

**PROTECTING THE CHILD'S RIGHT TO MAINTENANCE ACROSS BORDERS: A
LEGAL ASSESSMENT OF ENFORCEMENT UNDER INTERNATIONAL AND
REGIONAL FRAMEWORKS**

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BENIN CITY**

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BENIN, BENIN CITY, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF LLB.DEGREE**

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DECLARATION

I hereby declare that this work is the product of my own research efforts; undertaken under the supervision of **Dr. Keseme Philip ODUDU** and has not been presented elsewhere for the award of a degree or certificate. All sources have been duly distinguished and appropriately acknowledged.

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CERTIFICATION

This is to certify that the research work for this dissertation and the subsequent preparation of this dissertation by **Eseroghene Goodness, OGBORU (LAW2002908)** were carried out under my supervision.

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DEDICATION

This work is dedicated to God, whose supreme authority over all human affairs, be it in times of conflict or cooperation, remains a constant reminder of His sovereignty. For His enduring strength, insight, and guidance during this journey, I am ever grateful.

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First and foremost, I bow in utmost gratitude to the Lord that sits on the throne of Heaven who never for a day took His watchful eyes off me, whose guidance, grace and strength have been sufficient for me throughout life's journey. Indeed, His merciful interventions held my feeble hands at every stage of this work and in the absence of His help, the simplest paragraph would have been a winding maze.

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

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

Maintenance Orders Act, Cap M1 LFN 2004

Foreign Judgments (Reciprocal Enforcement) Act, Cap F35, LFN 2004

African Charter on the Rights and Welfare of the Child (Ratification and Enforcement)
Act, Cap A9 LFN 2004

International / Regional Instruments

Hague Convention on the International Recovery of Child Support and Other Forms
of Family Maintenance (2007)

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

LIST OF ABBREVIATIONS

CRC	–	Convention on the Rights of the Child
UN	–	United Nations
UNICEF	–	United Nations Children’s Fund
CRA	–	Child Rights Act
LFN	–	Laws of the Federation of Nigeria
MCA	–	Matrimonial Causes Act
MOA	–	Maintenance Orders Act
FJREA	–	Foreign Judgments (Reciprocal Enforcement) Act
AWRCA	–	African Charter on the Rights and Welfare of the Child
HCCS	–	Hague Convention on Child Support
UK	–	United Kingdom
US / USA	–	United States of America
ECOWAS	–	Economic Community of West African States

ABSTRACT

Cross-border child maintenance has become an increasingly complex legal issue as rising migration, international marriages and family breakdowns create situations where a parent resides outside the jurisdiction responsible for enforcing a child's right to maintenance. Although international instruments such as the 1989 United Nations Convention on the Rights of the Child and the 1990 African Charter on the Rights and Welfare of the Child affirm this right, enforcement remains inconsistent, particularly in Nigeria. The central problem addressed in this study is the persistent gap between the legal recognition of child maintenance as a right and the practical ability of custodial parents to enforce that right when the obligor lives abroad. The aim of this study is to critically assess the international, regional, and domestic frameworks governing the cross-border enforcement of child maintenance, with particular reference to Nigeria. Using a doctrinal method based on statutes, case law, treaties, and academic literature, the paper examines the extent to which Nigerian law accommodates international obligations and identifies legal, procedural, and institutional obstacles. Findings show that Nigeria's dualist approach to treaty ratification limits the domestic effect of international maintenance conventions, including the Hague 2007 Child Support Convention. Although domestic laws such as the Child Rights Act and Matrimonial Causes Act provide strong protections, they lack cross-border applicability. Additionally, the absence of a central authority, limited judicial expertise in private international law, bureaucratic delays, gendered socio-economic inequalities, and fragmented mechanisms for enforcing foreign judgments pose challenges. The study recommends comprehensive reforms, including domestication of relevant conventions, creation of a central enforcement authority, harmonisation of family laws, enhanced judicial capacity, and gender-responsive mechanisms to safeguard children's financial rights across borders.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Essay

The right of the child to maintenance covering financial support for necessities such as food, education, health care, and shelter is fundamental to their development and welfare. While domestic legal systems often recognize and provide for child support through family law statutes, globalization, migration, and transnational family arrangements have created complex challenges in enforcing these rights across borders. The increase in international marriages, divorces, and child relocation has led to situations where one parent resides in a different country from the child, making enforcement of maintenance obligations a complicated legal and jurisdictional issue.¹

Historically, maintenance was viewed primarily as a moral obligation, enforced socially or within close-knit communities. However, as modern legal systems evolved, especially in the aftermath of World War II and with the establishment of the United Nations and its affiliated instruments like the UN Convention on the Rights of the Child (CRC)², child maintenance has been redefined as a legal right of the child and a corresponding legal duty of the parent or guardian. This shift reflected the recognition of children as rights holders under international law.

The enforcement of child maintenance across borders significantly affects the quality of life for children, particularly those living in single-parent households. Research shows that inadequate enforcement of child support can lead to poor outcomes for children, impacting their health, education, and overall well-being³. International

¹ 'Navigating Cross-Border Family Law Disputes and International Child Abduction in Nigeria' <<https://chamanlawfirm.com/family-law-disputes-and-child-abduction/>> accessed 30th June 2025.

² United Nations, 'Convention on the Rights of the Child' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 30 June 2025.

³ LR Wilcox, 'Global Family Law: Cross-Border Issues & Recent Trends' <<https://lisareneewilcox.com/global-family-law-cross-border-issues>> accessed 30 June 2025.

frameworks, such as the United Nations Convention on the Rights of the Child, obligate governments to ensure that non-resident parents contribute financially to their children's upbringing, regardless of geographical barriers⁴. This gap in child support enforcement often stems from a reliance on private agreements between parents, which tend to overlook the financial and relational power imbalances that exist, particularly disadvantaging single mothers. The shift toward encouraging private negotiations has undermined the effectiveness of state-sanctioned systems, further complicating efforts to secure reliable maintenance payments for children. Determining jurisdiction is a critical aspect of international child custody and maintenance cases. Courts typically consider the child's country of habitual residence as a primary factor when assessing jurisdiction. Additionally, the best interests of the child must be paramount in these determinations, aligning with provisions such as Section 71(1) of the MCA 1970⁵, which emphasizes the need to prioritize children's welfare in custody and maintenance matters.

In Nigeria, the enforcement of child maintenance obligations is particularly challenging due to the interplay of local and international laws. For instance, the legal landscape includes the need for harmonization between various customary laws and statutory provisions that govern child welfare and maintenance⁶.

1.2 Statement of Problem

⁴ U.S. Department of Health & Human Services, 'Revision of Child Support Enforcement Program and Audit Regulations' <<https://acf.gov/css/policy-guidance/nprm-revision-child-support-enforcement-program-and-audit-regulations>> accessed 30 June 2025.

⁵ Cap M7, Laws of the Federation of Nigeria 2004

⁶ MT Kernel, 'Strengthening Legal Framework for Protection of Children in Nigeria: Challenges and Pathways for Effective Enforcement' <<https://medium.com/@mtkernel101/strengthening-legal-framework-for-protection-of-children-in-nigeria-challenges-and-pathways-for-121b2a5bf249>> accessed 30th June 2025.

