

**CHILD RIGHTS AND DISSOLUTION OF MARRIAGE  
UNDER THE MATRIMONIAL CAUSES ACT.**

**BY**

**MERCY OSARIEMEN IGBINEDION  
LAW2002872**

**FACULTY OF LAW,  
UNIVERSITY OF BENIN,  
BENIN CITY**

**NOVEMBER 2025**

**CHILD RIGHTS AND DISSOLUTION OF MARRIAGE UNDER THE []**

**BY**

**MERCY OSARIEMEN IGBINEDION  
LAW2002872**

**A LONG ESSAY PRESENTED TO  
THE FACULTY OF LAW  
UNIVERSITY OF BENIN**

**IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF  
THE DECREE OF BACHELOR OF LAWS (LL.B) OF THE UNIVERSITY OF  
BENIN, BENIN CITY.**

**NOVEMBER 2025**

## **CERTIFICATION**

**I, MERCY OSARIEMEN IGBINEDION** with Matriculation Number **LAW2002872**

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.

---

**IGBINEDION MERCY OSARIEMEN**  
**LAW2002872**

**APPROVAL**

We certify that this project was written and completed by, **MERCY OSARIEMEN IGBINEDION** with Matriculation Number LAW2002872 in partial fulfillment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

**DR. D.T. ACHI**  
**PROJECT SUPERVISOR**

\_\_\_\_\_  
**SIGNATURE AND DATE**

**DR. (MRS.) OBIAGELI FRANCISCA OSUJI**  
**PROJECT COORDINATOR**

\_\_\_\_\_  
**SIGNATURE AND DATE**

**PROF. BRIGHT BAZUAYE**  
**DEAN, FACULTY OF LAW**

\_\_\_\_\_  
**SIGNATURE AND DATE**

## **DEDICATION**

This work is dedicated to God Almighty, who gives life and inspiration and has been my guide and guard. Also my Family for their support and love.

## ACKNOWLEDGEMENT

Indeed all glory is given to almighty God for the breath of life, he alone is the reason why I am alive and I would not have made it thus far without him. He kept me throughout my journey, he provided for me, he sustained me and so therefore I am eternally Grateful. He deserves all the glory and honor and May his name be praised forever more in my life. Amen!!!

I would like to express my deepest gratitude to Dr. D.T. Achi for his continuous guidance, massive contributions, and unwavering support throughout the course of this project. His expertise, patience, and motivation have been instrumental in enhancing my understanding of the topic and in shaping this project to its present form. Thank u very much sir.

Also respect must be given to the Dean of the faculty of Law, university of Benin in the person of Prof Bright Bazuaye and other lecturers of the faculty who have in one way or the other impacted this academic journey of mine through teachings or achievements which has encouraged me to do more.

I am also profoundly grateful to my parents in the person of Mr Godwin Igbinedion and Mrs Rita Igbinedion for their endless love, patience and encouragement. Thank u for seeing me through school, paying my bills, providing for my feeding, accommodation throughout my lifetime. Thank u for the number of times I have called u and u have answered even though things were tight. Your faith in me has been a constant source of strength and inspiration, and I owe much of my progress to your sacrifices and understanding during this period of hard work. To my siblings Daniel Igbinedion my younger brother my pride in whom I am well pleased, Deborah Igbinedion the last born of the house. I love u both so much .

Special thanks to the friends I made in school turned life long friends-Tessy omordon my Girl for life, .To Winifred my sweet girl with the brightest smile, Mercy Isaac my namesake, Ella Mbet the scholar, Nosa my financial secretary ,Excel empire, Excel opuere, Osasere fine wine,

Peace Eghareva my Edo sister, Racheal Alfred, Edia Blessing, Sylvia, Osunde, Evidence (Oba of law), Dunamis, Prudence, Promise, Jesse Bello, Nadia, Divine, Favour, Success, Elijah Aposheri, Ephraim, Adya, Vestral, Peejay and many others. To the entire luminaries class of 2025 thank u. Special thanks goes to those people who shared materials, fixed tutorial classes, gave notes and made the journey easier-Lawson Sorhue a teacher indeed, Aristotle and his olodo material, John Ayuba God bless u all richly.

To Bernard my fighter thank u so much for supporting me, I'm glad I met u. To Believe Osaibueke thank u so much my shaylaa. To Elvis Odogwu thank u so much my best buddy, To Mueyiwa Oburoh Gamaliel, Uncle AY and Uncle Dayo thank u very much for your efforts and contributions in helping to complete this project I'm grateful.

To my friends outside school-Shalby my babe thank u so much for being there for me, Eki, Anita, Angel, Blessed Omoyi Iripia, Debby, Christabel, Providence, Prince, Lenny, Eniola, thank u all for everything

To my roommates from 100 till 500 level thank u so much for the times we spent together, the bond, the gists, the food. My 100 level roommates Harriet and my bunkie Ajay ,Joyce, success, Hannah, Anita. ,Debby. To my 200 level roommates Zemesely, Sarah, Dominica, My bunkie, Esther. To my 300 level roommate's Esther, Amy, Jemima ,Onyinye,. To my 400 level roommates Amina, Racheal, my bunkie Victoria, Kamsy the tallest, OG my love, Dora. To my 500 level roommates Chidera my babe, Blessing my black beauty, Gladys my personal hair stylist, Amy, my fellow final year babe, my sweet bunkie Divine, precious my love, Chisom my baby and my honey, Favour my slim diva. I love u all.

To my inspiring senior colleagues that encouraged me, came through for me and supported me-Justice Esq my daddy, Godswill, Arnold Esq, Treasure, Ella Adeyeye, Olouma, Boye, Chamber daddy Scarlet attorneys, Vanessa, Emmy and others thank u so much I'm grateful.

To Okwuchucku Chukwudinma Ilozue, thank u for being there for me and supporting me, I love u so much .To my very special cousin Emma, I'm grateful. Thanks for always turning up for me. I love u from the bottom of my heart.

To my dearest Blessing Sam, May your gentle soul rest in peace. It hurts me so much wen I think back and remember u are no longer with me. I miss u so much my dear friend. You were a source of inspiration and strength to me. I remember u teaching me back then, encouraging me. The memories I made with u will forever be in my heart. I love u so much. Keep resting my dearest friend.

To everyone who sent me money during my journey in school I'm grateful, yall are the real MVP's and I will never forget your support. This project stands as a reflection of the collective effort, cooperation, and goodwill of everyone who directly or indirectly contributed to its completion. I am sincerely thankful to all for making this endeavor a rewarding and meaningful experience.

## TABLE OF CONTENTS

Title page	-	-	-	-	-	-	-	-	-	-	ii
certification	-	-	-	-	-	-	-	-	-	-	iii
Approval	-	-	-	-	-	-	-	-	-	-	iv
Dedication	-	-	-	-	-	-	-	-	-	-	v
Acknowledgements	-	-	-	-	-	-	-	-	-	-	vi
Table of content	-	-	-	-	-	-	-	-	-	-	ix
Table of cases	-	-	-	-	-	-	-	-	-	-	xii
Table of statutes	-	-	-	-	-	-	-	-	-	-	xiii
List of Abbreviation	-	-	-	-	-	-	-	-	-	-	xiv
Abstract	-	-	-	-	-	-	-	-	-	-	xv
<b>CHAPTER ONE: GENERAL INTRODUCTION</b>	-	-	-	-	-	-	-	-	-	-	<b>1</b>
1.1 Background to the Study	-	-	-	-	-	-	-	-	-	-	1
1.2 Statement of the Problem	-	-	-	-	-	-	-	-	-	-	3
1.3 Objectives of the Study	-	-	-	-	-	-	-	-	-	-	5
1.4 Research Questions	-	-	-	-	-	-	-	-	-	-	6
1.5 Significance of the Study	-	-	-	-	-	-	-	-	-	-	7
1.6 Scope and Limitation of the Study	-	-	-	-	-	-	-	-	-	-	8

1.7	Research Methodology	-	-	-	-	-	-	-	9
1.8	Definition of Terms	-	-	-	-	-	-	-	11
<b>CHAPTER TWO: CONCEPTUAL AND LEGAL FRAMEWORK</b>									<b>13</b>
2.1	Conceptual Clarification	-	-	-	-	-	-	-	13
2.2	Legal Foundation of Child's rights during the Process of Divorce	-	-	-	-	-	-	-	15
2.3	Principles of Child Welfare	-	-	-	-	-	-	-	17
2.4	The Changing Function of Family Courts	-	-	-	-	-	-	-	18
2.5	Literature Reviews	-	-	-	-	-	-	-	19
2,6	Conclusion	-	-	-	-	-	-	-	22
<b>CHAPTER THREE: LEGAL PROVISIONS ON CHILD WELFARE IN DIVORCE</b>									<b>23</b>
3.1	Marriage Dissolution through the Matrimonial Causes Act	-	-	-	-	-	-	-	23
3.2	Children Custody After Dissolution	-	-	-	-	-	-	-	24
3.3	Child Support and Maintenance	-	-	-	-	-	-	-	26
3.4	Access to and Visitation Rights	-	-	-	-	-	-	-	27
3.5	Case Law Review	-	-	-	-	-	-	-	27
3.6	Comparative Analysis	-	-	-	-	-	-	-	28
3.7	Conclusion	-	-	-	-	-	-	-	29

<b>CHAPTER FOUR: CHALLENGES AND REFORMS</b>	-	-	-	-	-	-	-	-	<b>30</b>
4.1 Challenges in the Legal Framework	-	-	-	-	-	-	-	-	30
4.2 Social and Cultural Barriers	-	-	-	-	-	-	-	-	39
4.3 Comparative Analysis-	-	-	-	-	-	-	-	-	45
4.4 Proposals for Reform	-	-	-	-	-	-	-	-	51
4.5 Conclusion	-	-	-	-	-	-	-	-	68
<b>CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS</b>									<b>71</b>
5.1 Summary of Findings	-	-	-	-	-	-	-	-	71
5.2 Recommendations	-	-	-	-	-	-	-	-	74
5.3 Conclusion	-	-	-	-	-	-	-	-	77
5.4 Suggestions for Further Research	-	-	-	-	-	-	-	-	78
<b>BIBILOGRAPHY</b>	-	-	-	-	-	-	-	-	<b>79</b>

## TABLE OF CASES

- Ajayi v Ajayi* (1992) 2 NWLR (Pt 226) 490.
- Ajayi v Ajayi* [2008] 9 NWLR (Pt 1092) 199.
- Akinpelu v Akinpelu* (1992) 6 NWLR (Pt 247) 174.
- Alabi v Alabi* (1981) 5 SC 161
- Alabi v Alabi* (2007) 9 NWLR (Pt 1039) 297
- Chinweze v Chinweze* (2010) 3 NWLR (Pt 1180) 327.
- Ekpenyong v Ekpenyong* (1974) 1 All NLR 28.
- Ekundayo v Ekundayo* (2013) 12 NWLR (Pt 1369) 234.
- Ibikunle v Ibikunle* (2012) 4 NWLR (Pt 1289) 567.
- Mojekwu v Ejikeme* (2000) 5 NWLR (Pt 657) 402.
- Mojekwu v Mojekwu* [1997] 7 NWLR (Pt 512) 283 (CA).
- Obinna v Obinna* (2005) 8 NWLR (Pt 928) 445.
- Odogwu v Odogwu* (1992) 2 NWLR (Pt 225) 539.
- Odusote v Odusote* (2012) 3 NWLR (Pt 1288) 47.
- Okeke v Okeke* (2010) 5 NWLR (Pt 1187) 329.
- Okonjo v Okonjo* (1978) 2 LRN 255.
- Okwueze v Okwueze* (1989) 3 NWLR (Pt 110) 321.
- Otti v Otti* (1992) 2 NWLR (Pt 226) 490.
- Williams v Williams*(1980) 5-7SC 1
- Williams v Williams* (1987) 2 NWLR (Pt 54) 66.

## TABLE OF STATUTES.

### **Nigerian statutes**

Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004

Child's Rights Act, 2003

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Marriage Act, Cap M6 LFN 2004

Labour Act, Cap L1 LFN 2004

Evidence Act, Cap E14 LFN 2011

Legal Aid Act, Cap L9 LFN 2011

Violence Against Persons (Prohibition) Act, 2015

Judgment (Enforcement) Rules (High Court of Lagos State) 2019.

Sheriffs and Civil Process Act, Cap S6 LFN 2004.

### **Foreign statutes**

United Nations Convention on the Rights of the Child (UNCRC), 1989

African Charter on the Rights and Welfare of the Child (ACRWC), 1990

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

Universal Declaration of Human Rights (UDHR), 1948

International Covenant on Civil and Political Rights (ICCPR), 1966

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Children Act 1989 (United Kingdom)

African Charter on Human and People's rights (1981)

Children Act 1989 (UK), s 1(1), s 1(3).

Children's Act 38 of 2005 (South Africa), s 9, s 33.

Divorce Act RSC 1985 (Canada), ss 16.1–16.96 (as amended 2019).

## LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Full Meaning</b>
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ADR</b>	Alternative Dispute Resolution
<b>CAFCASS</b>	Children and Family Court Advisory and Support Service (United Kingdom)
<b>CRA</b>	Child Rights Act 2003
<b>FRN</b>	Federal Republic of Nigeria
<b>HC</b>	High Court
<b>LAC</b>	Legal Aid Council
<b>LFN</b>	Laws of the Federation of Nigeria
<b>MA</b>	Marriage Act
<b>MCA</b>	Matrimonial Causes Act
<b>NHRC</b>	National Human Rights Commission
<b>Sec. / S.</b>	Section
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNCRC</b>	United Nations Convention on the Rights of the Child

## **Abstract**

Although marriage is a legal institution used in solving marital instability, in most cases, it creates complex challenges with regard to children welfare and protection. The Matrimonial Causes Act (MCA) forms the main legislative foundation of divorce, separation and ancillary reliefs in the Nigerian legal system. But the overlap of the Act with the rights of the child, especially as expressed in the Child Rights Act 2003 and the global provisions like the UN Convention on the Rights of the Child is a serious subject of academic interest. This paper discusses how the MCA is sufficient to protect the rights of children both during and after dissolution processes. It questions the law-making principles on custody, maintenance, access and guardianship as well as evaluates the discretion of the judiciary and the overall importance of the best interests of the child. Through the case law, statutory provisions and comparative outlook, the study brings to the fore both the weaknesses and strengths of the matrimonial jurisprudence in balancing the interests of parents and child welfare in Nigeria. The paper contends that although the MCA offers a legal framework in the ancillary relief it lacks adequate incorporation of child centered provisions, hence there is a need to reform the laws to align the family law with the laws of children rights. Finally, the paper highlights the necessity of more comprehensive and rights-oriented approach to matrimonial conflicts with an aim at preserving dignity, welfare, and future of the child.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background of the study

Marriage is one of the most important social institutions, which make the family and society stable in general. According to Nigeria, it is legally accepted in three wide systems namely customary law, Islamic law, and statutory law. The statutory marriages that are the concern of the study are governed by the Marriage Act and in a case of its breakdown by the Matrimonial Causes Act (MCA)<sup>1</sup>. The statutory guidelines upon dissolution of statutory marriages, custody of children and ancillary reliefs have a statutory basis under the MCA which was enacted in 1970 and is now codified as Cap M7, Laws of the Federation of Nigeria 2004.

The Nigerian family structure has over the recent years experienced the rising rate of divorce, which is affected by the urbanization, the economic considerations, the changed gender roles, and the increased awareness of individual rights. Although dissolution can free wives and husbands of an unhappy marriage, children are usually the worst hit. Divorce may disrupt the emotional, educational and social growth of a child and when not well controlled, it may subject the children to neglect, abuse and psychological trauma. This fact highlights the necessity of studying whether the current law is adequate in protecting the rights of children in matters of divorce within a marital relationship.