The right of a child to financial maintenance is firmly rooted in international human rights instruments such as the United Nations Convention on the Rights of the Child (CRC), and various regional charters. Yet, despite these legal recognition, enforcement of maintenance across borders remains insufficient, inconsistent, and in many cases, non-existent. The problem this study identifies is multidimensional and centers on the disconnect between the legal right to maintenance and the ability of custodial parents to enforce that right when the obligor resides outside the child's country.

This problem is aggravated by the following factors:

- i. Jurisdictional Fragmentation: Legal obligations arising in one jurisdiction often hold little to no weight in another unless reciprocal enforcement agreements exist. Countries differ in their recognition and treatment of foreign judgments and maintenance orders.
- ii. Insufficient Treaty Ratification and Implementation: Treaties such as the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (2007) are either not ratified or poorly implemented in several developing countries, including Nigeria. Even where ratified, there is a lack of enabling legislation and procedural frameworks to give domestic effect to these conventions.
- iii. Institutional Weaknesses: National legal institutions often lack the expertise, resources, or coordination mechanisms to handle transnational child maintenance cases effectively. This includes weak judicial capacity, insufficient training in international family law, and inadequate cross-border collaboration with foreign agencies.

- iv. Economic and Gender Inequality: Custodial parents, typically women, are economically disadvantaged and often unable to afford prolonged cross-border litigation.
- v. Absence of Centralized Enforcement Structures: In many jurisdictions, there is no designated central authority to coordinate cross-border maintenance claims, leaving custodial parents without a clear route for enforcement.
- vi. Over-reliance on Private Agreements: An increasing trend toward private arrangements has weakened the role of state enforcement mechanisms. Such agreements often do not have binding legal status in multiple jurisdictions, especially where the obligor moves abroad.

1.3 Aim and Objectives

The aim of this long essay is to critically assess the effectiveness of international and regional legal frameworks in protecting and enforcing a child's right to maintenance across borders, with a focus on Nigeria and comparative jurisdictions.

The following are the objectives of this essay:

- i. To identify and analyze the principal international and regional legal frameworks governing the cross-border enforcement of child maintenance rights, including conventions, treaties, and customary international law.
- ii. To evaluate the legal and institutional mechanisms available within Nigeria for the recognition and enforcement of foreign maintenance orders and to assess their practical effectiveness.
- iii. To explore the interaction between international obligations and domestic legal structures, particularly how Nigerian courts and legislative provisions accommodate or conflict with treaty obligations.

- iv. To examine practical obstacles faced by custodial parents in enforcing cross-border child maintenance, including legal, procedural, and logistical barriers.
- v. To assess the level of compliance by state parties to international agreements on child maintenance enforcement and to evaluate the consequences of non-compliance or partial implementation.
- vi. To propose legal and institutional reforms necessary for strengthening enforcement of child support across borders within Nigeria and in other similar legal systems.
- vii. To analyze the role of gender and socio-economic inequality in obstructing access to enforcement mechanisms for child maintenance and to suggest mechanisms for redress.

1.4 Scope and Limitations of the Essay

The essay examines the legal, institutional, and procedural frameworks governing the enforcement of a child's right to maintenance across national borders, with a specific focus on Nigeria's domestic laws and their interaction with international and regional instruments. It evaluates core legislation such as the Child Rights Act 2003, the Matrimonial Causes Act 1970, the Maintenance Orders Act 1921, and the Foreign Judgments (Reciprocal Enforcement) Act, assessing how these statutes support or constrain cross-border maintenance enforcement. Its scope also extends to Nigeria's treaty obligations including ratified instruments like the UNCRC and ACRWC and the impact of Nigeria's dualist constitutional system on the domestic applicability of these treaties. Additionally, the study reviews the role of institutions such as family courts, the Ministry of Justice, and the Ministry of Women Affairs, as well as judicial practices, procedural mechanisms, and capacity challenges affecting enforcement. By analyzing legal gaps, jurisdictional conflicts, institutional weaknesses, and the socio-

economic dimensions that hinder effective maintenance enforcement, the essay provides a comprehensive examination of how children's financial rights are protected or undermined in transnational family situations.

The essay is limited by Nigeria's fragmented legal landscape, particularly the uneven domestication and implementation of the Child Rights Act across states, which restricts a uniform national evaluation of child maintenance enforcement. Another limitation arises from Nigeria's non-ratification of key international instruments particularly the Hague Child Support Convention which reduces the availability of comprehensive comparative data on reciprocal enforcement processes. The analysis is further constrained by the scarcity of reported Nigerian case law specifically addressing international or cross-border child maintenance disputes, as most judgments are either unreported or inaccessible. Practical limitations such as bureaucratic opacity, inconsistent institutional documentation, and limited scholarly literature on Nigeria's cross-border maintenance system also restrict the depth of empirical assessment. Additionally, the essay does not engage in fieldwork or interviews with judicial officers, policymakers, or affected families; therefore, the analysis relies primarily on doctrinal sources, which may not fully capture real world enforcement challenges. Lastly, because different countries apply varying legal traditions, the comparative insights referenced are limited to jurisdictions with available documentation and may not represent global practices exhaustively.

1.5 Significance of the Study

The essay is significant because it addresses the growing global challenge of securing financial support for children in transnational family contexts a problem intensified by migration, international marriages, and cross-border parental mobility. In highlighting the gaps within Nigeria's legal and institutional systems, the essay contributes to the

ongoing discourse on child protection and human rights, offering valuable insights for policymakers, legal practitioners, and child-welfare stakeholders. It underscores the need for harmonization between domestic legislation and international standards, emphasizing how constitutional dualism, legal fragmentation, and institutional weaknesses hinder effective enforcement. The essay provides a basis for law reform by identifying barriers that prevent custodial parents often economically disadvantaged women from accessing cross-border maintenance remedies. It also enriches academic literature by filling an existing gap concerning transnational child maintenance enforcement in Nigeria, an area with limited scholarly attention. Ultimately, the essay advances the protection of children's welfare by promoting stronger legal mechanisms, improved judicial cooperation, and enhanced institutional capacities needed to ensure that children receive consistent and adequate financial support regardless of geographical boundaries.

1.6 Research Methodology

This essay employs the doctrinal research methods. The essay relies on two primary sources of information: primary and secondary materials. Primary sources comprise authoritative texts, legislation, and judicial decisions. Secondary sources include scholarly articles, textbooks, online resources, and other relevant publications that support the research objectives.

CHAPTER TWO

CONCEPTUAL, THEORETICAL AND HISTORICAL FRAMEWORK AND LITERATURE REVIEW

2.1 Conceptual Clarifications

This part of the chapter is dedicated to clarifying and defining certain terms used in this area of the law. The idea is to give a proper understanding of the terms and put them in their right contexts.

2.1.1 Definition of Child Maintenance

Child maintenance or child support is the regular, reliable financial support that helps afford the everyday living costs of bringing up a child⁷ when parents are separated or divorced⁸. It also comes up as a point of discussion and action when there has been a breakdown of civil partnership⁹.