Under Section 69 MCA, a “child of the marriage” includes biological and adopted children under 21 years. The Act empowers courts to make orders on custody,

---

<sup>1</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria (LFN) 2004

maintenance, and access<sup>2</sup> However, it has been criticized as outdated because it does not explicitly adopt the “best interest of the child” principle, now recognized as central in modern child-rights jurisprudence. By contrast, the Child Rights Act (CRA) 2003 and international instruments such as the United Nations Convention on the Rights of the Child 1989 (UNCRC)<sup>3</sup> and the African Charter on the Rights and Welfare of the Child 1990 (ACRWC)<sup>4</sup> enshrine this standard.

The 1999 Constitution of the Federal Republic of Nigeria (as amended)<sup>5</sup> in its CRA, which domesticates the UNCRC, defines the concept of a child to be an individual who is under the age of sixteen years and provides that in executing all actions concerned with the child, whether by a court, administrative or legislative body, the best interest of the child shall be the programmatic consideration. Section 17(3)(f), on the other hand, affirms the protection against exploitation and moral or material neglect of children, and the onus on protecting the human person against exploitation. Nevertheless, there has been no harmonization between the MCA and the CRA, which creates ambiguity over what degree to which the matrimonial courts should give utmost consideration of the child rights principles in the course of dissolution proceedings.

Judicial authorities reflect both the possibilities and limitations of the current framework. In *Odogwu v. Odogwu*<sup>6</sup>, the Supreme Court emphasized that child welfare must guide custody decisions. Similarly, in *Williams v. Williams*<sup>7</sup>, the Court reiterated that the child’s interest is paramount. Other decisions, such as *Alabi v. Alabi*, *Okonjo v.*

---

<sup>2</sup> sections 70–71 MCA.

<sup>3</sup> United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3(1)

<sup>4</sup> 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), art 4

<sup>5</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 28 (“every child has the right ...”

<sup>6</sup> *Odogwu v Odogwu* (1992) 2 NWLR (Pt 225) 539

<sup>7</sup> *Williams v Williams* (1987) 2 NWLR (Pt 54) 66

*Okonjo*<sup>8</sup>, and *Otti v. Otti*<sup>9</sup>, reinforce this approach. Nonetheless, because the MCA lacks explicit statutory clauses on child welfare, courts rely heavily on discretion, leading to inconsistency.

It is on this basis that it has become necessary to question the competence of the MCA in protecting the rights and well-being of children when marriage is being terminated. The paper thus attempts to analyze critically the provisions of the MCA, its relation with that of the CRA, constitutional provisions, and that of international child rights provisions with a view to establishing whether the Nigerian law is adequate in safeguarding children in a matrimonial proceedings and suggest where reforms are needed.

## **1.2 Statement of the Problem**

When marriage is dissolved, concerns arose on the well-being and safety of the children, which in most cases are the most defenseless people during the process. Although the Matrimonial Causes Act<sup>10</sup> has the provisions concerning the divorce, custody and maintenance, the child welfare aspects have faced a lot of criticism as being ineffective. In contrast to the Child Rights Act<sup>11</sup>, which clearly incorporates the best interest of the child as the pre-eminent principle when dealing with issues of children, the MCA does not so do. This has resulted in courts being left to the mercy of judicial discretion in custody and maintenance orders and inconsistencies in practice.

The other issue is that the MCA is outdated since it was adopted in 1970 and has not been substantially revised in accordance with contemporary child rights

---

<sup>8</sup> *Okonjo v Okonjo* (1978) 2 LRN 255

<sup>9</sup> *Otti v Otti* (1992) 2 NWLR (Pt 226) 490.

<sup>10</sup> Matrimonial Causes Act (MCA) Cap M7 LFN 2004

<sup>11</sup> Child Rights Act 2003.

jurisprudence. To illustrate the case, matters of joint custody, shared parental responsibility, and the emerging ideas of child welfare are either not stipulated by the Act or implied by it. This has created some spaces which sometimes have led to decisions that though they are within the law, may not have the holistic needs of the children adequately met. In *Williams v. Williams*<sup>12</sup> stressed on the child welfare, but given that statutory direction was not laid out in detail, the decision was made more on the wisdom of the judge than out of the strict law provided.

Besides, there is inadequacy of the harmonization of the MCA and the CRA. The CRA is applicable in all countries although traditionally there has been an imbalanced enactment of the law with certain states being slow to domesticate the law because of cultural and religious factors. This leaves it unclear whether matrimonial courts, in the course of applying the MCA, are under obligation to embrace the child welfare provisions of CRA. What has been the outcome is a disjointed regime in which the fate of children is reliant not only on the statute that is applicable but also on whether the court is aligned to child rights norms and whether the parties wish to apply those norms.

Along with this, the implementation of custody and maintenance orders is also a problem. A large number of children whose parents have divorced are still left to experience neglect being a result of ineffective compliance mechanisms. Despite the provisions in the CRA and the Constitution of the Federal Republic of Nigeria 1999 (as amended) that safeguard the welfare and dignity of children, the mentioned provisions are usually more theoretical than operational without further incorporation into the matrimonial process.

---

<sup>12</sup> *Williams v Williams* (1987) 2 NWLR (Pt 54) 66

The key issue, then, is whether the Matrimonial Causes Act as it currently stands and functions adequately safeguard the rights and welfare of children during the divorce process, or whether there is a strong necessity to reform it so that it can be aligned with the CRA and with international law on the subject, including the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

### **1.3 Aim and Objectives of the Study**

The aims and objective of the study is to critically look at whether the Matrimonial Causes Act is sufficient to protect the rights and well-being of children during and after the dissolution of marriage in Nigeria. In order to do so, the study has the following specific objectives:

1. To review the stipulations in the Matrimonial Causes Act concerning custody, maintenance and access rights of children in divorce cases. This goal aims at identifying how far the Act safeguards children specifically and whether the provisions are in line with modern day child welfare ideas.
2. To determine the interpretation and application of rights of children by the courts in Matrimonial proceedings in Nigeria. Specific focus will be given to judicial discretion in the orders of custody and maintenance with reference to some of the landmark cases like *Odogwu v. Odogwu*<sup>13</sup> and *Williams v. Williams*<sup>14</sup>.

---

<sup>13</sup> *Odogwu v Odogwu* (1992) 2 NWLR (Pt 225) 539

<sup>14</sup> *Williams v Williams* (1987) 2 NWLR (Pt 54) 66

3. To compare Matrimonial Causes Act with other child protection tools, the 1999 Constitution, and international conventions, such as the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), to determine the relation between the Act and others.
4. To provide recommendations on legal and policy reforms, including proposals on how to amend the Matrimonial Causes Act, enhance enforcement frameworks and encourage its alignment with child rights law and international law.

#### **1.4 Research Questions**

Based on the objectives of the research, this study aims at answering the following questions:

1. What are the provisions under the Matrimonial Causes Act that govern the welfare of children during a divorce, especially when it comes to custody, maintenance and rights to see the children?
2. What have the courts in Nigeria said and how did they interpret and put these provisions into practice, and the extent to which have judicial decisions demonstrated the principle of the best interest of the child?
3. Is the Matrimonial Causes Act in line with the Child Rights Act 2003, the 1999 Constitution, and international instruments on child rights including the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the child (ACRWC) sufficiently well aligned?

4. What are the significant loopholes, contradictions and enforcement issues under Nigerian law relating to the protection of the rights of children during and after the end of the marriage?
5. Which reforms should we make to ensure the Matrimonial Causes Act is more effective in protecting the rights and welfare of children in the event of a breakdown of marriages?

### **1.5 Significance of the Study**

This study is important in a number of ways, both as a legal study and as a practical measure.

Research to Law Education: Through the study, the literature on family law and child rights in Nigeria will be enriched by critically assessing the sufficiency of Matrimonial Causes Act in safeguarding children throughout and after marriage breakdown. It will also offer an analytical framework that researchers in the future can build on in the investigation of the intersection between law in matrimonial and child welfare.

#### **1. Relevance in Judicial and Professional:**

The study will be useful to judges, magistrates, and legal professionals engaged in matrimonial cases because it will identify the loopholes present in the existing laws and provide an insight into the best practices of protecting the welfare of children. Through analysis of judicial interpretation of custody and maintenance, the study will act as a guide in ensuring more consistency and child-centred decision making in Nigerian courts.

## **2. Legislative and Policy Impact:**

The policy implications of the findings will be applicable to lawmakers and policymakers because the findings will reveal weaknesses in the current legal framework and suggest a reform process that will normalize the Matrimonial Causes Act with the Child-Rights Act 2003 and the international child rights instruments. This could help in the changes in the legislation, training of the judicial staff, and family specialized courts.

## **3. Public Interest: Child Advocacy:**

On a larger social scale, the paper highlights how practitioners should consider the best interests of the child when they are divorced. It will make practical suggestions to the child rights advocates, civil society groups and welfare organizations engaged in ensuring that vulnerable children are not subjected to the negative effects of marital breakdowns.

Overall, the study holds a lot of importance in the sense that it fills the gap in legal theory vis-a-vis social reality, the law is in a position to ensure that the welfare and dignity of children caught in the act of divorce is not only regulated, but also taken into account.

### **1.6 Scope and Limitations of the Study.**

This study is limited to the legal framework of children right in the termination of marriage under the Nigerian law and specifically the Matrimonial Causes Act (MCA). The MCA forms the main statutory foundation of divorce and allied processes in Nigeria, but in this study, the provisions of the Child Rights Act 2003, the 1999 Constitution (as amended), and the applicability of such international laws as the United

Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of Children (ACRWC) will also be taken into account to determine the sufficiency of child protection standards.

The work remains limited to matters which are directly related to custody, maintenance, access/visitation and the general welfare of children in divorce proceedings. The cases beyond this area, adoption, and guardianship cases that are not associated to divorce, inheritance, or criminal matters of child protection are not analyzed.

The research will also indulge in the comparative analysis through, albeit briefly, studying the strategies taken by other jurisdictions, especially the United Kingdom, South Africa and Canada, with an aim of drawing lessons, which could be used to inform Nigerian legal reforms.

Regarding the limitations, the study is mostly doctrinal as it makes use of statutes, case law and scholarly publications. There is no inclusion of empirical field information (interviews with judges, lawyers, or families affected) and that can limit the practical information on how the law works in real-life divorce situations. In addition, differences in the implementation of the Childs Rights Act at the state level, since Nigeria is a federation, can be a challenge in determining a standard criterion of child protection.

## **1.7 Research Methodology**

The research approach adopted in this study is the doctrinal legal research methodology, which is critical examination of legal rules, concepts and decisions of the courts on marriage dissolution and child rights in Nigeria. The research is based mainly on both primary and secondary law materials.

**1. Primary Sources:**

These are the applicable statutory laws which include the Matrimonial Causes Act, the Childs Rights Act 2003 as well as the 1999 Constitution (amended). Court rulings will also be looked at in the Nigerian courts and especially the appellate courts to determine the interpretation and application of the law in the real world. The international legal tools, United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child will be used to compare the obedience of Nigeria to international standards.

**2. Secondary Sources:**

The research utilizes legal books, journal articles, conference papers and reports issued by international bodies and child rights activists. Through these sources, one will be able to find scholarly viewpoints and critical insights of the strengths and weaknesses of the current legal framework.

**3. Comparative Approach:**

It is going to be comparatively analyzed with references to jurisdictions as the United Kingdom, South Africa, and Canada, where family law has evolved in the mechanisms that would prioritize child welfare in the case of divorce. This will help in determining best practices that will possibly direct reforms in Nigeria.

**4. Method of Analysis:**

The acquired data will be assessed in the forms of descriptive, analytical, and critical. The descriptive part entails defining the provisions of the applicable statutes; the analytical part judges judicial interpretations and enforcement issues; and the critical part identifies the loopholes in the law\, and proposes changes.

This research methodology is deemed to be the right one since the study is essentially a legal study focused on evaluating the statutory and judicial provisions and recommending the reforms that will enhance the protection of the rights of children under the Matrimonial Causes Act.

## **1.8 Definition of Terms**

The following key terms are to be defined to be clear and precise in terms of this research:

### **1. Child:**

The meaning of a child differs according to various legal tools. In the Matrimonial Causes Act, 1973, the definition of a child applies to a person below the age of 21 years who is a child to both or either of two persons who are married. A child under the Child rights act 2003 is more hectic and only refers to an individual who is under the age of 18 years. In this study, the term child will be applied as the Childs rights act and other international documents like UNCRC use the age of 18 years as the age of childhood.

### **2. Marriage:**

In this study, marriage is defined as a legal marriage as established by Marriage Act and governed by Matrimonial Causes Act. Customary and Islamic marriages though valid under the Nigerian law are not directly represented within the scope of this study unless they have to be mentioned as a reference point in comparison.

### **3. Dissolution of Marriage:**

This means the legal dissolution of a lawful statutory marriage by decree of a competent court through provisions of Matrimonial Causes Act. It comprises of divorce proceedings on any of the established legal reasons.

**4. Custody:**

Custody is the legal duty and right of one parent that he or she has the right to possess and take care of the child as decided by the court when a marriage is dissolved. It can be either individual, or joint, which relies on the situation and depends on the principle of best interest of the child.

**5. Maintenance:**

Maintenance is monetary assistance or care that the court directs to the maintenance, education and welfare of a child after the separation of the marriage. This covers food, clothing, shelter, medical and school costs.

**6. Welfare:**

Welfare is the overall well being of a child i.e. physical, emotional, psychological, educational, and social forms of development. Under the international standards, the Nigerian courts tend to view the concept of welfare broadly to incorporate the best interest of the child.

**7. Parental Responsibility:**

The term describes the collection of rights, duties, powers and responsibilities that parental figures bear towards their children. It entails the requirement to defend, sustain, and direct the child, even when marriage has broken.

## CHAPTER TWO

### CONCEPTUAL AND LEGAL FRAMEWORK

#### 2.1 Conceptual Clarification

The definition of child is the key to the divorce issue with custody, maintenance and welfare.

Matrimonial Causes Act (MCA): Matrimonial causes Act (MCA) does not define child in an absolute sense but it always mentions children of the marriage. This category has been anchored on judicial interpretation and practice as applied to minors, typically underage children who are below 18 years; and who are subject to the care and maintenance by their parents.

Child Rights Act (CRA) 2003 Section 277<sup>15</sup> gives an accurate definition: it is a person that has not yet reached the age of eighteen years. This puts Nigeria on the same level with other nations and offers guidelines in the areas of contentions on the custody, maintenance and welfare.

International Standards: According to the UN Convention on the Rights of the Child (UNCRC)<sup>16</sup>, the term child refers to a human being under the age of 18, which may be under the age of majority provided there is a domestic law on majority. The same stance is taken by the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>17</sup>.

---

<sup>15</sup> Section 277 Child Rights Act 2003,.

<sup>16</sup> United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3(1).

<sup>17</sup> 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), art 4.

The harmonized definition of the term is such that in the application of the CRA with the MCA, the courts in Nigeria are not left in confusion with the extent of their jurisdiction over children in the dissolution process.

Divorce is the legal end of a lawful marriage union, which is acknowledged and executed by a court of proper jurisdiction.

Matrimonial Causes Act (MCA): According to section 15(1)<sup>18</sup> matrimonial can only be dissolved upon the ground that the marriage has irretrievably broken up. Section 15(2)<sup>19</sup> gives eight factual circumstances by which the irretrievable breakdown can be established and this is through adultery, cruelty, desertion, lack of consummation, a period of at least two years of separation with consent, or five years without consent.

Consequences: The dissolution does not only end the marital relationship but also causes a chain of other problems: child custody, child maintenance, distribution of property and spousal support.

It is a wider concept than what divorce means in the common meaning. According to Nigerian jurisprudence, it summarizes the legal bases as well as the fair remedies of the welfare of children.

What defines the legal framework to be used in the case of dissolution is the type of marriage:

- 1. Statutory Marriage:** The Acts that govern this include the Matrimonial Causes Act and the Marriage Act. It is formalized and monogamous and is registered in a registry of place of worship or a license. Statutory marriages are the only marriage that is the sole mandate of the High Court under the MCA.

---

<sup>18</sup> Section 15 Matrimonial Causes Act 1970 (Nigeria).

<sup>19</sup> Section 15(2) Matrimonial Causes Act 1970 (Nigeria).

2. **Traditional Marriage:** This is based on the tradition and practices of the locals. It tends to be polygamous and the divorce processes are governed by the native law and custom until the parties submit voluntarily to the statutory jurisdiction. Customary courts make decisions over issues of child custody which is usually biased towards the male.
3. **Religious Marriage:** the marriage ritual is dominated by Islamic and Christian rituals. When registered, Islamic marriages are governed by the Sharia principles whereas Christian marriages come across with statutory marriage. An instance of this is a Christian marriage which may be a marriage that is celebrated in church but not registered, but is not statutory.

It is imperative to know these differences, as only the marriages that are statutory are subject to remedies that are provided by the MCA. Children born prior to marriage of customary or religious marriages may have an access to the CRA or the state family law statutes protection of welfare.

## 2.2 Legal Foundation of Child Rights During the Process of Divorce.

Matrimonial Causes Act (MCA)<sup>20</sup> In Nigeria, the main law that deals with divorce and ancillary reliefs is the MCA. Custody and Guardianship: Section 71 gives the court the power to issue such orders as to the custody of the children with a clear statement that the best interest of the child will amount to the foremost. Maintenance and Education: Section 70 and 72 permits orders which are related to the financial provision to provide proper upbringing, medical treatment, and educational progress. Judicial Discretion: Nigerian courts are very wide-ranged, balancing between the principle of financial capacity and between the principle of welfare. In *Williams v. Williams*<sup>21</sup>, the Supreme

---

<sup>20</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria (LFN) 20

<sup>21</sup> *Williams v Williams* (1987) 2 NWLR (Pt 54) 66

Court emphasized on the fact that welfare prevails over any other consideration including parental rights. The CRA is a supplement to the MCA because it codifies the fundamental child rights. Core Rights which includes: Right to life and human dignity<sup>22</sup>, Right to care and protection of parents<sup>23</sup>, Right to protection against abuse, health, and education<sup>24</sup>. Best Interest Principle: Section 1 of the CRA entrenches the best interest of the child as a leading factor in any action taken regarding the child. This is an implication of Article 3 of the UNCRC.

**Application:** CRA is applicable in domesticated states only. This has resulted in disequilibrium in protection within the nation, where some states in the north do not domesticate out of religious beliefs. Nevertheless, federal courts have still been using its persuasive power.

The Constitution does not directly control dissolution, but it offers a human right background:

1. **Section 17(3) (f)CFRN**<sup>25</sup> : Requires the protection of children against exploitation and neglect.
2. **Section 34(1)CFRN**<sup>26</sup>: affirms the human dignity, which forbids inhuman treatment or degradation.

These clauses augment the responsibility of the state to protect children during custody disputes particularly against abuse and negligence by their families.

The international law imposes on the judicial reasoning in the cases of divorce in Nigeria:

---

<sup>22</sup> Right to life and human dignity (*Child Rights Act 2003*, s 3)  
<sup>23</sup> Right to care and protection of parents (*Child Rights Act 2003*, s 14).  
<sup>24</sup> Right to protection against abuse, health, and education (*Child Rights Act 2003*, ss 15–17)  
<sup>25</sup> Constitution of the Federal Republic of Nigeria 1999 (as altered), s 17(3)(f).  
<sup>26</sup> *ibid*, s 34

**UNCRC (1989)<sup>27</sup>**: Nigeria is bound since it ratified it and has to prioritize best interests in issues involving children.

Article 19 of the African Charter on the Rights and Welfare of the Child (1990): This article espoused the need to protect children in the event of separation between parents with respect to maintenance and custody rights.

**CEDAW**: Guarantees the rights of women which indirectly affects the welfare of children by providing equality based on gender in divorce.

In *Chinweze v Chinweze*<sup>28</sup>,. The Court of Appeal referred to the international conventions as it upheld a right of custody by a mother where the welfare of the child required maternal care.

### 2.3 Child Welfare Principles

And this is the golden thread of both the MCA and the CRA. Courts must consider:

1. Moral, emotional, and psychological maturity.
2. Home environmental stability.
3. Educational requirements and cultural sustainability.
4. Health and safety concerns

The court reaffirmed this in *Oduote v Oduote*<sup>29</sup> by granting the mother custody over the child, although the father had better financial capacity.

In a relative sense,<sup>30</sup> Myron G.Hill, Family Law adds that the courts in the United States use identical standards where the emphasis on the entire welfare of the child is applied in lieu of strict parent rights. Such a comparison resonance indicates that Nigeria conforms to international jurisprudence.

---

<sup>27</sup> United Nations Convention on the Rights of the Child (UNCRC) 1989, Art . 3(1).

<sup>28</sup> *Chinweze, v Chinweze*, 2010) 3 NWLR (Pt. 1180) 327

<sup>29</sup> *Oduote v Oduote* (2012) 3 NWLR (Pt 1288) 47

<sup>30</sup> MG Hill, *Family Law* (West Publishing 2018) 212

1. **Custody:** Can either be exclusive (given to one parent) or joint (shared obligations). The joint custody is not taken lightly by the Nigerian courts because of challenges to enforcement.<sup>a</sup>

2. **Guardianship:** In court cases where both parents are unfit, the guardianship can be awarded to a relative or third parties, as is the case with *Alabi v Alabi* <sup>31</sup>.

3. **Parental Responsibility:** It encompasses financial support, education, healthcare and moral education. In most instances during custody denial, access rights are usually awarded to avoid the emotional severance.

#### 2.4 The Changing Function of Family Courts.

The family law in Nigeria is not well established:

1. **Specialization:** Compared to the U.S. system in the Family Law by Hill, Nigeria does not have domesticized family courts across the country. The MCA has High Courts that are also family courts.

2. **Child-Friendly Processes:** There are also other jurisdictions (such as Lagos) which have led the way in child friendly courtrooms, child psychologists, welfare officers.

3. **ADR Mechanisms:** Courts are more and more encouraging mediation in order to minimize hostility and maintain parental cooperation.

This development highlights the fact that the judiciary realized that adversarial litigation in many cases is detrimental to children, and that welfare requires novel methods.

---

<sup>31</sup> *Alabi v Alabi* (2007) 9 NWLR (Pt 1039) 297

## 2.5 Literature Review

Matrimonial causes act (MCA) is still primal in the context of divorce in statutory marriage settings in Nigeria. Ezeani (2024) points out that the MCA represents the doctrine of irretrievable breakdown, in which legal dissolution is based on substantive marital failure, as opposed to moral blame and fault. This evolution of doctrine is consistent with the international trend in modern family law of no-fault divorce, which minimizes litigation of an adversarial nature as well as psychological damages to spouses and children. Ezeani however criticizes that in Nigeria, entrenched cultural and religious norms that are against divorce render the application of this principle a problem and it has created a social stigma and legal barriers to the affected parties particularly women and children.

It is emphasized by Adebola (2023) that child rights under matrimonial law in Nigeria have to be interpreted in the framework of the nexus of the MCA, the Child Rights Act, and court traditions. The analysis by Adebola indicates that although courts consider the best interests of the child when making decisions in custody and maintenance orders, the application of the same is not consistently followed due to the conflict between statutory provisions and the practises. Such a discrepancy is not only problematic due to the tendency of depriving parental care and financial resources to many children after divorce, but also due to the tendencies of patriarchy in the customary law regimes. Adebola ends by proposing that judicial sensitization and training is needed to reconcile the interpretation of child welfare across jurisdictions.

The case law is dominated by the custody principle of the child welfare as opposed to the parental rights. In their review, *Ojo and Alade (2025)*<sup>32</sup> observed that

---

<sup>32</sup> T Ojo and K Alade, 'Child Custody and the Influence of English Matrimonial Jurisprudence' (2025) 14 *Nigerian Journal of Family Law* 45, 52.

Nigerian courts have overtime been influenced by the English matrimonial jurisprudence which has emphasized on mental, physical, and educational interests of the child instead of simplistic issuance of custody due to gender. *T.B. v A.T.* saw the court understand that the preference that a mother has in keeping young children must be counterbalanced by the ability and situation of the father, which ushered in a more subtle, case-by-case adjudication paradigm. In a similar manner, *Ajayi v Ajayi*<sup>33</sup> showed that the courts were unwilling to award custody to a parent who they deemed to be neglectful or morally unfit yet in some cultures some people believed that fatherly custody was the best option.

Concerning maintenance, Chukwuemeka (2024)<sup>34</sup> highlights the fact that in terms of maintenance, the provisions of the MCA regarding financial assistance are based on the changes in the requirements of the society in regard to safeguarding the rights of children after divorce. He notes that the Act requires that the courts look at all the issues about the living conditions of the child such as education and health than just subsistence allowances. Chukwuemeka <sup>35</sup> denounces that implementation of maintenance orders is still ineffective because of the systematic nature of delays and ineffectiveness of punitive actions against delinquent parents. He suggests changes in the law to enhance the enforcement mechanisms and increase the awareness of the parents on the obligation.

Socio-culturally, Okonkwo (2025) examines the conflict between the law and native cultural practices in matrimonial conflicts where children are involved. He states that customary laws usually override the best interest of the child with the family or

---

<sup>33</sup> *Ajayi v Ajayi* (1992) 2 NWLR (Pt 226) 490

<sup>34</sup> Chukwuemeka Emmanuel Ibe, 'Profile' (Nnamdi Azikiwe University) <<https://profile.unizik.edu.ng/nau2333>> accessed 27 September 2025.

<sup>35</sup> Ibid.

patriarchal control which makes it hard to enforce the laws statutorily. His study recommends law pluralism that acknowledges the cultural diversity but does not disregard the sovereignty of the children rights as expressed in the international conventions such as the UNCRC which Nigeria is a signatory. Okonkwo supports mutual work of religious leaders, elderly members of the community and legal institutions to close this gap.

Lastly, reconciliation through judicial mechanisms before dissolution, which has to be done as required by MCA, get diverse academic consideration. Fakoya (2023) values the conciliatory nature of the Act by presuming that mediation by the courts can help to lower the levels of acrimony and save children the harrowing experience of the disputed divorces. However, Fakoya cautions that these mechanisms have not been fully exploited because of the absence of trained mediators and congested courts and do not have significant effects in practice on protecting family integrity and child welfare.

The legal provision of divorce as outlined by MCA is widely endorsed but termed to be in need of a revision to overcome the problem of enforcement and cultural opposition. Scholars stress the need to focus on child welfare, where the best interest principles are to be consistently considered, with the sensitization to the cultural context. Recurrent themes in call-for-action scholarly works include enforcement of maintenance, reduction of social stigma, and better mediation practices.

This review combines the statutory and judicial reforms and academic review to give a comprehensive understanding of the Matrimonial Causes Act as far as child rights are concerned. Although the Act provides a progressive legal framework, more

effective enforcement mechanisms, cultural adaptation, and uniform judicial interpretation have to make the Act more effective.

## **2.5 Conclusion**

Chapter two has helped to explain the conceptual foundations of the term child and the term dissolution of marriage, the types of marriage as also the statutory and constitutional constructs that govern children rights during divorce. The principle, which governs all the MCA, CRA, and even international instruments, is the best interest of the child.

Nevertheless, there are still some obstacles: the inconsistent domestication of the CRA, insufficient implementation of custody and maintenance orders and the lack of specialism of family courts. Nigerian jurisprudence has however cut a solid child-oriented path, as will be demonstrated in later chapters, as a fusion of the statutory requirements and judicial discretion to protect children when marital dissolution occurs.

## CHAPTER THREE

### CHILD WELFARE LEGAL PROVISIONS DURING DIVORCE.

#### 3.1 Marriage Dissolution through Matrimonial Causes Act.

The Matrimonial Causes Act (MCA) is still the foundation of matrimonial litigation in Nigeria.<sup>36</sup>MCA 15(1) confirms the fact that the marriage can only be dissolved when the court is convinced that marriage has irretrievably broken down.<sup>37</sup>Section 15(2) then enumerates eight instances on which irretrievable breakdown can be shown: adultery, desertion of at least one year, habitual cruelty, conviction and imprisonment of at least five years, habitual drunkenness or drug addiction, refusal to consummate the marriage, separation of at least two years with consent or three years without consent, and where one party is disappeared with presumption of death.<sup>38</sup>

The interpretation of the irretrievable breakdown by judicial courts has always been unanimous: it cannot be satisfied by mere accusation, but with convincing evidence that marriage has really broken down beyond repair. For example, in *Ekpenyong v. Ekpenyong*, the court emphasized that in order to justify a divorce, cruelty should be of a serious nature and weighty enough so as to render the continued living with it unbearable.<sup>39</sup>Equally, desertion should be willful and sustained. Nigerian judiciary thus has managed to maintain the sanctity of marriage by making sure that only petitions with serious and substantiated cases are carried out.

The High Court is where a petition is filed seeking divorce and by Section 2 MCA, the party has the jurisdiction to do so.<sup>40</sup> It ends with the issue of a decree nisi

---

<sup>36</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004.

<sup>37</sup> Section 15(1) Matrimonial Causes Act.

<sup>38</sup> Section 15(2) Matrimonial Causes Act.

<sup>39</sup> *Ekpenyong v. Ekpenyong* (1974) 1 All NLR 28.

<sup>40</sup> Section 2 Matrimonial Causes Act.

that may be allowed to become absolute after a period of three months as long as no effective reason is proved against it. Notably, divorce cases are usually associated with ancillary reliefs especially custody, maintenance and visitation. Section 69 MCA literally provides the authority to the courts to make consequential order on children so that the welfare of minors is not abandoned without adequate attention.<sup>41</sup>

### **3.2 Children Custody after dissolution.**

Among the most controversial parts of matrimonial litigation are the custody cases. Section 71 MCA states that when the case is concerned with custody the court shall consider interests of child as the first priority.<sup>42</sup> This is in line with Section 1 of the Child Rights Act (CRA) 2003 that says that in all acts done against a child, consideration of the best interests of the child is to be considered as the first act.<sup>43</sup> This legal focus on welfare is an indication that Nigeria adheres to international requirements that are embedded in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.<sup>44</sup>

The courts of Nigeria regard the following to make custody determinations:

**1. Child age and sex:** The infants and young children are normally kept with the mother as it was in the case of *Mojekwu v. Ejikeme*, but at a later stage of childhood this assumption gains less strength.<sup>45</sup>

---

<sup>41</sup> Section 69 Matrimonial Causes Act.

<sup>42</sup> Section 71 Matrimonial Causes Act

<sup>43</sup> Section 1 Child Rights Act 2003.

<sup>44</sup> United Nations Convention on the Rights of the Child, 1989; African Charter on the Rights and Welfare of the Child, 1990

<sup>45</sup> *Mojekwu v. Ejikeme* (2000) 5 NWLR (Pt. 657) 402.

2. **Needs, emotional and educational:** Courts like arrangements that do not disrupt the child in terms of schooling and feelings.
3. **Parental behavior and personality:** In case the behavior of one parent threatens the child (e.g. abuse of drugs, violence), the right to custody can be withheld, no matter how much money one has.
4. **Monetary means:** This is not the only one but the courts look into the financial capability of both parents to support the child in a material sense.
5. **Child wishes:** According to Section 39 CRA, the court can in certain circumstances pay attention to parental opinion of older children.<sup>46</sup>

Hard customary assumptions have always been dismissed by the courts. In *Odogwu v. Odogwu*, the Supreme Court held that welfare prevails against all customary considerations and that no parent is entitled to custody by default.<sup>47</sup> Similarly, in *Okwueze v. Okwueze*, a custom-based claim was dismissed by the Court because of the level of welfare, which was primary.<sup>48</sup>

Joint-custody is not forbidden; however, Nigerian courts do not practice it in reality, as they can be unstable and conflict with each other. Rather, one parent tends to be given the sole custody, the other being allowed to visit. Nonetheless, *Williams v. Williams* showed the malleability of the Court admitting that joint arrangements can be acceptable provided they are explicitly in the best interests of a child.<sup>49</sup> The Family Law of Myron G. Hill is no exception with such a tendency in the American judicial system,

---

<sup>46</sup> Section 39 Child Rights Act 2003.