The courts in *Hayes v. Hayes*¹⁰ laid to rest the issue of whether the spouse having care of the children or the children themselves can bring a petition or action for relief in circumstances where spouses in conflict separate for a period or periods before the presentation of a petition for dissolution. The Appeal Court per Aderemi JCA reasoned that "in matrimonial proceedings, the interest of the child of the marriage, as to his custody and welfare is held in paramount".¹¹

It refers to the financial support that a non-custodial parent or guardian is legally obligated to provide for the care and upbringing of their child.¹² This support is aimed at covering essential needs for the financial benefit of the child such as food, shelter,

⁷ Usually children under the ages of 16 and 20 if they are getting education up to A level

⁸ Farani Taylor Solicitors, 'What Is Child Maintenance And Why Is It Important?' <<https://faranitaylor.com/what-is-child-maintenance-and-why-is-it-important/>> accessed 26 November 2025.

⁹ Michael Attah, 'Family Welfare Law in Nigeria' (Ambik Press Limited 2016) 131.

¹⁰ (2000) 3 NWLR (Pt. 648) 276

¹¹ Ibid

¹² Section 14 CRA 2003

education, health care to ensure the general welfare with respect to the well-being and development of the child. Conceptually, child maintenance embodies a fundamental right of the child, recognizing that both parents share responsibility for the child's needs regardless of their personal relationship or geographic location.

2.1.2 Cross-border” or “Transnational” Child Maintenance

This refers to the financial support obligations for a child that arise when the parents or guardians involved live in different countries. As the number of family cases with an international element increases, there is greater need than ever for expertise and enforcement on child maintenance where the child or parents live, work, or have financial resources abroad¹³. This concept highlights the complexities of enforcing child maintenance orders across national jurisdictions, where differing legal systems, regulations, and enforcement mechanisms can impact the child's ability to receive consistent support¹⁴. In the context of this project, it underscores the necessity for effective international and regional legal frameworks to facilitate recognition, enforcement, and cooperation between states to protect the child's right to maintenance regardless of geographic boundaries.

2.1.3 The “Best Interest of the Child” Principle

The “best interest of the child” principle or BIOC is a fundamental legal standard. It is a rule of action that has found its way into international instruments and local legislations especially those dealing with children¹⁵. According to *Lord MacDermott* in *J & Another v C & Others*¹⁶ “it connotes a process whereby, when all relevant facts,

¹³ Penningtons Manches Cooper LLP, ‘International child maintenance’ <<https://www.lexology.com/library/detail.aspx?g=309ca078-abb4-4c1e-a52b-dfd642caa84a>> accessed 13 September 2025.

¹⁴ AV Ogunnubi, ‘Enforcement of Maintenance Orders in Nigeria and Across the Globe’ <<https://spaajibade.com/enforcement-of-maintenance-orders-in-nigeria-and-across-the-globe/>> accessed 26 November 2025.

¹⁵ Michael Attah, ‘Family Welfare Law in Nigeria’ (Ambik Press Limited 2016) 30.

¹⁶ (1970) AC 668

relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare.... it rules upon and determines the course to be followed.”

There is no universal definition of BIOC. The term is subjective and can be generally referred to as the well being of the child or deliberation undertaken by the courts in deciding what orders might best serve the child¹⁷. Enshrined in Article 3(1) of the United Nations Convention on the Rights of the Child (CRC), which requires that in all actions and decisions affecting children whether by courts, administrative authorities, or other institutions the child’s best interests must be a primary consideration, it entails assessing and balancing all relevant factors concerning the child’s welfare, well-being, safety, development, and views to ensure holistic protection and care. As a core principle, it guides enforcement of child maintenance across borders to prioritize the child’s rights and needs above all other considerations. This principle functions not only as a substantive right but also as a procedural safeguard aimed at securing the child’s optimal care and protection universally, regardless of differing national laws.

2.1.4 Parental Responsibility and Child Maintenance

Parental responsibility is best described as the sum of rights, duties, powers, and authority that a parent has in relation to a child and the welfare of that child. According to Lowe and Douglas, it is the "bundle of legal incidents" involving decision-making authority concerning a child's upbringing, custody, education, health,

¹⁷ Dina Imam Supaat, ‘Establishing The Best Interests Of The Child Rule As An International Custom’ *International Journal of Business, Economics and Law* (2014) <<https://ijbel.com/wp-content/uploads/2014/12/LAW-48-Establishing-The-Best-Interests-Of-The-Child-Rule-As-An-International-Customs.pdf?>> accessed 13 September 2025.

and general welfare¹⁸. While the provision of child maintenance is a fundamental parental duty, it is nonetheless conceptually separate from the broader notion of parental responsibility. Maintenance represents the financial obligation owed to the child to ensure adequate provision for basic needs such as food, shelter, education, and health care.¹⁹

In many jurisdictions, parental responsibility is treated as a holistic concept that includes maintenance. For instance, English law views the obligation to provide financial support under parental responsibility, even though child support may have to be enforced through separate statutory mechanisms.²⁰ In contrast, Nigerian law does not seem to make any express provision for maintenance under parental responsibility; rather, the obligation of maintenance is independent and separately treated in statutes such as the Child's Rights Act²¹ and the Matrimonial Causes Act²². At the international level, instruments such as the UNCRC emphasize that parental responsibility encompasses both care and financial support, thereby framing maintenance as an important part of ensuring the best interests of the child²³.

However, international practice currently shows that the legal treatment of maintenance and parental responsibility differs significantly when enforcement takes place across borders. The Brussels IIa Regulation in Europe, for instance, separates jurisdictional rules for parental responsibility matters from those governing

¹⁸ Nigel Lowe and Gillian Douglas, 'Bromley's Family Law' (Oxford University Press 2018) 122.

¹⁹ United Nations Convention on the Rights of the Child, adopted 20 November 1989, Art 27

²⁰ Children Act 1989 (UK), s. 2–3

²¹ Child's Rights Act 2003, ss 13–14

²² Cap M7 LFN 2004

²³ Nigel Lowe (n1)

maintenance obligations, reflecting differences in the legal proceedings and forms of cooperation required for each²⁴.

It is relevant to make a distinction between parental responsibility and child maintenance in cross-border enforcement, as the two categories trigger different jurisdictional bases, recognition regimes, and administrative cooperation structures.²⁵

While matters of parental responsibility might prioritize the consideration of habitual residence and issues of custody or guardianship, maintenance matters focus more on financial obligations and enforcement mechanisms. The differentiation has practical implications, particularly in jurisdictions where the private international law rules remain underdeveloped. The conceptual clarity between the two terms, therefore, guides the interpretation of the legal frameworks assessed in this study.

2.2 Theoretical Framework

2.2.1 Child Rights Theory

According to Child Rights Theory, the child is a rights-holder with entitlements on her own that are recognized and enforceable under both domestic and international legal systems. Julia Sloth-Nielsen considers that the CRC revolutionized child law, turning its focus away from paternalistic welfare-based approaches to legally enforceable rights.²⁶

This framing of children as independent rights-bearers places obligations on parents, states, and institutions to ensure that children obtain adequate financial provision regardless of parental residence.