<sup>47</sup> *Odogwu v. Odogwu* (1992) 2 NWLR (Pt. 226) 539

<sup>48</sup> *Okwueze v. Okwueze* (1989) 3 NWLR (Pt. 110) 321

<sup>49</sup> *Williams v. Williams* (1980) 5-7 SC 1

where the welfare of a child takes precedence over the proprietary right of a parent and displays a common ethos of the common law.<sup>50</sup>

### **3.3 Child Support and Maintenance.**

Section 70 MCA authorizes courts to command financial help to children of the marriage that is used to cover education, housing, health, and overall maintenance.<sup>51</sup> This has been the responsibility of the father but courts have pointed out that in a case where the mother is more viable, he or she as well can be ordered to pay. The definition of children of the marriage is broad which includes legitimate, adopted as well as children that are accepted into the family.

Even with these statutory powers, implementation of maintenance orders is a big challenge. Most fathers fail to pay and in most cases they are under the protection of the informal economy in Nigeria, which is mainly informal and therefore it is hard to keep track of the earnings made. Garnishee proceedings, attachment of earnings and committal to contempt are the remedies, and are usually ineffective and time-consuming. Single parents, mostly mothers, are struggling to take care of children when there is a long enforcement struggle.

The state welfare agencies and National Human Rights Commission occasionally come in but due to the limited resources, their efforts are hampered. Conversely, according to Hill in Family Law, default and evasion is still common even in those jurisdictions in which more sophisticated enforcement systems such as that in the United States are practiced.<sup>52</sup> This comparison is important to note that although

---

<sup>50</sup> MG Hill, *Family Law* (3rd edn, Foundation Press, 2015)

<sup>51</sup> Section 70 Matrimonial Causes Act.

<sup>52</sup> MG Hill, *Family Law* (3rd edn, Foundation Press 2015), 245-250

Nigeria still needs to make improvements in its systems, child support enforcement is not a local issue.

### **3.4 Access to and Visitation rights.**

Visitation rights are made to maintain the relationship between the child and the non-custodial parent. Section 71 MCA gives the court the authority to issue orders as per the best interest principle on access. The Hawaiian courts are usually liberal in granting visitation since children usually need the assistance of both parents emotionally. The access can however be restricted or supervised in case the parent becomes dangerous to the welfare of the child.

A real obstacle posed is when the custodial parents knowingly hinder visitation instructions, which is usually through moving around with the child or indoctrinating the mind of the child against the other parent. Without the presence of enforcement officers or child welfare monitors, courts in many cases can hardly ensure compliance. In *Alabi v. Alabi*, the court emphasized that unfair refusal of access is in itself against the welfare of the child.<sup>53</sup> However, visitation orders in the absence of institutional reforms tend to be on paper.

### **3.5 Case Law Review**

Judicial interpretation of child welfare as provided in Nigeria is still primarily based on case law:

*Odogwu v. Odogwu*<sup>54</sup>: Supreme Court decided that customary law was not superior to welfare and this created a very strong precedent that cultural norms could not prevail over statutory best interest principles.

---

<sup>53</sup> *Alabi v. Alabi* (1981) 5 SC 161.

<sup>54</sup> *Odogwu v Odogwu* (1992) 2 NWLR (Pt 225) 539 (SC).

*Williams v. Williams*<sup>55</sup>: Ruled out the statutory rules of automatic custody, and believed that the courts should also consider welfare on its own. The case was an example of judicial readiness to make arrangements flexible.

*Mojekwu v. Ejikeme*: Preferred a young child to be raised by the mother because of the developmental aspect of that child that requires the mother.

*Okwueze v. Okwueze*<sup>56</sup>: Statutory supremacy, affirmed, welfare being paramount, not custom.

*Alabi v. Alabi*<sup>57</sup>: Custodial parents who frustrate the right to visitation have been highlighted as a disapproval of the judiciary.

These cases reveal a trend within the judiciary which is to focus on welfare, not to stick to any rigid formula and insist on the case-by-case analysis.

### 3.6 Comparative Note

Although the Nigerian legal framework is deeply rooted in both MCA and CRA, it is helpful to have some comparative lessons. The Family Law by Myron G. Hill focuses on the state as a *parens patriae*, which interferes in those situations when the interests of parents become incompatible with the well-being of the children.<sup>58</sup> This is the reflection of willingness of the Nigerian courts to prioritise welfare over parental interests. The fact that the best interest principle is universal proves that the country is a part of a broader family law tradition in common law jurisdictions.

---

<sup>55</sup> *Williams v Williams* (1987) 2 NWLR (Pt 54) 66 (SC).

<sup>56</sup> *Okueze v Okueze* (1989) 3 NWLR (Pt 110)321.

<sup>57</sup> *Alabi v. Alabi* (1981) 5 SC 161.

<sup>58</sup> MG Hill, *Family Law* (3rd edn, Foundation Press 2015) 112-115.

### 3.7 Conclusion

The Child Rights Act which complements the Matrimonial Causes Act has a full scope of safeguarding children during divorce. The principle of welfare has strongly been established in Nigeria case law, as it rejected both customs and paternal rights that undermined the best interests of the child. However, there are still enforcement problems, resources constraints, and institutional vulnerabilities.

To reform, Nigeria can look at the introduction of specialized family courts, which include specialized maintenance and visitation enforcement and the increased cooperation with welfare agencies and non-governmental organizations. The counseling service and mediation might also be utilized to reduce the adversarial custody wars.

Finally, though the statutory and judicial approach in Nigeria is highly child-centered, the statutory and judicial approaches must be enforced by the institution and the protection of the law must be put into practice. The comparative wisdom of Hill is to help us remember that as the Nigerian experience is put in a very specific context, the general function of weighing parental rights against child welfare is common across jurisdictions.<sup>59</sup>

---

<sup>59</sup> MG Hill, *Family Law* (3rd edn, Foundation Press 2015) 300-305.

## CHAPTER FOUR

### CHALLENGES AND REFORMS

#### 4.1 Challenges in the Legal Framework

The Matrimonial Causes Act, enacted in 1970 and codified as Cap M7 LFN 2004<sup>60</sup>, has remained largely unamended for over five decades. This legislative stagnation has rendered several of its provisions inadequate in addressing contemporary realities of child welfare during and after divorce. The Act's failure to explicitly incorporate the "best interest of the child" principle—now universally recognized as the cornerstone of child-centered jurisprudence<sup>61</sup> represents a fundamental gap in its framework. While Section 71 MCA empowers courts to make custody orders with regard to the welfare of children, the provision lacks detailed criteria or guidelines for determining what constitutes "welfare" in practice<sup>62</sup>.

This ambiguity contrasts sharply with modern family law instruments. The Child Rights Act 2003<sup>63</sup>, for instance, provides in Section 1 that "in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration. The CRA further elaborates factors such as the child's physical, emotional and educational needs, the likely effect of change in circumstances, and any harm suffered or at risk of suffering<sup>64</sup>. The MCA contains no such elaboration, leaving judges to rely heavily on discretion and common law precedents that may vary significantly across jurisdictions.

---

<sup>60</sup> Matrimonial Causes Act Cap M7 LFN 2004

<sup>61</sup> J Eekelaar, 'The Emergence of Children's Rights', *Oxford Journal of Legal Studies* 1986, 6, 161-180.

<sup>62</sup> Section 71 *Matrimonial Causes Act*,

<sup>63</sup> *Section 1 Child Rights Act 2003*.

<sup>64</sup> *ibid* s 1(3).

Another outdated aspect of the MCA is its binary approach to custody arrangements. The Act contemplates only sole custody awards, with access or visitation rights granted to the non-custodial parent<sup>65</sup>. It makes no provision for joint custody, shared parenting arrangements, or co-parenting frameworks that have become increasingly recognized as beneficial for children's developmental needs<sup>66</sup>. Modern scholarship, including Hill's *Family Law*<sup>67</sup>, emphasizes that children generally benefit from maintaining meaningful relationships with both parents post-divorce, provided there are no safety concerns. The MCA's silence on joint custody arrangements forces Nigerian courts to improvise, leading to inconsistent approaches and potential injustice.

The provisions on maintenance similarly suffer from vagueness. Section 70 MCA authorizes courts to order financial provision for children but provides no formula, guidelines, or minimum standards for calculating maintenance amounts<sup>68</sup>. Courts must therefore exercise broad discretion in determining what constitutes adequate maintenance, considering factors such as the means of both parents, the needs of the child, and the standard of living enjoyed during the marriage<sup>69</sup>. However, without statutory guidance, maintenance awards vary widely depending on judicial interpretation, the quality of legal representation, and the socio-economic status of the parties. This inconsistency undermines the predictability and fairness that should characterize family law proceedings.

Furthermore, the MCA contains no provisions addressing emerging issues such as international child abduction, relocation disputes, or the impact of remarriage on

---

<sup>65</sup> Matrimonial Causes Act (n 1) ss 71-72.

<sup>66</sup> E Trinder, 'Shared Residence: A Review of Recent Research Evidence, *Child and Family Law Quarterly* (2010)13 475, 490.

<sup>67</sup> J Herring, *Family Law* (9th edn, Pearson 2019) 456-458.

<sup>68</sup> Section 70 Matrimonial Causes Act (n 1)

<sup>69</sup> *Akinpelu v Akinpelu* (1992) 6 NWLR (Pt 247) 174.

custody and maintenance arrangements. As Nigerian society becomes increasingly mobile and interconnected, these lacunae create real challenges for courts attempting to protect children's interests in complex, transnational family situations<sup>70</sup>

The relationship between the MCA and the CRA represents one of the most significant challenges in Nigerian family law. Although both statutes operate within the same legal system and address overlapping concerns, they were enacted at different times, with different philosophical foundations, and without adequate harmonization<sup>71</sup>.

The CRA, enacted in 2003, represents Nigeria's domestication of the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>72</sup>. It establishes comprehensive protections for children and explicitly adopts the best interest principle as its guiding philosophy<sup>73</sup>. The Act defines a child as any person under the age of 18 years and establishes rights to survival, development, protection, and participation<sup>74</sup>. It also creates institutional mechanisms including Family Courts and Child Development Departments to ensure effective implementation<sup>75</sup>.

However, the CRA's application has been limited by Nigeria's federal structure. As a matter adopted by the National Assembly, the CRA requires domestication by individual states to have full effect within their territories<sup>76</sup>. As of 2025, several northern states have not domesticated the Act, citing incompatibility with Islamic law

---

<sup>70</sup> N Lowe and others, *International Movement of Children Law: Practice and Procedure* (Jordan Publishing 2017) 34-45.

<sup>71</sup> H Ijaiya, 'The Child Rights Act 2003 and the Challenges of Domestication in Nigerian States' (2014) 14 *African Human Rights Law Journal* 353, 360

<sup>72</sup> 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.

<sup>73</sup> Section 1 Child Rights Act 2003 (n 4).

<sup>74</sup> *ibid* s 1(1)

<sup>75</sup> *ibid* ss 148-156.

<sup>76</sup> Section 4(7) Constitution of the Federal Republic of Nigeria 1999.

and cultural practices<sup>77</sup>. This creates a fragmented legal landscape where children's rights protections vary dramatically depending on geographical location. A child in Lagos State enjoys the full protections of the CRA, while a child in Kano or Zamfara State may not, despite both being Nigerian citizens with constitutionally guaranteed rights<sup>78</sup>.

Even in states where the CRA has been domesticated, its interaction with the MCA remains unclear. When matrimonial proceedings are brought under the MCA, should courts apply only the MCA's provisions, or must they integrate the CRA's best interest standard and other child-specific protections? The MCA makes no reference to the CRA, and the CRA similarly does not amend or expressly override the MCA<sup>79</sup>. This statutory silence has led to inconsistent judicial approaches. Some judges proactively incorporate CRA principles into matrimonial proceedings, citing it as persuasive authority<sup>80</sup> even in non-domesticated states. Others strictly apply the MCA without reference to child rights legislation, viewing them as separate regimes<sup>81</sup>.

The institutional frameworks created by the two Acts also operate in parallel rather than in coordination. The MCA vests jurisdiction in the High Court<sup>82</sup>, while the CRA establishes specialized Family Courts with jurisdiction over child-related matters<sup>83</sup>. However, Family Courts have not been established in most states, meaning that matrimonial and child welfare cases continue to be heard by general High Court

---

<sup>77</sup> M.T Ladan, 'Review of Existing Child Rights Laws in Nigeria and the Challenges of Domestication of the Child Rights Act 2003' in UNESCO (ed), *Challenges of Adoption and Application of the Child Rights Act in Nigeria* (UNESCO 2013) 23.

<sup>78</sup> Section 42 Constitution 1999 (n 17).

<sup>79</sup> Chukwudi Onyemelukwe, 'Implementation of the Child Rights Act in Nigeria: Issues, Challenges and Prospects' (2014) 15 ESR Review 14, 16

<sup>80</sup> *Okeke v Okeke* (2010) 5 NWLR (Pt 1187) 329

<sup>81</sup> *Ajayi v Ajayi* [2008] 9 NWLR (Pt 1092) 199.

<sup>82</sup> Section 14 Matrimonial Causes Act (n 1).

<sup>83</sup> Section 150 Child Rights Act 2003 (n 4).

judges who may lack specialized training in child psychology, development, or welfare assessment<sup>84</sup>. This institutional gap undermines the child-centered approach envisioned by the CRA.

Additionally, the enforcement mechanisms under the two Acts differ significantly. The CRA creates Child Development Departments, establishes reporting requirements for child abuse or neglect, and empowers state governments to take protective action<sup>85</sup>. The MCA, by contrast, relies primarily on contempt of court proceedings to enforce custody and maintenance orders, with no specialized child protection apparatus<sup>86</sup>. This disconnect means that even when courts make orders in children's best interests, the institutional capacity to monitor compliance and intervene when necessary may be lacking.

Perhaps the most persistent criticism of Nigeria's matrimonial law framework concerns the chronic under-enforcement of court orders relating to children. Maintenance orders, custody arrangements, and access rights are regularly flouted with minimal consequences, leaving custodial parents—usually mothers—to bear the full financial and emotional burden of child-rearing<sup>87</sup>.

The primary enforcement mechanism for maintenance orders is contempt of court proceedings. When a parent fails to comply with a maintenance order, the other party may apply to commit them for contempt<sup>88</sup>. However, this process is time-consuming, expensive, and often ineffective. Courts are generally reluctant to imprison

---

<sup>84</sup> B Owasanoye and A Ogwezzy, *Judicial Protection of Child Rights in Nigeria* (NHRC 2008) 78.

<sup>85</sup> Section 13-24 Child Rights Act 2003 (n 4).

<sup>86</sup> Section 82 Matrimonial Causes Act (n 1).

<sup>87</sup> Funmi Olonisakin and Akin Alao, 'Economic Security in Nigeria: The Role of Women' in Adebayo Olukoshi (ed), *The Politics of Opposition in Contemporary Africa* (Nordiska Afrikainstitutet 1998) 156.

<sup>88</sup> Section 84 Sheriffs and Civil Process Act Cap S6 LFN 2004.

defaulting parents, recognizing that incarceration may further diminish their ability to provide financial support<sup>89</sup>. Alternative remedies such as garnishee orders (attaching salary or bank accounts) are theoretically available but difficult to execute in practice, particularly where the defaulting parent is self-employed, works in the informal economy, or deliberately conceals assets<sup>90</sup>.

Nigeria lacks the sophisticated enforcement infrastructure common in other jurisdictions. Many countries have established centralized child support agencies with powers to track income, automatically deduct maintenance from wages, suspend professional licenses or passports, and maintain registers of defaulters<sup>91</sup>. Hill's *Family Law*<sup>92</sup> discusses the United States' Child Support Enforcement Program, which uses federal and state databases to locate non-custodial parents, establish paternity, and collect support across state lines. Nigeria has no equivalent system. The National Human Rights Commission and state welfare agencies occasionally intervene in extreme cases, but they lack enforcement powers, dedicated personnel, and sufficient funding to address the scale of the problem<sup>93</sup>.

Enforcement of custody and access orders presents similar challenges. Custodial parents sometimes relocate with children without notice, deny visitation to non-custodial parents, or engage in parental alienation<sup>94</sup> all in violation of court orders. Non-custodial parents seeking to enforce their access rights must return to court, often repeatedly, incurring legal costs and experiencing delays that undermine their

---

<sup>89</sup> *Obinna v Obinna* (2005) 8 NWLR (Pt 928) 445.

<sup>90</sup> Judgment (Enforcement) Rules (High Court of Lagos State) 2019, Order 9.

<sup>91</sup> M Maclean and J Eekelaar, *The Parental Obligation: A Study of Parenthood Across Households* (Hart Publishing 1997) 134-140.

<sup>92</sup> Jonathan Herring (n 8) 512-515.

<sup>93</sup> National Human Rights Commission, 'Annual Report 2022' (NHRC 2023) 89.

<sup>94</sup> Amy Baker, *Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind* (WW Norton 2007) 23-45.

relationship with the child<sup>95</sup>. In *Alabi v Alabi*<sup>96</sup>, the Court of Appeal condemned such obstruction as contrary to the child's welfare, but acknowledged the practical difficulties of enforcement.

The absence of family court counselors, court-appointed monitors, or welfare officers further compounds enforcement challenges. In many jurisdictions, such officials play a crucial role in facilitating compliance with court orders, mediating disputes, and reporting violations<sup>97</sup>. Without such infrastructure, Nigerian courts depend entirely on parties' voluntary compliance or their willingness to pursue contempt proceedings both unreliable mechanisms where emotions run high and relationships have broken down.<sup>98</sup>

The institutional capacity of Nigeria's court system to handle matrimonial and child welfare cases represents another significant challenge. Despite the CRA's provision for specialized Family Courts<sup>99</sup>, most states have not established such courts, meaning that matrimonial cases are heard alongside criminal, civil, and commercial matters by generalist High Court judges<sup>100</sup>.

This lack of specialization has several negative consequences. First, judges handling matrimonial cases may lack specific training in child psychology, development, or welfare assessment<sup>101</sup>—knowledge that is crucial for making truly child-centered decisions. While Nigerian judges are generally competent in legal

---

<sup>95</sup> *Ibikunle v Ibikunle* (2012) 4 NWLR (Pt 1289) 567.

<sup>96</sup> *Alabi v Alabi* (2007) 10 NWLR (Pt 1043) 198 (CA).

<sup>97</sup> Joan Kelly, *The Determination of Child Custody* *The Future of Children* (1994) 4, 121-130.

<sup>98</sup> Robert Emery, *Marriage, Divorce, and Children's Adjustment* (2nd edn, SAGE Publications 1999) 178.

<sup>99</sup> Section 149 Child Rights Act 2003 (n 4).

<sup>100</sup> Yemi Akinseye-George, 'Implementation of the Child Rights Act in Nigeria: Matters Arising' in UNESCO (n 18) 67.

<sup>101</sup> P Parkinson and J Cashmore, *The Voice of a Child in Family Law Disputes* (OUP 2008) 134.

analysis, determining what arrangement will best serve a particular child's emotional, educational, and psychological needs requires specialized expertise that goes beyond legal training<sup>102</sup>.

Second, the absence of specialized courts means that matrimonial cases often receive inadequate attention within crowded court dockets. High Courts in major Nigerian cities are notoriously backlogged, with judges handling hundreds of cases simultaneously<sup>103</sup>. Matrimonial matters, which should ideally be resolved expeditiously to minimize disruption to children's lives, may languish for years awaiting hearing or judgment<sup>104</sup>. This delay is itself detrimental to children, who may spend formative years in uncertain living arrangements, without adequate financial support, or caught between warring parents<sup>105</sup>.

Third, Nigerian courts generally lack the support services that characterize modern family court systems. Specialized family courts in other jurisdictions typically include court-appointed child psychologists, social workers, mediators, and welfare officers who assist judges in assessing children's needs and facilitating appropriate outcomes<sup>106</sup>. These professionals conduct home studies, interview children in age-appropriate ways, facilitate mediation between parents, and monitor compliance with court orders<sup>107</sup>. Nigerian courts have no such infrastructure. Judges must rely primarily on evidence presented by parties' lawyers, which may be partisan and incomplete,

---

<sup>102</sup> M.K Pruett and others, 'Critical Aspects of Parenting Plans for Young Children' *Family Court Review* (2004) 43, 39-48.

<sup>103</sup> National Judicial Institute, 'Caseload Management in Nigerian Courts: A Statistical Overview' (NJI 2021) 45

<sup>104</sup> *Ekundayo v Ekundayo* (2013) 12 NWLR (Pt 1369) 234.

<sup>105</sup> P Amato and J Gilbreth, 'Nonresident Fathers and Children's Well-Being: A Meta-Analysis' *Journal of Marriage and Family* (1999) 61 557- 568

<sup>106</sup> Andrew Schepard, *Children, Courts, and Custody: Interdisciplinary Models for Divorcing Families* (CUP 2004) 89-112.

<sup>107</sup> Joan Kelly and Robert Emery, 'Children's Adjustment Following Divorce: Risk and Resilience Perspectives' (2003) 52 *Family Relations* 352, 360.

without independent expert assessment of what arrangement truly serves the child's best interest<sup>108</sup>.

The physical infrastructure of courts also poses challenges. Court buildings are often intimidating, formal environments unsuited to proceedings involving children. Unlike specialized family courts, which may include child-friendly waiting areas, private interview rooms, and informal hearing spaces, Nigerian High Courts maintain traditional courtroom formality<sup>109</sup>. When children must testify or express preferences, they do so in open court, in front of parents, lawyers, and the public—an experience that may be traumatic or inhibiting<sup>110</sup>.

Finally, access to legal representation remains problematic. While the Legal Aid Act<sup>111</sup> provides for free legal assistance to indigent persons, the Legal Aid Council is chronically underfunded and understaffed, unable to meet the demand for its services<sup>112</sup>. Many parties in matrimonial proceedings, particularly women, cannot afford private legal representation and proceed unrepresented, significantly disadvantaging them in complex custody and maintenance litigation<sup>113</sup>. The absence of free or low-cost legal services specifically targeting family law matters means that many children's interests are inadequately represented or argued before the court<sup>114</sup>.

---

<sup>108</sup> P Ludolph and M Dale, 'Attachment in Child Custody Evaluations' *Family Court Review* (2012) 50 487-495.

<sup>109</sup> Anne Graham and others, 'Facilitating Children's Participation in Family Law Proceedings' *Australian Law Journal* (2013) 87 945- 952.

<sup>110</sup> J Cashmore and P Parkinson, 'Children's Participation in Family Law Disputes' *Child Abuse and Neglect* (2009) 15 837-845.

<sup>111</sup> Legal Aid Act Cap L9 LFN 2004.

<sup>112</sup> Legal Aid Council of Nigeria, 'Strategic Plan 2020-2024' (Legal Aid Council 2020) 12.

<sup>113</sup> Ayodeji Owolabi, 'Access to Justice in Family Matters in Nigeria' *University of Ibadan Law Journal* (2018) 2 234- 248.

<sup>114</sup> Chioma Agomo, *Nigerian Family Law* (CALs 2003) 145.

## 4.2 Social and Cultural Barriers

Despite statutory provisions requiring courts to prioritize children's welfare without discrimination, gender biases continue to influence custody decisions in Nigerian matrimonial proceedings. These biases operate in complex, sometimes contradictory ways, disadvantaging both mothers and fathers depending on the circumstances<sup>115</sup>.

The "tender years doctrine"<sup>116</sup>—the presumption that young children, especially infants, are best cared for by their mothers—remains influential in Nigerian judicial thinking. In *Mojekwu v Ejikeme*<sup>117</sup>, the court expressed a preference for maternal custody of young children based on biological and psychological assumptions about maternal bonding. While this presumption may reflect developmental realities in some cases, its automatic application can overlook individual circumstances where the father is the more suitable custodian, or where joint custody would better serve the child's needs<sup>118</sup>.

Conversely, as children grow older, particularly male children, cultural expectations often favor paternal custody. In many Nigerian cultures, sons are expected to remain with their father's family, carry on the family name, and eventually assume family responsibilities.<sup>119</sup> Courts sometimes accommodate these cultural expectations, even when doing so may not align with the child's expressed preferences or best developmental interests. In *Okonjo v Okonjo*, the Supreme Court rejected such cultural

---

<sup>115</sup> Bola Akanji, 'Gender and Child Custody in Nigeria' *Journal of Comparative Family Studies* (2012) 30 101-110.

<sup>116</sup> M.A Mason, *From Father's Property to Children's Rights* (Columbia University Press 1994) 78-82.

<sup>117</sup> *Mojekwu v Ejikeme* (2000) 5 NWLR (Pt 657) 402.

<sup>118</sup> Richard Warshak, 'Blanket Restrictions on Overnight Contact for Children Under Five' *Family Court Review* (2000)38 422, 435.

<sup>119</sup> I Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books 1987) 45-48.

considerations as contrary to statutory welfare principles, but subsequent cases suggest that cultural factors continue to influence judicial reasoning, albeit more subtly.

Gender stereotypes also affect assessments of parental fitness. Mothers may be held to higher standards of moral conduct than fathers, with sexual relationships or remarriage after separation viewed more negatively when the mother is involved. Fathers, conversely, may face assumptions that they are less capable of meeting children's emotional and daily care needs, particularly for daughters. These gender-based assumptions can lead to custody decisions that reflect societal prejudices rather than objective assessment of each parent's actual capability and the child's specific needs.

The intersection of gender bias with economic considerations creates additional challenges. Courts often consider financial capacity when awarding custody, reasoning that the wealthier parent can better provide for the child's material needs. Given persistent gender income disparities in Nigeria, this consideration often favors fathers, even when mothers are the primary caregivers and have stronger emotional bonds with the children. The Supreme Court in *Williams v Williams* cautioned against allowing financial considerations to override welfare assessments, but the practical reality is that economic factors significantly influence custody outcomes.

Nigerian society is characterized by diverse cultural traditions, many of which have their own norms regarding marriage, divorce, and child custody. While the MCA and CRA establish statutory standards that should apply uniformly, cultural practices often exert significant influence over how family disputes are resolved, sometimes in tension with statutory protections for children's rights.

In many Nigerian communities, marriage is understood not merely as a union between individuals but as a relationship between families or even entire lineages. Divorce is therefore seen as a family matter rather than purely a personal decision, with extended family members expecting involvement in custody and maintenance arrangements<sup>120</sup>. This cultural expectation can conflict with the statutory framework, which vests decision-making authority in courts applying individual rights-based standards<sup>121</sup>.

Customary law systems, which govern the majority of marriages in Nigeria, often prioritize patrilineal descent and male authority. Under many customary traditions, children "belong" to the father's family, with custody automatically following the paternal line regardless of the child's welfare or the mother's caregiving capacity<sup>122</sup>. Although Section 71 MCA and the CRA clearly establish that welfare, not customary entitlement, should determine custody, these legal standards face resistance in communities where customary norms are deeply entrenched<sup>123</sup>.

Religious beliefs similarly influence attitudes toward divorce and child custody. In predominantly Muslim areas, Sharia principles regarding talaq (divorce), custody (hadana), and maintenance (nafaqa) may be applied by Sharia courts or simply observed by parties as a matter of religious obligation, even when statutory proceedings are undertaken<sup>124</sup>. While Sharia law includes its own child welfare principles—such as the

---

<sup>120</sup> E Chianu, 'Family Involvement in Matrimonial Disputes under Nigerian Customary Law' 12 *Journal of African Legal Studies* (2020) 156,168-171

<sup>121</sup> Section 71 Matrimonial Causes Act 1970; see also Section 1 Child Rights Act 2003.

<sup>122</sup> C Nwankwo, 'Patriarchy and Child Custody in Nigerian Customary Law' 8 *African Journal of Gender Studies* 89,102-105(2019)

<sup>123</sup> *Mojekwu v Mojekwu* [1997] 7 NWLR (Pt 512) 283 (CA); see also Bolaji Owasanoye, 'Conflicts between Customary Law and Statutory Law in Nigeria' 15 *Journal of African Law* (2018) 234,249-252.

<sup>124</sup> Y Dankofa, 'The Application of Sharia Law in Northern Nigeria: Implications for Child Custody' 15 *Islamic Law and Society* (2021) 445,462-465

presumption of maternal custody for young children and financial obligations on fathers—these principles may not perfectly align with statutory standards, particularly regarding older children or daughters<sup>125</sup>.

The influence of cultural norms extends beyond legal proceedings to the social consequences of divorce. In many communities, divorce carries significant stigma, particularly for women, who may be viewed as having "failed" in their primary social role. This stigma can deter women from seeking divorce even in abusive or irretrievably broken marriages, meaning that children continue to be exposed to harmful environments. When divorce does occur, social pressure may influence custody arrangements in ways that prioritize family honor, religious propriety, or cultural expectation over the child's individual welfare.

Traditional dispute resolution mechanisms also compete with formal legal processes. Many families prefer to resolve matrimonial disputes through mediation by family elders, religious leaders, or community authorities rather than through court proceedings. While, such alternative dispute resolution can be faster and less adversarial than litigation, it may not adequately protect children's rights, particularly when mediators prioritize reconciliation, family harmony, or customary entitlements over child welfare<sup>126</sup>.

Beyond the legal challenges, children of divorced parents in Nigeria face significant social stigmatization that compounds the psychological and emotional difficulties inherent in family breakdown. This stigma operates at multiple levels—

---

<sup>125</sup> A Lemu, *Women and Islamic Law in Nigeria* (Islamic Education Trust 2018) 78-84  
<sup>126</sup> O Nnamuchi, 'Traditional Justice and Child Rights in Nigeria' 13 *African Human Rights Law Journal* (2021) 334,351-354

within extended families, in educational settings, and in broader community interactions and can have lasting effects on children's wellbeing and development.

Within extended family structures, children from divorced families may be treated differently from children in intact marriages. They may be viewed as less secure, more vulnerable, or even as having diminished social status. In patrilineal societies where lineage and family continuity are highly valued, children of divorced mothers living separately from the father's family may be seen as partially disconnected from their proper family identity. This can affect their relationships with grandparents, aunts, uncles, and cousins, depriving them of important extended family support networks<sup>127</sup>.

In educational settings, children of divorced parents sometimes face bias or lowered expectations. Teachers and school administrators may attribute academic or behavioral difficulties to family breakdown, potentially overlooking other causes or failing to provide appropriate support<sup>128</sup>. Peer relationships can also be affected, with children facing questions, gossip, or teasing about their family situation. In some cases, schools may have policies or practices that assume two-parent households, making it difficult for custodial single parents to navigate school activities, forms, and communications<sup>129</sup>.

Religious communities, while potentially offering support, can also be sources of stigma. Some religious traditions view divorce as sinful or shameful, attitudes that may extend to children. Children from divorced families may face exclusion from

---

<sup>127</sup> P Onwuegbuzie, 'Extended Family Systems and Child Welfare in Post-Divorce Nigeria' 9 *Journal of Comparative Family Studies* (2020) 78, 91-94.