²⁴ Council Regulation (EC) No 2201/2003 (Brussels IIa), separate from Council Regulation (EC) No 4/2009 on Maintenance Obligations.

²⁵ Child's Rights Act 2003 s. 3(1).

²⁶ Julia Sloth-Nielsen, 'Children's Rights in Africa: A Legal and Contextual Analysis' (Ashgate 2008) 12–18.

Under Article 27 of the CRC, states have the duty to “take all appropriate measures to secure the recovery of maintenance” both domestically and across borders.²⁷ This puts a positive obligation on national authorities to create institutional mechanisms such as Central Authorities, administrative cooperation channels, and judicial procedures that will allow for the enforcement of maintenance orders. The theory, therefore, conceptualizes enforcement failures not merely as administrative inefficiencies but as violations of the child’s substantive rights.

In Nigerian courts, while such a rights-based analysis is less overt, the Child's Rights Act 2003 exemplifies the same normative framework.²⁸ Child Rights Theory is thus critical in shaping the argument that cross-border maintenance enforcement is not discretionary but a state-mandated responsibility.

2.2.2 Feminist Legal Theory

Feminist Legal Theory provides critical insight into the gendered aspects of child maintenance enforcement. Martha Fineman contests that family law is structured in a way that it systematically disadvantages women by bearing an unequal burden of care and child-rearing²⁹. This imbalance becomes even more pronounced within cross-border contexts where custodial mothers must navigate costly and complex foreign legal systems to secure maintenance. Studies have repeatedly demonstrated that lone mothers face declining incomes, lower labor force participation, and increased economic insecurity³⁰. These vulnerabilities are exacerbated when fathers move overseas-whether they mean to or not. Gendered power inequalities may also impact

²⁷ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) Art 27.

²⁸ Child’s Rights Act 2003, s. 14

²⁹ Martha Fineman, ‘The Autonomy Myth: A Theory of Dependency’ (New Press 2004) 67-89.

³⁰ Sara McLanahan and Irwin Garfinkel, ‘Single Mothers, the Underclass, and Social Policy’ (1993) 1 *The Annals of the American Academy of Political and Social Science* 97–109

on informal bargaining, as many women come to accept insufficient or non-enforceable private agreements under social or economic duress.

In addition, scholars like Himonga note that within Africa, women are hindered by customary norms, which often favour paternal authority and undermine women's ability to assert their rights through formal legal mechanisms.³¹

2.2.3 Transnational Legal Process Theory

The Transnational Legal Process Theory by Harold Koh has explained how international norms evolve and are internalized in domestic legal frameworks through repeated interaction among states, institutions, and non-state actors³². This theory is particularly relevant for the operation of Hague Conventions and other international instruments on child maintenance. According to Koh, transnational norms are effective only when internalized that is, when states translate them into legislation, policy, and judicial decisions. The failure of Nigeria to domesticate the Hague 2007 Convention, for example, shows a malfunctioning of the process of internalization. Without domestic legislation, even ratified treaties will not become operational, thereby denying children the benefit of an international support structure. Transnational networks-which include immigration authorities, courts, child welfare agencies, and ministries-are also key players in the enforcement of maintenance obligations³³. These networks facilitate information exchange, service of documents, and recognition and enforcement processes. The theory thus emphasizes that successful enforcement does not rely exclusively on legal rules but on institutional behavior within transnational normative systems.

2.2.4 Legal Pluralism

³¹ Chuma Himonga, 'The Advancement of African Women's Rights: The Interplay of International Norms and Domestic Law' *African Human Rights Law Journal* (2011) 1–23.

³² Harold Koh, 'Transnational Legal Process' *Nebraska Law Review* (1996) 181.

³³ Harold Hongju Koh, 'Why Do Nations Obey International Law?' *Yale Law Journal* (1997) 2599–2659.

Legal pluralism provides a framework for understanding fragmentation and inconsistencies that form one of the key factors standing in the way of Nigeria's ability to comply with international obligations for maintenance. It highlights the situations where one jurisdiction contains more than one legal system: customary, statutory, religious, and international. In Nigeria, the interaction between statutory family law, customary norms, Sharia principles, and international obligations complicates maintenance enforcement. Himonga observes that African family law is in many cases influenced by socio-cultural norms, and these norms often take precedence over statutory obligations in practice.³⁴

For instance, paternal lineage structures in many Nigerian communities that place maintenance obligations on extended families rather than on individual parents. Although this may provide informal support, it undermines enforceable rights. Legal pluralism also influences judicial approaches, as some courts may favour customary arrangements over statutory duties. These inconsistencies then weaken cross-border enforcement. Notably, plural legal systems complicate the recognition of foreign orders because the receiving state has to determine compatibility with domestic norms.³⁵

2.3 Historical Foundations of Child Maintenance Laws

The historical development of child maintenance laws in Nigeria is tied to the evolution of the country's legal systems, which are a product of colonial influence, indigenous customs, religious norms, and post-independence legal reforms. Understanding the trajectory of child maintenance regulation in Nigeria requires an examination of the interaction between English common law, Nigerian customary law,

³⁴ Chuma Himonga, 'African Family Law: The Impact of Legal Pluralism on Women's Rights' *Journal of African Law* (2011) 1–30.

³⁵ Ibid

Islamic (Sharia) law, and statutory law. The analysis also involves examining how the courts have interpreted and enforced maintenance obligations and how international obligations have gradually shaped Nigeria's domestic legal framework concerning the protection and welfare of children.³⁶

Before colonial rule, child maintenance in Nigeria was governed primarily by customary law and Islamic law, depending on the ethnic and religious setting. In customary law systems, child welfare was a communal and family-based responsibility.³⁷ Patriarchal traditions gave the father control over the children and made him the primary provider, though actual enforcement was informal and non-state-regulated. For instance, under Yoruba and Igbo customs, child maintenance was a communal obligation often enforced through family elders and kinship structures.³⁸ However, such practices lacked uniformity and were subject to local interpretation, Islamic law (Sharia), applicable mostly in Northern Nigeria, had more structured provisions regarding maintenance (nafaqa)³⁹. It made it compulsory for the father to provide for the child's food, shelter, clothing, and education based on his capacity. This obligation was enforceable in Islamic courts (Alkali courts), and failure to meet such obligations could lead to judicial intervention.⁴⁰

Colonialism introduced English common law into Nigeria. The British colonial administration codified family law provisions, although they maintained a system of legal pluralism. The Matrimonial Causes Ordinance (1933)⁴¹ laid the foundation for formalized matrimonial and child-related legal proceedings under the colonial legal

³⁶ Dina Imam Supaat (n25)

³⁷ AO Akinola, 'Child Maintenance under Nigerian Family Law: Legal Challenges and Reform Options' *Nigerian Law Journal* (2015) 2.

³⁸ Ibid

³⁹ Dina Imam Supaat (n25)

⁴⁰ Ibid

⁴¹ Cap M7, LFN 2004.

system. However, this law largely focused on matrimonial issues and paid limited attention to child maintenance outside of divorce contexts.