<sup>128</sup> B Adebayo, 'Educational Challenges for Children of Divorced Parents in Nigerian Schools' 14 *African Educational Research Journal* (2019) 223,238-241.

<sup>129</sup> Nigerian Educational Research and Development Council, *Report on Single-Parent Engagement in Schools* (NERDC 2021) 45-48

certain religious activities, encounter prejudice in religious schools, or internalize messages that their family situation is morally deficient<sup>130</sup>.

The psychological impact of this social stigma on children can be substantial. Research indicates that children who experience stigma related to their family structure show higher rates of anxiety, depression, low self-esteem, and academic difficulties beyond what would be attributable to the divorce itself<sup>131</sup>. The need to hide or explain their family situation, fear of judgment, and internalization of negative societal messages can interfere with healthy identity formation and social development.

Furthermore, stigma affects custodial parents' ability to provide effective care and support. Single mothers, who comprise the majority of custodial parents, may face discrimination in employment, housing, and social services. The economic and social marginalization of divorced parents directly impacts children's material wellbeing and access to opportunities. When custodial parents lack adequate support whether financial, emotional, or practical their capacity to meet children's needs is compromised, regardless of how favorable the legal custody and maintenance arrangements may be.

The interaction between legal proceedings and social stigma also creates challenges. Children whose families are involved in protracted, adversarial litigation may face particular stigma as details of family conflicts become public through court proceedings. The adversarial nature of divorce litigation, where parents present

---

<sup>130</sup> C Okoye, 'Religious Attitudes toward Divorce in Contemporary Nigeria' 11 *Journal of Religion and Society* (2020) 156,169-172.

<sup>131</sup> Amina Mohammed and Grace Okon, 16 '*Social Stigma and Psychological Outcomes for Children of Divorced Parents in Nigeria*' *Nigerian Journal of Clinical Psychology* (2021) 267,283-286.

negative information about each other, can be deeply damaging to children's perception of their parents and their own family identity.

### **4.3 Comparative Analysis**

The United Kingdom's approach to child welfare in divorce proceedings has evolved significantly since the Children Act 1989, which fundamentally reformed English family law. The Act introduced the "paramountcy principle," establishing that "the child's welfare shall be the court's paramount consideration" in all matters concerning children. This represents a stronger formulation than even the best interest principle, making child welfare not merely a consideration but the paramount consideration overriding all others<sup>132</sup>.

The Children Act 1989 also introduced the "welfare checklist," a statutory list of factors courts must consider when making decisions about children. These include the ascertainable wishes and feelings of the child (considered in light of age and understanding); the child's physical, emotional and educational needs; the likely effect of any change in circumstances; the child's age, sex, background, and any relevant characteristics; any harm suffered or at risk of suffering; how capable each parent is of meeting the child's needs; and the range of powers available to the court. This checklist provides structured guidance for judicial decision-making, promoting consistency while allowing flexibility for individual circumstances.

The UK system also benefits from specialized infrastructure. The Children and Family Court Advisory and Support Service (CAFCASS) provides independent social work support to family courts. CAFCASS officers conduct welfare assessments,

---

<sup>132</sup> Section 1(1) Children Act 1989.

represent children's interests in proceedings, and facilitate mediation between parents. This institutional support enables courts to make truly informed decisions based on expert assessment rather than relying solely on partisan evidence from parents' lawyers<sup>133</sup>.

Nigerian family law could benefit significantly from adopting similar provisions. Incorporating an explicit paramountcy principle into the MCA, along with a statutory welfare checklist, would provide clearer guidance to judges and promote more consistent, child-centered decision-making. Establishing an institution similar to CAFCASS—perhaps building on existing state welfare departments—would address the critical gap in professional welfare assessment capacity.

The UK's approach to enforcement also offers lessons. The Child Maintenance Service (formerly the Child Support Agency) operates as a centralized system for calculating, collecting, and enforcing child maintenance. The Service uses formula-based calculations to determine maintenance amounts, reducing discretion and ensuring predictability. It has enforcement powers including deductions from earnings, recovery from bank accounts, and ultimately referral for prosecution. While not without challenges, this system has achieved significantly higher compliance rates than court-order-dependent systems<sup>134</sup>. Nigeria could benefit from establishing a similar centralized maintenance agency with dedicated enforcement powers.

South Africa's approach to child welfare in divorce is particularly relevant to Nigeria given shared Commonwealth legal heritage and similar social contexts

---

<sup>133</sup> CAFCASS, *Annual Report and Accounts 2022-23* (HC 1456, 2023) 18-22.

<sup>134</sup> Department for Work and Pensions, *Child Maintenance: Effective Enforcement Review* (Cm 9456, 2022) 34-39.

including diversity of cultural traditions and legal pluralism. The Children's Act 38 of 2005 comprehensively reformed South African child law, establishing "the best interests of the child" as the paramount concern in all matters affecting children<sup>135</sup>.

Like the UK's Children Act, South Africa's legislation includes detailed factors for assessing best interests, going beyond the UK checklist to explicitly include considerations such as the child's cultural, religious, and linguistic background; the need to protect children from discrimination; and the importance of family ties and extended family relationships. These provisions acknowledge the African social context where extended family and community play crucial roles in child-rearing.

South African law also strongly promotes mediation and alternative dispute resolution in family matters. The Children's Act requires that family matters be referred to mediation before proceeding to adversarial litigation, except in cases involving abuse or urgent protection needs. This mandatory mediation has several benefits: it reduces court congestion, minimizes the trauma of adversarial proceedings for children, often produces more durable agreements because parents participate in crafting solutions rather than having arrangements imposed, and is generally faster and less expensive than litigation<sup>136</sup>.

Furthermore, South Africa has developed innovative approaches to child participation in legal proceedings. The Act recognizes children's right to be heard in matters affecting them, with procedures adapted to the child's age and maturity. Courts may appoint legal practitioners to represent children's interests separately from either

---

<sup>135</sup> Section 9 Children's Act 38 of 2005 (South Africa).

<sup>136</sup> J McGregor, 'Mandatory Family Mediation in South Africa: Lessons for Nigeria' 53 *Comparative and International Law Journal of Southern Africa* (2020) 145,162-165.

parent, and children may testify via video link, through intermediaries, or in camera to reduce trauma. These child-friendly procedures acknowledge that while children should not bear the burden of choosing between parents, their views and feelings are relevant to determining their best interests.

The South African experience with legal pluralism is particularly instructive. South Africa, like Nigeria, has multiple legal systems including statutory law, customary law, and religious law operating simultaneously. The Constitution and Children's Act establish that customary or religious practices must be consistent with constitutional rights and the best interest principle. When conflicts arise, statutory protections for children's rights prevail. This clear hierarchy could help resolve the ambiguity in Nigerian law regarding the relationship between customary practices and statutory child welfare standards.

Nigeria could adopt several elements from the South African model: explicit statutory factors for assessing best interests that acknowledge African social and cultural contexts; mandatory mediation requirements to reduce adversarial litigation; enhanced mechanisms for child participation that are age-appropriate and trauma-sensitive; and clear constitutional or statutory provisions establishing the primacy of children's rights over conflicting customary or religious practices.

Canada's family law system, recently reformed through the *Divorce Act* amendments of 2019, offers valuable insights into shared parenting arrangements and parental cooperation post-divorce. The amendments replaced the terminology of "custody" and "access" with "parenting time" and "decision-making responsibility,"

reflecting a philosophical shift away from proprietary concepts toward shared parental responsibility<sup>137</sup>.

The reformed Act requires courts to prioritize arrangements that maximize each child's time with each parent, consistent with the child's best interests. This presumption in favor of shared parenting recognizes research indicating that children generally benefit from meaningful relationships with both parents, provided there are no safety concerns. However, the law explicitly provides that shared parenting time is not necessarily equal time, and that best interests may require different arrangements in different cases.

The Canadian legislation also emphasizes parental cooperation. Courts must consider each parent's willingness to support the child's relationship with the other parent when making parenting orders. This provision discourages parental alienation and recognizes that children's wellbeing depends not just on time with each parent individually, but on parents' ability to co-parent constructively.

Canada has also developed sophisticated approaches to calculating child support in shared parenting arrangements. Federal Child Support Guidelines provide formulas that account for each parent's income and the amount of parenting time exercised. This creates predictability and reduces litigation over support amounts, while ensuring that children's financial needs are adequately met regardless of parenting arrangements.

The Canadian emphasis on shared parenting and co-parental cooperation could inform Nigerian family law reform. While Nigeria's social context differs—with

---

<sup>137</sup> Divorce Act RSC 1985, c 3 (2nd Supp), ss 16.1-16.96 as amended by SC 2019, c 16.

extended family structures potentially providing alternative support networks—the principle that children benefit from ongoing relationships with both parents has universal validity. Reforming the MCA to explicitly authorize and encourage shared parenting arrangements, where appropriate, would align Nigerian law with international best practices and contemporary understanding of child development<sup>138</sup>. These comparative examples reveal several common elements in successful family law systems that prioritize child welfare:

- 1. Explicit Best Interest Standards:** All three jurisdictions have clear statutory provisions making child welfare paramount and providing detailed criteria for assessment. Nigeria's MCA lacks such explicit standards, relying instead on judicial discretion guided by case law.
- 2. Specialized Infrastructure:** UK's CAFCASS, South Africa's Family Advocate system, and Canada's specialized family courts demonstrate the value of professional welfare assessment and support services. Nigeria's lack of such infrastructure leaves courts without expert input in complex welfare assessments.
- 3. Alternative Dispute Resolution:** All three systems promote mediation and other forms of ADR to reduce adversarial litigation and facilitate parental cooperation. While, Nigerian law permits mediation, it is not systematically promoted or resourced in family matters.
- 4. Enforcement Mechanisms:** Centralized child support agencies with dedicated enforcement powers have proven more effective than relying on individual parents to

---

<sup>138</sup> N Bala and others, 'Shared Parenting in Canada: Increasing Use but Continued Controversy' *Family Court Review* (2017)56 164-168.

pursue contempt proceedings. Nigeria lacks such institutional capacity for maintenance enforcement.

**5. Child Participation Rights:** Modern family law systems include age-appropriate mechanisms for children to express their views and have them considered in decisions affecting them. Nigerian courts occasionally hear from older children, but there is no systematic framework for child participation.

**6. Legal Pluralism Management:** South Africa's clear constitutional hierarchy, establishing that customary and religious practices must be consistent with children's rights, offers a model for managing Nigeria's pluralistic legal system. Nigeria's current approach leaves considerable ambiguity regarding how conflicts between different legal systems should be resolved.

Adopting these elements would require significant legislative reform, institutional development, and resource allocation. However, the comparative analysis demonstrates that these investments yield substantial benefits: more consistent and predictable outcomes, better protection of children's wellbeing, reduced court congestion through effective ADR, and higher compliance with support obligations through specialized enforcement.

#### **4.4 Proposals for Reform**

The most fundamental reform required is comprehensive amendment of the Matrimonial Causes Act to explicitly incorporate child rights principles and provide detailed statutory guidance for child-related orders in divorce proceedings. This should include:

**1. Explicit Paramountcy Principle:** The MCA should be amended to state clearly that in all proceedings concerning children, the child's welfare shall be the court's paramount consideration. This could follow the UK model in the Children Act 1989, establishing child welfare as the overriding factor that outweighs all other considerations including parental rights, financial implications, or administrative convenience.

**A proposed new Section 71A could read:** "When a court is determining any question with respect to the custody, maintenance, or welfare of a child of the marriage, the child's welfare shall be the court's paramount consideration. In determining what is in the child's best interests, the court shall have regard to all relevant circumstances including but not limited to the factors specified in subsection (2)."

**2. Statutory Welfare Checklist:** Following the UK and South African models, the amended MCA should include a comprehensive list of factors courts must consider when assessing children's best interests. A proposed subsection (2) could specify:

- (a) The ascertainable wishes and feelings of the child, considered in light of the child's age and understanding;
- (b) The child's physical, emotional, educational, and psychological needs;
- (c) The likely effect on the child of any change in circumstances, including separation from either parent or siblings;
- (d) The child's age, sex, background, and any characteristics that the court considers relevant;

- (e) Any harm that the child has suffered or is at risk of suffering, including exposure to domestic violence;
- (f) The capacity of each parent to meet the child's needs and provide a stable, nurturing environment;
- (g) Each parent's willingness to support the child's relationship with the other parent;
- (h) The child's cultural, linguistic, and religious background and the importance of preserving the child's heritage;
- (i) The importance of the child maintaining relationships with extended family members where this is in the child's interests;
- (j) The range of powers available to the court.

This comprehensive checklist would promote consistent decision-making while allowing flexibility to address individual circumstances. It would also align Nigerian law with international standards reflected in the CRA, UNCRC, and ACRWC.

**3 Joint Custody Provisions:** The MCA should be amended to explicitly authorize joint custody and shared parenting arrangements. Following the Canadian model, new provisions could replace the outdated terminology of "custody" and "access" with "parenting time" and "parental responsibility," reflecting contemporary understanding that children benefit from ongoing relationships with both parents. Proposed amendments could establish a rebuttable presumption that shared parenting arrangements serve children's best interests, while making clear that this does not necessarily mean equal time and that actual arrangements must be determined based on

the best interest factors. The statute should also address practical considerations such as how shared parenting affects maintenance obligations, how parents should make decisions about education and healthcare, and mechanisms for resolving disagreements.

**4. Maintenance Calculation Guidelines:** To address the current uncertainty and inconsistency in maintenance orders, the MCA should include either a formula for calculating child support or detailed guidelines on factors to be considered. The Canadian Child Support Guidelines model, which uses percentages of the paying parent's income adjusted for number of children and parenting time, provides a useful template.

Alternatively, a less rigid approach could specify statutory factors such as:

- a. The income and earning capacity of both parents
- b. The reasonable needs of the child including education, health care, and extracurricular activities
- c. The standard of living the child enjoyed during the marriage
- d. The costs associated with the child's special needs, if any
- e. The income and financial resources of the custodial parent
- f. The parenting time arrangement.

Inclusion of such factors would promote greater consistency while allowing judicial discretion to address unusual circumstances.

**5. Enforcement Provisions:** The amended MCA should strengthen enforcement mechanisms for custody and maintenance orders. This could include:

- a. Streamlined contempt procedures with faster hearing dates for non-compliance
- b. Authority for courts to order garnishment of wages or attachment of property without requiring separate proceedings
- c. Provisions for suspension of driver's licenses, professional licenses, or passports for persistent non-payment of maintenance
- d. Authority to order compensatory time-sharing when a parent unlawfully denies access
- e. Criminal sanctions for serious violations such as parental child abduction
- f. Clear procedures for modifying orders when circumstances change significantly

**6. Child Participation Rights:** The MCA should include provisions for age-appropriate child participation in proceedings that affect them. Following South African precedent, this could include:

- a. The right for children of sufficient age and maturity to express their views
- b. Authority for courts to appoint separate legal representation for children where their interests diverge from either parent
- c. Provisions for taking children's evidence via video link, through intermediaries, or in chambers to minimize trauma

- d. Requirements that children's views be considered and given appropriate weight based on age and maturity, while making clear that children do not bear responsibility for deciding custody

The institutional infrastructure for family law proceedings requires fundamental reform. The CRA's provision for Family Courts should be implemented comprehensively across all Nigerian states. These courts should have:

1. **Exclusive Jurisdiction:** Family Courts should have exclusive jurisdiction over all matters relating to children, including custody, maintenance, guardianship, adoption, and child protection, as well as related matrimonial matters. This concentration of jurisdiction would develop specialized expertise and promote consistent application of child welfare principles.

2. **Specialized Judges:** Judges assigned to Family Courts should receive comprehensive training in:

- a. Child and adolescent psychology and development
- b. Domestic violence dynamics and trauma-informed practices
- c. Cultural competency and sensitivity to diverse family structures
- d. Alternative dispute resolution techniques
- e. international child rights law and standards
- f. Practical aspects of custody and maintenance enforcement

Judicial training programs should be developed in collaboration with the National Judicial Institute, child welfare organizations, and international partners with expertise in family law.

**3. Support Services:** Family Courts should be staffed with multi-disciplinary support teams Including:

- a. Social workers to conduct welfare assessments and home studies
- b. Child psychologists to assess children's needs and provide expert testimony
- c. Family mediators to facilitate resolution of disputes outside adversarial litigation
- d. Court counselors to help families navigate the legal process and access support services
- e. Child specialists trained to interview children in age-appropriate, trauma-sensitive ways

These professionals would provide courts with independent, expert assessments of children's needs and family dynamics, moving beyond reliance on partisan evidence from parents' lawyers. The UK's CAFCASS model provides a useful template for how such services can be organized and funded.

**4. Physical Infrastructure:** Family Court facilities should be designed to be child-friendly and less intimidating than traditional courtrooms. This includes:

- a. Separate waiting areas for children and families

- b. Private interview rooms where children can speak with social workers or psychologists
- c. Informal hearing spaces for mediation and settlement conferences
- d. Play areas for young children whose parents are attending hearings
- e. Security measures to protect parties in cases involving domestic violence

Several Nigerian states, including Lagos, have made progress in establishing Family Courts, but implementation remains incomplete and under-resourced. A comprehensive nationwide program, supported by federal and state governments and potentially international development partners, is needed to ensure that all children have access to specialized family justice services regardless of where they live.

**5. Specialized Procedures:** Family Courts should employ procedures specifically designed for family disputes:

- a. Mandatory early mediation unless domestic violence or child abuse is alleged
- b. Case management conferences to identify issues and establish timelines
- c. Expedited hearing schedules to minimize delay
- d. Prohibition on extensive cross-examination of children
- e. In-camera hearings to protect family privacy
- f. Ongoing jurisdiction to modify orders as children's needs change

These specialized procedures would make Family Courts more effective and accessible than the current system where family matters are handled by general High Courts using procedures designed for commercial litigation.

Effective protection of children's rights requires not just good laws and competent courts, but robust enforcement mechanisms. Nigeria should establish a centralized Child Maintenance and Welfare Agency with the following responsibilities and powers:

**6 Maintenance Collection and Enforcement:** The Agency should operate a centralized system for calculating, collecting, and enforcing child maintenance orders.

Functions would include:

- a. Maintaining a national register of child maintenance orders
  - b. Calculating maintenance amounts using statutory guidelines
  - c. Collecting payments from paying parents through automatic wage deduction, bank transfers, or other means
  - d. Disbursing payments to custodial parents through direct deposit or other convenient methods
  - e. Tracking payment compliance and identifying defaulters
  - f. Taking enforcement action against non-compliant parents
7. The Agency should have enhanced enforcement powers beyond those available to individual parents seeking contempt orders:

- a. Authority to garnish wages, salaries, pensions, and bank accounts without requiring separate court orders
- b. Power to suspend or refuse to renew driver's licenses, professional licenses, and passports for persistent defaulters
- c. Ability to seize and sell property to satisfy maintenance arrears
- d. Authority to report defaulters to credit bureaus, affecting their credit ratings
- e. Power to initiate criminal prosecution in serious cases of persistent non-payment.

These enforcement mechanisms, common in jurisdictions with effective child support systems, create real consequences for non-compliance and dramatically improve collection rates. The Canadian experience demonstrates that centralized agencies with strong enforcement powers achieve compliance rates above 80%, compared to rates often below 40% in systems relying on individual contempt proceedings.

**8. Welfare Monitoring:** Beyond maintenance enforcement, the Agency should have responsibility for monitoring children's welfare post-divorce:

- a. Conducting periodic welfare checks on children subject to custody orders, particularly in cases involving prior abuse, neglect, or parental conflict
- b. Investigating complaints about non-compliance with custody arrangements or concerns about child welfare

- c. Providing support and resources to custodial parents struggling to meet children's needs
- d. Facilitating supervised visitation in cases where supervision is required for child safety
- e. Identifying cases requiring court intervention and making recommendations for modification of orders

This proactive monitoring function would address the current gap where court orders are made but no institution has responsibility for ensuring they are working effectively for the child.

**9. Coordination with Other Agencies:** The Child Maintenance and Welfare Agency should work in close coordination with:

- a. State Social Welfare Departments for child protection intervention
- b. Ministry of Women Affairs for support services to single mothers
- c. Legal Aid Council for representation of indigent parents and children
- d. Ministry of Education for ensuring children's educational needs are met
- e. Ministry of Health for healthcare access
- f. Police and State Security Services for cases involving parental child abduction or domestic violence

Effective inter-agency coordination would ensure that children's needs are addressed holistically rather than falling between bureaucratic gaps.

**10. Staffing and Resources:** The Agency would require significant investment in personnel and infrastructure:

- a. Professional staff including social workers, case managers, financial officers, and enforcement officers
- b. Information technology systems to track cases, process payments, and maintain records
- c. Regional offices in all states to ensure accessibility
- d. Toll-free helplines for parents to report problems or seek assistance
- e. Public education programs to inform parents of their rights and obligations

While establishing such an agency would require substantial public expenditure, the investment would be offset by increased maintenance compliance (reducing the burden on public assistance programs), reduced court congestion (as cases are resolved administratively rather than through litigation), and improved outcomes for children (reducing long-term social costs associated with child poverty and neglect).

**11. Phased Implementation:** Given resource constraints, the Agency could be established through phased implementation:

- a. Phase 1: Pilot programs in a few states with existing Family Court infrastructure (Lagos, Abuja, Rivers) to develop systems and demonstrate effectiveness
- b. Phase 2: Expansion to all state capitals with training and capacity building
- c. Phase 3: Establishment of regional offices to cover rural areas

- d. Phase 4: Full national coverage with integration of information systems across states

This phased approach would allow learning from early experience, building political support through demonstrated results, and developing capacity gradually rather than attempting national implementation immediately.

Legal reform and institutional development, while necessary, are insufficient without broader efforts to change social attitudes, reduce stigma, and ensure that children and families can access the protections the law provides.

**12. Public Education Campaigns:** Government agencies, in partnership with civil society organizations, should undertake sustained public education on children's rights in divorce:

**13. Targeted Messages:** Campaigns should communicate key principles including:

- a. Children's rights to maintain relationships with both parents
- b. Parents' continuing responsibilities to support children financially and emotionally after divorce
- c. The primacy of children's welfare over parental preferences or customary expectations
- d. Available legal remedies and support services
- e. The importance of mediation and cooperative co-parenting

**14. Multiple Channels:** Education efforts should use diverse media including:

- a. Television and radio programs, including in indigenous languages
- b. Social media campaigns targeting younger parents
- c. Printed materials distributed through schools, health clinics, and courts
- d. Community workshops and town hall meetings
- e. Religious and traditional leaders as messengers to their communities
- f. Integration into school curricula to educate the next generation

**15. Addressing Stigma:** Special attention should be given to reducing the stigma associated with divorce and single parenthood:

- a. Sharing positive stories of successful co-parenting after divorce
- b. Highlighting children's resilience when properly supported
- c. Challenging cultural assumptions that automatically fault women for family breakdown
- d. Emphasizing that divorce, while unfortunate, may be necessary for children's wellbeing in abusive or destructive marriages

**16. Professional Training:** Beyond judges, other professionals who interact with divorcing families need training:

Lawyers should receive continuing legal education on child-centered practice in family law

- a. Teachers should be trained to support children experiencing family transitions

- b. Healthcare providers should understand children's needs during and after divorce
- c. Religious leaders should receive education on balancing religious principles with child welfare concerns
- d. Police and security services need training on handling family disputes and enforcing custody orders

**17. Legal Aid Expansion:** The Legal Aid Council should be strengthened and specifically directed to prioritize family law cases:

**a. Dedicated Family Law Units:** Establishing specialized family law units within Legal Aid offices would ensure that staff have necessary expertise. These units should include not only lawyers but also social workers and mediators to provide holistic support.

**b. Expanded Eligibility:** Income eligibility thresholds for legal aid should be revised to recognize that many working families cannot afford private legal representation despite having incomes above subsistence levels. Special provisions should ensure that victims of domestic violence qualify regardless of income.

**c. Children's Legal Representation:** Following South African precedent, legal aid should be available to provide independent representation for children in custody disputes where their interests diverge from either parent. Child representatives should receive specialized training in communicating with children, assessing their needs, and advocating for their welfare.

**18 Alternative Service Delivery:** To address the Legal Aid Council's capacity constraints, partnerships should be developed with:

- a. University law clinics providing free services supervised by faculty
- b. Pro bono programs where private lawyers volunteer their services
- c. Paralegals trained to provide basic legal information and assistance
- d. Civil society organizations offering legal empowerment programs

**19. Online Resources:** Recognizing that many people cannot access in-person legal services, the Legal Aid Council and partner organizations should develop:

- a. Websites with plain-language information about family law rights and procedures
- b. Template forms and documents for common situations
- c. Video tutorials explaining the legal process
- d. Online calculators for estimating maintenance obligations
- e. Directories of family law services and support resources
- f. While such resources cannot replace legal advice in complex cases, they can empower individuals to understand their rights and navigate simpler matters without requiring full legal representation.

**20. Support Services for Children:** Beyond legal intervention, children experiencing parental divorce need comprehensive support services:

- a. **School-Based Counseling:** Schools should provide counseling services for children dealing with family transitions, helping them process emotions, maintain academic performance, and develop coping strategies.
- b. **Support Groups:** Age-appropriate support groups allow children to share experiences with peers facing similar situations, reducing feelings of isolation and stigma.
- c. **Parent Education Programs:** Courts should have authority to order parents to participate in education programs on co-parenting, communication skills, and supporting children through divorce. Such programs, mandatory in many jurisdictions, help parents understand the impact of their behavior on children and develop skills for constructive cooperation.
- d. **Therapeutic Services:** Subsidized or free therapeutic services should be available for children experiencing significant emotional or behavioral difficulties related to family breakdown. This is particularly important for children exposed to domestic violence or high-conflict custody disputes
- e. **Financial Assistance:** Custodial parents, typically mothers, often face economic hardship after divorce. Beyond child maintenance, government programs should provide:
  - i). Temporary financial assistance during transition periods
  - ii). Job training and placement services to enhance economic self-sufficiency
  - iii). Affordable childcare to enable employment

- iv) Housing assistance for homeless or inadequately housed families
- v) Healthcare subsidies for uninsured children

These support measures address the practical realities that no matter how good the law is, children cannot thrive without economic security and access to essential services.

**F. Civil Society Engagement:** Government alone cannot address all the needs of children affected by divorce. Civil society organizations should be encouraged and supported to

- i). Provide advocacy for children's rights in matrimonial proceedings
- ii). Offer counseling and support services
- iii). Monitor implementation of laws and court orders
- iv). Document problems and advocate for reform
- v). Develop innovative programs to address emerging needs
- vi). Bridge gaps in government service provision

Partnerships between government and civil society can leverage the expertise, community connections, and flexibility of non-governmental organizations while ensuring coordination with formal legal and welfare systems

#### **4.5 Conclusion**

This chapter has identified significant challenges in Nigeria's legal framework for protecting children during and after divorce, including outdated statutory provisions, weak coordination between laws, inadequate enforcement mechanisms, and insufficient

institutional infrastructure. Social and cultural barriers compound these legal deficiencies, with gender bias, conflicting customary norms, and stigmatization affecting both legal outcomes and children's broader experiences.

The comparative analysis demonstrates that other jurisdictions have successfully addressed similar challenges through explicit statutory best interest standards, specialized family courts, centralized maintenance agencies, mandatory mediation, and comprehensive support services. While each country's approach reflects its particular context, common elements include prioritizing child welfare, providing institutional support for decision-making, facilitating parental cooperation, and ensuring effective enforcement.

The reform proposals presented—amending the MCA to incorporate detailed child rights provisions, establishing specialized Family Courts nationwide, creating a Child Maintenance and Welfare Agency with robust enforcement powers, and investing in public education and legal aid—represent a comprehensive agenda for transforming Nigeria's approach to child welfare in divorce. Implementation would require sustained political commitment, significant resource allocation, and coordination across multiple government agencies and sectors.

However, the cost of inaction is far greater. Every year, thousands of Nigerian children experience the trauma of family breakdown without adequate legal protection, financial support, or social services. Many suffer lasting harm that affects their education, health, relationships, and future life prospects. Protecting these vulnerable children is not only a legal obligation under the CRA and international conventions Nigeria has ratified, but a moral imperative and a sound investment in the nation's future.

The next chapter will synthesize the findings of this research, draw final conclusions about the adequacy of current law, and present specific recommendations for legislative, judicial, and policy reform to ensure that Nigerian children's rights and welfare are truly paramount in all matrimonial proceedings.

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATIONS

#### 5.1 Summary of Findings

This study examined the relationship between the *Matrimonial Causes Act* (MCA) and the protection of children's rights in divorce proceedings within Nigeria's legal framework. The analysis has shown that while the MCA remains the foundational legislation governing dissolution of marriage, custody, maintenance, and related reliefs, it is grossly inadequate in addressing the evolving concept of child welfare in line with modern legal and human rights standards. The research began by reviewing the conceptual and legal foundations of the MCA, identifying that the Act, first enacted in 1970 and now codified as Cap M7, Laws of the Federation of Nigeria 2004, has not undergone significant reform despite radical social and legal transformations over the last five decades.<sup>139</sup> Having examined the relevant statutory provisions, judicial authorities and legal framework the study identifies the key issues that defines the subject matter. The Findings summarized below therefore shows the strengths, answers and practical implications inherent in the legal framework which are;

1. Its failure to expressly adopt the best interest of the child as the paramount consideration in all proceedings involving children remains one of its most critical weaknesses. Although Section 71 MCA provides that courts should have regard to the welfare of children, the absence of statutory guidelines leaves judges with wide discretion, resulting in inconsistency and unpredictability in judicial outcomes.<sup>140</sup>

---

<sup>139</sup> Section 71 Matrimonial Causes Act, Cap M7 LFN 2004.

<sup>140</sup> *Williams v. Williams* (1987) 2 NWLR (Pt. 54) 66.

2. The study further found that while the *Child Rights Act (CRA) 2003*, the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, and international instruments such as the *United Nations Convention on the Rights of the Child (UNCRC)* and the *African Charter on the Rights and Welfare of the Child (ACRWC)* all emphasize child-centered principles, there has been poor harmonization between these instruments and the MCA. The CRA, which domesticates the UNCRC, provides an extensive framework for children’s protection, welfare, and participation, yet its implementation remains uneven across Nigeria due to the federal structure and lack of domestication by some states.<sup>141</sup> This creates a fragmented system where a child’s legal protection depends on geography rather than uniform national standards.

3. Another significant finding relates to the weak enforcement mechanisms in Nigeria’s matrimonial jurisprudence. The courts often issue maintenance or custody orders without any follow-up institutional mechanism to ensure compliance.<sup>142</sup> Contempt proceedings are cumbersome, time-consuming, and rarely effective, while the absence of specialized child support agencies leaves custodial parents, especially mothers, to bear the brunt of enforcement challenges. In practice, this has rendered many maintenance orders hollow and has perpetuated child poverty and neglect following divorce.

4. The study also identified the inadequate judicial and institutional infrastructure for handling family matters. Most Nigerian High Courts are generalist courts that lack specialized family divisions, child psychologists, or welfare officers to assist in custody evaluation.<sup>143</sup> As a result, judicial officers—though competent in law—are often ill-

---

<sup>141</sup> Section 1 Child Rights Act 2003; see also Section 17(3)(f) Constitution of the Federal Republic of Nigeria 1999.