The Children and Young Persons Ordinance (CYPO) of 1943⁴², although primarily focused on juvenile justice, introduced state interest in child welfare. It emphasized care and protection, although maintenance was not its core focus. After independence in 1960, Nigeria retained many colonial laws but started introducing legislation to reflect national interests and international human rights developments. One significant development was the Matrimonial Causes Act (MCA) of 1970⁴³, which consolidated matrimonial proceedings and formally recognized child maintenance as a judicial issue. Section 70 of the MCA grants the courts power to make orders for the maintenance of children in divorce, separation, or nullity proceedings. It was a direct importation from English matrimonial law but adapted for Nigerian courts. However, the MCA applies only to marriages contracted under the Marriage Act (statutory marriages), and does not cover marriages under customary or Islamic law. This created a gap in protection, particularly given the prevalence of non-statutory marriages in Nigeria⁴⁴.

To address broader concerns of child protection, the Children and Young Persons Law (CYPL) was adopted by various states post-independence, based on the 1943 Ordinance. Although child maintenance was not its focus, it reinforced the need for child care and protection in broader welfare terms.

⁴² The Children and Young Persons Law (CYPL) are a set of laws derived from the colonial Children and Young Persons Ordinance of 1943. After Independence, Nigeria adopted the state laws, and it became the main legal framework governing child welfare and juvenile justice for many decades until the introduction of the Child Rights Act (CRA) of 2003.

⁴³ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004

⁴⁴ AO Akinola (n45)

Several judicial decisions have interpreted the maintenance provisions under the MCA and other legal frameworks. In *Okon v Okon*⁴⁵, the Supreme Court emphasized the court's discretion in determining the amount and terms of maintenance, considering the needs of the child and the financial ability of the father. In *Odogwu v Odogwu*⁴⁶, the Supreme Court affirmed the statutory obligation of a father to maintain his children, irrespective of whether the mother has means or not. The judgment highlighted the principle that child maintenance is a legal and moral obligation enforceable through the courts.

A significant turning point in the development of child maintenance law in Nigeria was the ratification of the United Nations Convention on the Rights of the Child (CRC) 1989⁴⁷, which Nigeria ratified in 1991, and the African Charter on the Rights and Welfare of the Child (ACRWC) 1990, ratified by Nigeria in 2001. These instruments established the principle that both parents have joint responsibility for the maintenance and upbringing of the child. To give effect to these instruments, Nigeria enacted the Child's Rights Act (CRA) 2003⁴⁸, which represents the most comprehensive legal framework for child protection in Nigeria. The CRA consolidated and reformed all laws relating to children and, for the first time, made express provisions for child maintenance outside the context of matrimonial breakdown. Sections 14 and 70–75 of the CRA provide mechanisms for maintenance. Section 70 of the CRA empowers courts to make orders requiring parents or guardians to contribute to the maintenance of the child, including provision for food, clothing, housing, education, and medical care. Importantly, these provisions apply regardless of the marital status of the parents.

⁴⁵ (1972) 1 All NLR (Pt.1) 194

⁴⁶ (1992) 2 NWLR (Pt.225) 539

⁴⁷ United Nations Convention on the Rights of the Child (1989), General Comment No. 17: Rights of the Child (Article 24). HRI/ GEN/1/Rev.1.

⁴⁸ Ibid (n5)

However, the CRA has not been uniformly adopted across the country. Family law remains a residual matter under Nigeria's federal structure, so each state must domesticate the CRA for it to be operational. As of 2025, only 25 out of 36 states have adopted the CRA⁴⁹. The states that have not adopted it are mostly in the North, where Islamic law principles are considered paramount. This legal fragmentation affects the uniform enforcement of maintenance obligations.

Judicial interpretation of the CRA has increasingly emphasized the best interest of the child. In *Ogunbiyi v Ogunbiyi*⁵⁰, the Court of Appeal reaffirmed the court's power under both the MCA and CRA to make orders for maintenance that reflect the standard of living to which the child is accustomed.

2.4 Literature Review

2.4.1 Global Literature on Cross-Border Maintenance Enforcement

Most global scholarship focuses on the development and implementation of Hague Conventions and EU regulations. Trimmings and Beaumont provide the leading commentary on the Hague system, arguing that administrative cooperation through Central Authorities is the cornerstone of effective cross-border recovery⁵¹. They note that standardized forms, simplified procedures and direct judicial communication have significantly improved outcomes in Europe and North America. Nigel Lowe recognizes that international cooperation reduces litigation costs and delays for custodial parents, particularly in those relocation cases involving habitual residence

⁴⁹ Usang Maria Assim, 'Why the Child's Rights Act still doesn't apply throughout Nigeria' (2020) <<https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345#:~:text=But%20as%20Nigeria%20operates%20a,adherents%20of%20traditional%20African%20religions>> accessed 28 November 2025.

⁵⁰ (2010) 10 NWLR (Pt.1202) 200

⁵¹ Katarina Trimmings and Paul Beaumont, 'International Family Law for the European Union' (Hart 2014) 205.

changes. He also identifies the importance of uniform jurisdictional rules to prevent forum shopping or parental evasion⁵².

However, scholars identify several persistent problems:

- i. Non-ratification by many African and developing countries;
- ii. Asymmetrical implementation, where some states lack operational Central Authorities;
- iii. High evidentiary burdens in states requiring proof of paternity or financial status;
- iv. Variation in domestic enforcement measures, e.g., garnishment, tax intercepts, credit reporting;
- v. Limited adaptability of Hague procedures to informal economies⁵³.

The HCCH Guide to Good Practice indeed points out that even the ratifying states suffer from delays, lack of training, and poor resource allocation⁵⁴. One important limitation of global literature is the tendency to focus mainly on the Euro-American experience and to rarely engage with African institutional realities.

2.4.2 Regional (African and ECOWAS) Literature

There is scant literature on cross-border child maintenance in Africa. Most studies are broadly devoted to children's rights, social welfare, or family law reform. Several scholars, including Sloth-Nielsen and Himonga, have emphasized institutional weaknesses of African legal systems: limited judicial expertise, lack of coordination between ministries, and poor legislative domestication of treaties⁵⁵. Authors discuss the ACRWC at length, but they also mention its lack of an enforcement machinery

⁵² Nigel Lowe and Gillian Douglas, 'Bromley's Family Law' (Oxford University Press 2018) 456.

⁵³ Katarina Trimmings, 'International Maintenance Enforcement' *International Family Law Journal* (2015) 33.

⁵⁴ HCCH, 'Guide to Good Practice under the 2007 Child Support Convention' (2013) 10.

⁵⁵ Chuma Himonga, 'African Family Law' *Journal of African Law* (2011) 45.

similar to that of the Hague Convention.⁵⁶ Odongo notes that the African Committee of Experts lacks jurisdiction and procedural capacity in matters of maintenance disputes.⁵⁷

2.4.3 Nigerian Literature and Judicial Commentary

Even though Nigerian scholars have made considerable contributions on matters of family law, discussions relating to international maintenance enforcement are few. Adedokun observes that the Nigerian courts have not principle guiding enforcement of foreign maintenance orders because of obsolete Private International Law rules and non-domestication of available treaties⁵⁸.

Okoli and Oppong observe that the law governing private international law in Nigeria is largely fragmented as there exist conflicting provisions between the Reciprocal Enforcement of Judgments Act, the Sheriffs and Civil Process Act, and common law principles⁵⁹. This creates uncertainty and judicial inconsistencies.

Empirical studies reveal that Nigerian parents often relocate abroad without paying maintenance, thus leaving custodial parents mostly mothers with no effective remedies.⁶⁰ The absence of Central Authorities, lack of training by family court judges, and inefficiencies in the bureaucracy exacerbate the outcomes⁶¹.

2.4.4 Gaps in the Existing Literature

A review across global, regional, and Nigerian literature reveals several key gaps:

⁵⁶ African Charter on the Rights and Welfare of the Child 1990, Art 4

⁵⁷ Godfrey Odongo, 'Domestication of Children's Rights in Africa' *African Human Rights Law Journal* (2011) 12.

⁵⁸ K. Adedokun, 'Child Maintenance Enforcement in Nigeria' *Nigerian Journal of Family Law* (2019) 88.

⁵⁹ Chukwuma Okoli and Francis Oppong, 'Private International Law in Nigeria' (Hart 2020) 215.

⁶⁰ Ibid

⁶¹ Godfrey Odongo, 'The Domestication of International Standards on the Rights of the Child: A Critical and Comparative Evaluation of the African Experience' *African Human Rights Law Journal* (2011) 12–40.

- i. Scarce Nigerian scholarship that directly addresses cross-border maintenance enforcement
- ii. Limited African research on the operation of Hague 2007 Convention mechanisms within African socio-legal contexts
- iii. There are minimal comparative studies that contrast the domestic regime in Nigeria with international models
- iv. Inadequate consideration is paid to the gendered effects of enforcement failures in Africa
- v. Lack of empirical studies on bureaucratic obstacles, institutional failures, and social barriers affecting maintenance recovery
- vi. Inadequate scholarship exists regarding the potential role of ECOWAS in developing a regional child maintenance framework. This study intends to fill these gaps through a broad analysis of international and regional frameworks, their applicability in the Nigerian context, among others.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR CROSS-BORDER ENFORCEMENT OF CHILD MAINTENANCE IN NIGERIA

3.1 Legal Framework

3.1.1 Domestic Legal Framework

The various domestic legal frameworks that protect a child's right to maintenance in Nigeria collectively establish the rights of the child to receive maintenance from parents or guardians, emphasizing the child's welfare as paramount. They provide the legal basis for claims and enforcement of maintenance obligations through the courts and relevant authorities in Nigeria. The principal legislation guaranteeing the child's right to maintenance, emphasizing the duty of parents or guardians to provide adequate care, support, and maintenance to children is the Child Rights Act 2003⁶². The Matrimonial Causes Act 1970⁶³ which is another relevant domestic legal framework that safeguards children maintenance rights provides for maintenance orders during and after marriage dissolution, including provisions for child maintenance. Additionally, the various provisions of Child Protection Laws under the Family Law Jurisdiction that ensure enforcement mechanisms for child support will be considered here as well. Subsequently, these domestic frameworks would be examined with respect to their provisions and contributions on protecting the child's rights to maintenance.

⁶² Cap C50 Laws of the Federation of Nigeria 2011

⁶³ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004

3.1.1.1 Overview of Child Maintenance Provisions in the Child's Rights Act (CRA 2003)

The Child's Rights Act contains statutory provisions with respect to protection of the rights of a Nigerian child. It is an Act enacted by the National Assembly of the Federal Republic of Nigeria in that regard. The Act grants comprehensive powers to the court to protect and promote the rights and welfare of children emphasizing that the best interest of the child shall be the paramount consideration in all actions concerning a child. Section 1 CRA grants the court jurisdiction and powers to make orders concerning the custody, care, protection, and maintenance of children, among other rights necessary for the wellbeing of the child. With respect to the powers granted to the Court by the Child's Rights Act, the Court can hear and determine matters relating to the care, protection, custody, and welfare of a child in Nigeria. The Court has powers to order parental care, protection, and maintenance of the child by parents or guardians⁶⁴. The section expressly stipulates the child's right to maintenance under the Act as well as factors the Court would consider in the circumstance. The child has a right to enforce this right in the family court.⁶⁵ In addition to this Section, the CRA provides for the Court's power to order the parent to contribute to maintenance of the child upon order of custody to an individual or an approved institution⁶⁶. Where the child under section 52(1)(b) is in exceptional circumstances committed to an appropriate institution due to neglect of the child by persons primarily responsible for the child under section (2), the court would order weekly monthly contributions by such persons, and for every failure to comply with this, the Court is empowered to enforce penalties. The Act also authorizes the Courts

⁶⁴ Section 14 Child's Rights Act

⁶⁵ Ibid Subsection 2

⁶⁶ Section 52(1) Child's Rights Act

to upon application by the relevant persons and on proof of change of circumstances, increase or reduce the contribution or rescind any order as it deems fit. Under the Act, the Court is empowered to make orders for children in need of care and supervision.⁶⁷ Also, the Court has authority to enforce maintenance orders for payment of money by attachment of income. In this regard, the Act provides for the Courts power to ensure compliance with maintenance order which is an order granted against the person whom maintenance order is made and for the financial benefit of the child. After giving the person by whom the pension or income is payable, the party is given the opportunity to be heard. It is on this basis that the court would then order that such part of the pension or income as the Court may deem fit be attached for the payment of any money under this Act.⁶⁸

Other powers of the Courts under the CRA 2003 include:

- i. Powers to make custody and access orders⁶⁹.
- ii. Ability to consult the wishes of the child and regard the conduct of parents in custody and welfare cases⁷⁰.
- iii. The court can order scientific tests for determining paternity or maternity⁷¹
- iv. Authority to make foster care, adoption, wardship, and guardianship orders⁷².
- v. Powers to enforce penalties and non-compliance measures against persons in breach or persons who fail to comply with court orders granted in relation to children's welfare.
- vi. Jurisdiction of exclusive family courts specified for children's cases⁷³.

⁶⁷ Ibid Parts V and VI

⁶⁸ Section 77 Child's Rights Act

⁶⁹ Ibid Section 69 and 70

⁷⁰ Ibid Sections 73 and 75

⁷¹ Part VII Child's Rights Act

⁷² Ibid Parts IX, X, XI, XII

⁷³ Sections 149-162 Child's Rights Act

The Act provides for establishment of the Family Court (referred to as “the Court” in the Act) in every State of the Federation and the Federal Capital Territory, Abuja to hear and determine matters pertaining to children. This Family Court shall be at two levels viz; as a Division of the High Court at the High Court level: and a Magistrate Court, at the Magistrate level.⁷⁴ Section 162 affirms the Court's exclusive jurisdiction as in section 149 CRA 2003 with respect to matters relating to children.