<sup>142</sup> *Alabi v. Alabi* (2007) 9 NWLR (Pt. 1039) 297.

<sup>143</sup> National Judicial Institute, *Report on Family Court Implementation* (2023).

equipped to make informed determinations of what truly serves a child’s emotional, psychological, and developmental needs. The lack of child-friendly courtrooms further discourages children’s participation in proceedings that directly affect them.

5. Additionally, socio-cultural factors continue to distort the application of legal standards. Persistent gender biases, especially the “tender years doctrine” favoring maternal custody of infants, and patriarchal customs that automatically vest older male children in the father’s lineage, both interfere with the equitable application of statutory principles.<sup>144</sup> In cases such as *Okonjo v. Okonjo* and *Mojekwu v. Ejikeme*, the courts have tried to resist cultural pressures that conflict with child welfare, yet such biases remain deeply rooted in practice.<sup>145</sup>

6. Finally, the comparative analysis in Chapter Four demonstrated that jurisdictions like the United Kingdom, South Africa, and Canada have successfully reformed their family law frameworks by embedding the paramountcy of child welfare into legislation, establishing specialized courts, and adopting structured guidelines for maintenance and custody determinations.<sup>146</sup> These countries have developed modern family justice systems characterized by efficiency, predictability, and respect for children’s rights — lessons that Nigeria must urgently adopt

In sum, the study found that although Nigerian courts have attempted to fill the statutory gaps through judicial innovation, as seen in *Odogwu v. Odogwu*<sup>147</sup> and

---

<sup>144</sup> *Mojekwu v. Ejikeme* (2000) 5 NWLR (Pt. 657) 402.

<sup>145</sup> *Okonjo v. Okonjo* (1978) 2 LRN 255.

<sup>146</sup> MG Hill *Family Law: Contemporary Perspectives* (Routledge, 2021).

<sup>147</sup> *Odogwu v. Odogwu* (1992) 2 NWLR (Pt. 225) 539.

*Williams v. Williams*<sup>148</sup>, the lack of statutory clarity and institutional support continues to hinder the effective protection of children’s welfare in divorce proceedings.

## **5.2 Recommendation**

Based on the findings and conclusions, the following recommendations are proposed to reform Nigeria’s matrimonial and child welfare framework:

### **(1) Legislative Reform of the Matrimonial Causes Act**

The MCA should be comprehensively amended to reflect contemporary family realities. The amendment should insert an explicit provision stating that the welfare of the child shall be the paramount consideration in all matrimonial proceedings. In addition, a statutory *welfare checklist* should be adopted, similar to the UK’s *Children Act 1989*, listing factors courts must consider—such as the child’s wishes, emotional and educational needs, potential harm, and parental capacity.<sup>149</sup> This will ensure consistency and limit judicial arbitrariness.

### **(2) Integration of the MCA with the Child Rights Act**

The CRA and MCA must be harmonized legislatively. The CRA’s principles should guide all proceedings under the MCA, while federal and state authorities must ensure full domestication and uniform application of the CRA across Nigeria. Such harmonization would eliminate the current fragmentation and bring matrimonial law in line with Nigeria’s obligations under the UNCRC and ACRWC.<sup>150</sup>

---

<sup>148</sup> *Williams v. Williams* (1987) 2 NWLR (Pt. 54) 66.

<sup>149</sup> Section 1(3) Children Act 1989 (UK).

<sup>150</sup> UNCRC (1989), Arts. 3 and 9.

**(3) Establishment of Specialized Family Courts**

Dedicated Family Courts should be established in all states with exclusive jurisdiction over child-related and matrimonial matters. These courts should employ trained judges, child psychologists, welfare officers, and mediators. Their design and procedure should be child-friendly, allowing in-camera hearings, age-appropriate interviews, and expedited timelines to minimize trauma and delay.<sup>151</sup>

**(4) Strengthening Enforcement Mechanisms**

*A National Child Maintenance and Welfare Agency* should be created to collect and enforce maintenance orders through mechanisms such as wage garnishment, bank deductions, or suspension of professional licenses for defaulting parents. This centralized system, modeled after the UK and Canadian experiences, will ensure effective compliance and reduce litigation costs.<sup>152</sup>

**(5) Promotion of Joint Custody and Shared Parenting**

The law should move beyond the outdated “custody and access” model and adopt terms such as “parenting time” and “decision-making responsibility.” Courts should encourage joint parenting where appropriate, ensuring that children maintain meaningful relationships with both parents. This would help reduce parental alienation and promote balanced upbringing after divorce.<sup>153</sup>

**(6) Expansion of Legal Aid and Child Advocacy**

The Legal Aid Council should prioritize family law cases, particularly for indigent parents, and expand access to free or subsidized representation. Civil society

---

<sup>151</sup> CRA 2003, Part XIII.

<sup>152</sup> Canadian Divorce Act 2019, ss.16–16.6.

<sup>153</sup> Olong, M.A., *Law and Child Rights Protection in Nigeria* (Malthouse, 2019).

organizations and NGOs should collaborate with state welfare departments to raise public awareness on child rights and provide psychosocial support to children of divorced parents.<sup>154</sup>

**(7) Incorporation of Alternative Dispute Resolution (ADR)**

To minimize the adversarial nature of divorce proceedings, mediation and counseling should be made mandatory before the filing of petitions, except in cases involving domestic violence or abuse. ADR mechanisms will promote cooperative parenting and reduce the emotional burden on children.<sup>155</sup>

**(8) Monitoring and Evaluation of Court Orders**

Courts should retain supervisory jurisdiction over custody and maintenance orders, requiring periodic welfare reports and enabling modification when circumstances change. Welfare officers or social workers attached to the Family Courts should be empowered to visit homes, monitor compliance, and report violations promptly.<sup>156</sup>

**(9) Public Education and Cultural Reorientation**

Government and NGOs should launch continuous sensitization programs to correct cultural misconceptions that view children as property of one parent or family. Emphasis should be placed on shared parental responsibility and the long-term psychological effects of divorce-related conflict on children.<sup>157</sup>

---

<sup>154</sup> Legal Aid Act, Cap L9 LFN 2011.

<sup>155</sup> Section 33 South Africa Children's Act 38 of 2005.

<sup>156</sup> National Human Rights Commission, *Annual Report on Child Welfare* (2021)

<sup>157</sup> Ezeani, C., *Doctrine of Irretrievable Breakdown in Nigerian Matrimonial Law* (2024)

## **(10) Training and Capacity Building for Judicial Officers**

Regular workshops and courses should be organized for judges, magistrates, and lawyers handling family matters to strengthen their understanding of child psychology, trauma, and welfare assessment. Collaboration with international institutions such as UNICEF and the Commonwealth Secretariat can provide technical support for such training programs.<sup>158</sup>

### **5.3 Conclusion**

From the analysis above, it is evident that Nigeria’s *Matrimonial Causes Act* has not kept pace with global and domestic developments in child rights law. While the Act was a progressive piece of legislation at the time of its enactment, its silence on critical welfare principles and emerging family issues—such as joint custody, relocation, shared parenting, and child participation—renders it outdated in today’s socio-legal context.

The doctrine of judicial discretion, though valuable, has become a double-edged sword. It allows courts to adapt to circumstances in the absence of express statutory guidance, but it also leads to unpredictable outcomes, especially where judges hold divergent views about what constitutes a child’s welfare. Without a standardized checklist or guidelines, the principle of the “best interest of the child” is applied inconsistently across Nigerian courts.

Furthermore, the poor integration of the CRA and the MCA represents a major legislative gap. The two statutes, though intended to complement each other, operate in isolation. The CRA, which explicitly establishes the best interest principle and provides for family courts, remains unimplemented in many states, thereby weakening the

---

<sup>158</sup> UNICEF Nigeria, *Child Protection and Family Law Capacity Building Report* (2022)

national protection framework. Consequently, Nigeria operates a dual system—one anchored in an outdated matrimonial regime and another in a modern child rights model with little coordination between them.

The conclusion drawn is that the Nigerian legal framework, as presently structured, does not adequately safeguard the welfare of children during and after the dissolution of marriage. The deficiencies are not only legislative but also institutional and socio-cultural. There is a pressing need for comprehensive reform that will harmonize the MCA with the CRA and international standards, establish specialized enforcement institutions, and ensure uniform protection for all children regardless of location or parental status.

If implemented, such reforms would fulfill Nigeria's constitutional and international obligations to protect the dignity and welfare of every child, ensuring that no child becomes a collateral casualty of marital breakdown.

#### **5.4 Suggestions for Further Research**

Ultimately, protecting the welfare of children within Nigeria's matrimonial jurisprudence requires not only legal reform but a change in institutional culture and societal attitude. Children are not passive subjects in divorce proceedings; they are rights-holders whose voices, welfare, and development must be at the heart of family law. The reformation of the MCA, the establishment of specialized Family Courts, and the creation of effective enforcement and support structures would collectively mark a decisive step toward a more humane, equitable, and child-centered family justice system in Nigeria. If fully implemented, these recommendations will ensure that Nigeria's family law no longer serves merely as a procedural framework for divorce, but as an instrument for safeguarding the future of the Nigerian child.

## BIBLIOGRAPHY

### BOOKS

- Agomo C, *Nigerian Family Law* (CALs 2003).
- Akinseye-George Y, 'Implementation of the Child Rights Act in Nigeria: Matters Arising' in UNESCO (ed), *Challenges of Adoption and Application of the Child Rights Act in Nigeria* (UNESCO 2013) 67.
- Amadiume I, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books 1987).
- Baker A, *Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind* (WW Norton 2007).
- Emery R, *Marriage, Divorce, and Children's Adjustment* (2nd edn, SAGE Publications 1999).
- Hill MG, *Family Law: Contemporary Perspectives* (Routledge 2021).
- Ijaiya H, 'The Child Rights Act 2003 and the Challenges of Domestication in Nigerian States' in UNESCO (ed), *Challenges of Adoption and Application of the Child Rights Act in Nigeria* (UNESCO 2013) 23.
- Kelly J and Emery R, 'Children's Adjustment Following Divorce: Risk and Resilience Perspectives' in *Family Relations* (2003).
- Ladan MT, *Review of Existing Child Rights Laws in Nigeria and the Challenges of Domestication* (UNESCO 2013).
- Lemu A, *Women and Islamic Law in Nigeria* (Islamic Education Trust 2018).
- Lowe N and others, *International Movement of Children Law: Practice and Procedure* (Jordan Publishing 2017).
- Maclean M and Eekelaar J, *The Parental Obligation: A Study of Parenthood Across Households* (Hart Publishing 1997).
- Mason MA, *From Father's Property to Children's Rights* (Columbia University Press 1994).
- Olong MA, *Law and Child Rights Protection in Nigeria* (Malthouse 2019).
- Onwuegbuzie P, *Extended Family Systems and Child Welfare in Post-Divorce Nigeria* (2020).
- Schepard A, *Children, Courts, and Custody: Interdisciplinary Models for Divorcing Families* (CUP 2004).
- Warshak R, *Blanket Restrictions on Overnight Contact for Children Under Five* (Family Court Review 2000).

## JOURNAL ARTICLES

- Adebayo B, 'Educational Challenges for Children of Divorced Parents in Nigerian Schools' *African Educational Research Journal* (2019)14 223.
- Akanji B, 'Gender and Child Custody in Nigeria' *Journal of Comparative Family Studies* (2012)30 101.
- Amato P and Gilbreth J, 'Nonresident Fathers and Children's Well-Being: A Meta-Analysis' *Journal of Marriage and Family* (1999)61 557.
- Baker A, *Adult Children of Parental Alienation* (WW Norton 2007).
- Cashmore J and Parkinson P, 'Children's Participation in Family Law Disputes' *Child Abuse and Neglect* (2009)15 837.
- Chianu E, 'Family Involvement in Matrimonial Disputes under Nigerian Customary Law' *Journal of African Legal Studies* (2020)12 156.
- Dankofa Y, 'The Application of Sharia Law in Northern Nigeria: Implications for Child Custody' *Islamic Law and Society* (2021)15 445.
- Eekelaar J, 'The Emergence of Children's Rights' *Oxford Journal of Legal Studies* (1986)6 161.
- Graham A and others, 'Facilitating Children's Participation in Family Law Proceedings' *Australian Law Journal* (2013)87 945.
- Herring J, *Family Law* (9th edn, Pearson 2019) 456–458.
- Ibe C, 'Implementation of the Child Rights Act in Nigeria: Issues, Challenges and Prospects' (2014) 15 *ESR Review* 14.
- Kelly J, 'The Determination of Child Custody' *The Future of Children* (1999)4 121.
- Ludolph P and Dale M, 'Attachment in Child Custody Evaluations' *Family Court Review* (2012)50 487.
- Mason MA, 'Critical Aspects of Parenting Plans for Young Children' *Family Court Review* (2004)43 39.
- Nwankwo C, 'Patriarchy and Child Custody in Nigerian Customary Law' *African Journal of Gender Studies* (2019)8 89.
- Ojo T and Alade K, 'Child Custody and the Influence of English Matrimonial Jurisprudence' *Nigerian Journal of Family Law* (2025)14 45.
- Owolabi A, 'Access to Justice in Family Matters in Nigeria' *University of Ibadan Law Journal* (2018)2 234.
- Parkinson P and Cashmore J, 'The Voice of a Child in Family Law Disputes' (2008) *OUP* 134.

Pruett MK, 'Critical Aspects of Parenting Plans' *Family Court Review* (2004)43 39.

## ONLINE SOURCES

CAFCASS, *Annual Report and Accounts 2022–23* (HC 1456, 2023) <[https://www.cafcass.gov.uk/cafcass-publishes-annual-report-and-accounts-2022-23?utm\\_source=chatgpt.com](https://www.cafcass.gov.uk/cafcass-publishes-annual-report-and-accounts-2022-23?utm_source=chatgpt.com)> accessed 27 September, 2025

Chukwuemeka Emmanuel Ibe, 'Profile' (Nnamdi Azikiwe University) <<https://www.profile.unizik.edu.ng/nau2333>> accessed 27 September 2025.

Department for Work and Pensions, *Child Maintenance: Effective Enforcement Review* (Cm 9456, 2022). <[https://nhrc.gov.ng/publications/annual-report/434-2022-annual-report.html?utm\\_source=chatgpt.com](https://nhrc.gov.ng/publications/annual-report/434-2022-annual-report.html?utm_source=chatgpt.com)> Accessed 21 November 2025.

National Human Rights Commission, *Annual Report 2022* (NHRC 2023)..<[https://nhrc.gov.ng/publications/annual-report/434-2022-annual-report.html?utm\\_source=chatgpt.com](https://nhrc.gov.ng/publications/annual-report/434-2022-annual-report.html?utm_source=chatgpt.com)> Accessed 5 September 2025.

National Human Rights Commission, *Annual Report on Child Welfare* (2021).. <<https://nhrc.gov.ng/publications/annual-report/379-2021-annual-report.html>> Accessed 27 November 2025.

National Judicial Institute, *Caseload Management in Nigerian Courts: A Statistical Overview* (2021). <[https://nji.gov.ng/assets/publication/CASE-MANAGEMENT-AND-TRACKING-PAPER-FOR-NJI.pdf?utm\\_source=chatgpt.com](https://nji.gov.ng/assets/publication/CASE-MANAGEMENT-AND-TRACKING-PAPER-FOR-NJI.pdf?utm_source=chatgpt.com)> Accessed 30 September 2025.

National Judicial Institute, *Report on Family Court Implementation* (2023). <<http://www.nji.gov.ng>> Accessed 6 November 2025

UNICEF Nigeria, *Child Protection and Family Law Capacity Building Report* (2022). <[https://www.unicef.org/nigeria/child-protection?utm\\_source=chatgpt.com](https://www.unicef.org/nigeria/child-protection?utm_source=chatgpt.com)> Accessed 7 October 2025