The Act defines a child as a person under the age of 18 years⁷⁵ which implies that the provisions of The Act extends to and applies only as far as the child in question is under the 18 years age benchmark. Hence, maintenance orders typically do not extend beyond the child’s eighteenth birthday unless otherwise specified. These provisions collectively empower Nigerian courts to actively ensure children’s rights to care, protection, and maintenance are upheld in various family and child welfare matters under the Child’s Rights Act 2003.

3.1.1.2 The Role of the Matrimonial Causes Act (MCA) and Other Relevant

Family Laws

The MCA1970 which is the principal legislation governing matrimonial matters in Nigeria sets out the legal framework for issues of statutory marriage in the country. Maintenance is one of the ancillary matters the Act covers. Its provisions are relevant in this essay because of the significant role it plays in safeguarding children’s maintenance rights domestically and trans-nationally. The Act not only embodies provisions and safeguards for child maintenance rights but also stipulates enforcement mechanisms relevant for cross border maintenance. Its salient provisions on children’s maintenance rights succinctly empower Nigerian courts to provide maintenance for

⁷⁴ Ibid Section 150

⁷⁵ Section 277

children, regulate custody, and enforce cross-border maintenance where jurisdiction is established, underscoring the child's welfare as a key consideration.

Section 70⁷⁶ of the Act confers on the High Court, on appropriate application, the power to make orders for two types of maintenance; maintenance *per se* (maintenance obligations independent of principal relief) and maintenance pending disposal of proceedings - in favour of a spouse or children of the marriage. The section effected an important change in the law⁷⁷.

The Section further provides for factors the courts would consider in a maintenance proceeding with respect to maintenance of a spouse or of children of the marriage, empowering the court to make such orders as it considers appropriate. This stipulation is intended to guide the court in the exercise of its discretion in issues of maintenance.⁷⁸

The subsection prescribes the following factors viz:

- i. means of the parties;
- ii. earning capacity of the;
- iii. conduct of the parties to the marriage; and
- iv. all other relevant circumstances

The party seeking grant of order of maintenance must satisfy the court by evidence in the party's pleadings of these factors.

An application of the provisions of this section is evident in the case of *Olu-Ibukun & Anor v. Olu-Ibukun*⁷⁹ where section 70 MCA 1970 was interpreted in relation to alimony and maintenance. The Supreme Court per Atanda Fatai-Williams, JSC gave his judgment after concise analysis of the section stating that the section had cleared

⁷⁶ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004

⁷⁷ Michael Attah, 'Family Welfare Law in Nigeria' (Ambik Press Limited 2016) 131.

⁷⁸ Section 70(1) Matrimonial Causes Act

⁷⁹ (1974) LPELR-2606(SC)

the confusion in terminologies by using the word "maintenance" even when alimony in the conventional sense is intended. The court further explained that the purpose of maintenance pending suit is not to enable the wife to share the husband's fortune, but to ensure that the wife should be able to live approximately in the position to which she has been accustomed until the suit is heard. In the case of a child and the child's best interests require it, the court should grant ancillary relief.

The Section provides for twenty-one as the age benchmark for courts power to grant order. Hence, under the MCA the power of the court to make a maintenance order does not extend to children of marriage who have attained the age of twenty-one unless there are special circumstances to justify the making of such an order. In *Ajai-Ajagbe v Ajai-Ajagbe*⁸⁰, the youngest child of the marriage was twenty-seven years old, the court refused to exercise its discretion. This shows that unlike the CRA, the MCA recognizes children under 21 years for maintenance purposes, extending protection of children beyond 18 years as stipulated under the Child Rights Act. Also, powers of the Court to make orders on maintenance matters are stated elaborately in the Act.⁸¹

The Court is also authorized to increase and decrease the amount ordered to be paid in the appropriate circumstances where the conditions stipulated in the statute are met. Under Section 2(3). The MCA, grants the court jurisdiction in matrimonial cases based on petitioners domicile. i.e. if petitioner is domiciled in Nigeria the courts are empowered to allow enforcement of maintenance orders even if one party resides abroad. (This stipulation is as applicable to spousal support and not child maintenance) As regards maintenance of children, domicile is done away with and Section 70 MCA's provision is ultimate in issues of child maintenance and courts can make

⁸⁰ (1978) 10-12 CCHCJ 182

⁸¹ Section 73 Matrimonial Causes Act

orders for custody and maintenance of children regardless of domicile. The focal point in such circumstances being the child's welfare and best interest, the court would make order in domestic and cross-border cases as it deems fit.

The methods of enforcement of maintenance cognizable under the MCA includes:

- i. Attachment and Sequestration⁸²
- ii. Attachment of earnings under 3rd Schedule to the MCA⁸³
- iii. Summary enforcement by registration in a court of summary jurisdiction .i.e. Magistrate and District courts⁸⁴
- iv. By registration in another High Court⁸⁵

With respect to maintenance orders granted abroad, the MCA facilitates enforcement of maintenance orders issued by Nigerian courts against parties living outside Nigeria, provided Nigerian jurisdiction is established.

Other relevant statutory provisions on the MCA on child maintenance are;

- i. Section 24-25: Provision for maintenance *pendente-lite* (maintenance during the proceedings) for spouse and children.
- ii. Section 30: Court's power to make lump sum settlements or periodic payments for maintenance and financial provision.
- iii. Section 53: Courts can make maintenance orders for children beyond the age of 18 (up to 21) if they are dependent on the parent or still in education.
- iv. Section 72: Enforcement of maintenance orders issued under the MCA, including penalties for non-compliance.

These sections collectively empower Nigerian courts to provide maintenance for children.

⁸² Section 88 MCA

⁸³ Section 92 MCA

⁸⁴ Section 91 MCA

⁸⁵ Section 89 MCA

The MCA plays a pivotal role in maintenance cases by effectively ensuring that children receive necessary support during and after matrimonial disputes, underpinning Nigeria's commitment to child welfare and support within the legal system.

3.1.1.2.1 Role of Other Relevant Family Law in Maintenance

The Act empowers Nigerian courts to enforce foreign maintenance orders based on reciprocal arrangements or general principles of comity, although Nigeria is not a signatory to specific international maintenance enforcement conventions. In this regard, the Maintenance Orders Act 1921(MOA)⁸⁶ was primarily enacted to facilitate the enforcement of maintenance orders made in England and Ireland in Nigeria. However, the Act empowers the president to extend the provisions of the Act to any other country of the commonwealth or of any British possession where such country has made reciprocal provisions for the enforcement, within such country or possession, of maintenance orders made in Nigeria.⁸⁷

The Act defines a "maintenance order" as an order for the periodical payment of sums of money towards the maintenance of the wife or other dependents of the person against whom the order is made⁸⁸.

"Dependents" are persons which any other person is liable to maintain. Furthermore, the Act stipulates the procedure for enforcement of foreign maintenance orders be they final.⁸⁹ Final orders indicate that all parties to the maintenance proceedings were present at the hearing and the orders made abroad were final and binding on the parties pending enforcement, or provisional orders.⁹⁰ These orders are made pending registration and confirmation by the courts in Nigeria. It is not final and as a result,

⁸⁶ MOA Cap M1 LFN 2011

⁸⁷ Section 11MOA

⁸⁸ Section 2 MOA

⁸⁹ Section 3MOA

⁹⁰ Section 6 MOA

certain procedures must be followed before its commencement or remittance back to the original country. The effect of registration or confirmation of an order made abroad is that it is enforceable as if the order were for the payment of a civil debt recoverable summarily. For the purpose of enforcement, the magistrate is empowered to issue a warrant of distress or commitment. Such warrant can be executed in any part of Nigeria as if the warrant had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the warrant is executed.⁹¹ The Maintenance Orders Act (MOA) of 1921 is a legislation, enacted in various countries including Nigeria, Bangladesh, and Zambia, to facilitate the mutual enforcement of maintenance orders made in one country with another, particularly between England/Ireland and these countries⁹². It established a system for the registration and enforcement of these orders, allowing them to have the same force as if they were originally made in the local court.⁹³ Additionally, administrative bodies such as customary courts and community leaders may support enforcement locally, but formal enforcement outside Nigeria mainly depends on international cooperation and local court jurisdiction⁹⁴. Also, the Legal Aid Council provides assistance for maintenance enforcement, ensuring access to justice for applicants, especially in foreign or challenging enforcement scenarios⁹⁵. The MCA primarily governs maintenance in matrimonial causes, extending to children and spouses in relation to which, jurisdiction is based on domicile. Together with supportive family and customary law structures and legal aid, Nigerian laws seek to protect children's maintenance rights

⁹¹ S. 7 (2)&(3) MOA

⁹² Abiodun Ogunnibi, 'Enforcement of Maintenance Orders in Nigeria and Across The Globe' (2024) <<https://www.mondaq.com/nigeria/family-law/1409720/enforcement-of-maintenance-orders-in-nigeria-and-across-the-globe>> accessed 28 November 2025.

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

even when parents are across borders, although enforcement internationally depends on reciprocity and recognition by foreign jurisdictions.⁹⁶

3.1.2.3 Jurisdictional Competence of Nigerian Courts on International

Maintenance Matters

The jurisdictional competence of Nigerian courts on international maintenance matters is a critical aspect of family law that addresses the legal authority of these courts to adjudicate and enforce maintenance orders across borders⁹⁷. This jurisdiction is notably significant due to Nigeria's diverse legal framework, which incorporates statutory laws, customary practices, and international treaties, shaping the enforcement of maintenance obligations for children and spouses. The Child Rights Act of 2003 and the Matrimonial Causes Act are pivotal pieces of legislation that outline maintenance obligations, yet the complexity arises when dealing with foreign judgments and cross-border disputes, making the role of Nigerian courts crucial in safeguarding the rights of dependents and ensuring compliance with international standards. Nigeria's legal landscape faces notable challenges in effectively managing international maintenance matters, particularly concerning the recognition and enforcement of foreign judgments.⁹⁸ The Foreign Judgments (Reciprocal Enforcement) Act of 1933⁹⁹ provides a statutory basis for recognition of foreign judgments. Nigerian courts recognize foreign judgments under specific conditions to treat such judgments similarly to one registered under current legislation, ensuring its enforcement across Nigerian courts. Such judgments must be final and conclusive and given in a superior court of the originating country.¹⁰⁰

⁹⁶ Ibid

⁹⁷ K. Adedokun, 'Child Maintenance Enforcement in Nigeria' *Nigerian Journal of Family Law* (2019) 88.

⁹⁸ Ibid

⁹⁹ Cap F35, Laws of the Federation of Nigeria, 2004

¹⁰⁰ Sec. 3(2) Foreign Judgments (Reciprocal Enforcement) Act 1933

Also, the Foreign Judgments (Reciprocal Enforcement) Act in Section 4 mandates that a judgment debtor be given adequate notice of the proceedings of the original action in sufficient time to enable them to appear and defend the proceedings. Sections 6(1)(a)(iii) of the Act makes it a ground for the setting aside of a registered foreign judgment. However, despite these provisions, complications arise from varying interpretations of jurisdictional principles and inconsistent applications of related laws. Furthermore, the influence of customary and Islamic law adds layers of complexity, reflecting Nigeria's plural legal system. The courts must navigate these diverse frameworks while upholding children's rights and ensuring equitable outcomes for all parties involved.

Controversies surrounding jurisdictional competence often revolve around the enforcement of maintenance orders issued by foreign courts, leading to disputes over the adequacy of protections afforded to Nigerian residents. Additionally, criticisms have emerged regarding the limited effectiveness of enforcement mechanisms with many maintenance orders remaining unenforced due to procedural inconsistencies.¹⁰¹ These limited effectiveness of enforcement measures constitutes an enforcement challenge in the absence of a formal framework¹⁰². The issues encountered by the courts regarding the recognition and enforcement of judgments rendered in foreign jurisdictions, particularly when they are required to refer cases to courts outside the country, complicate the legal landscape on issues of international maintenance. Though Nigeria has demonstrated its commitment to fulfilling its international obligations in respect of the rights of a child, there is a clear argument for the country to adopt the “Big Four” Children’s Conventions to improve inter-state cooperation for the protection of children, provide better protection of children in cross-border

¹⁰¹ K. Adedokun (n35)

¹⁰² Ibid

situations under civil law and ameliorate issues of conflict of laws.¹⁰³ The Nigerian judiciary is gradually evolving to address these concerns, yet significant gaps remain in the legal framework that require further reform to enhance cooperation with international jurisdictions. Overall, the jurisdictional competence of Nigerian courts in international maintenance matters is vital for ensuring that maintenance obligations are recognized and enforced effectively. As the landscape of family law continues to evolve, addressing these jurisdictional challenges will be essential for upholding the rights of dependents and fostering international legal cooperation in maintenance disputes.

3.1.2 Nigeria's Treaty Obligations and Their Domestic Status

International agreements are formal understandings between contracting state parties with an intention to be legally bound. They are governed by international law and are codified into single or multiple legal instruments. They could be bilateral or multilateral and are usually arrived at after series of negotiations among member states. A variety of nomenclature has been used to describe international agreements. Some of which include: Treaties, Conventions, Protocols, Pacts, Accord etc. Domestication of an international agreement is the process of incorporating the provisions of a treaty into the extant laws of a country to give it force of law in that country. It is not all countries that adopt the dualist system of domestication of international agreements before enforceability¹⁰⁴. For some countries operating a monist system like Switzerland, France and the Netherlands, there is no provision for

¹⁰³ African Portal, 'Why Nigeria should welcome the value and feasibility of acceding to the Hague Conference Children's Conventions' (2020) <<https://www.africaportal.org/features/why-nigeria-should-welcome-the-value-and-feasibility-of-acceding-to-the-hague-conference-childrens-conventions-the-1980-child-abduction-1993-intercountry-adoption-1996-child-protection-and-2007-maintenance-the-big-four/>> accessed 11th November 2025.

¹⁰⁴ Sandra Eke, 'Non-domestication Of Treaties In Nigeria As A Breach Of International Obligations' (S.P.A. Ajibade, 2020) 34.

domestication before enforceability of a treaty. (In France, ratified treaties upon publication prevail over their domestic laws)¹⁰⁵

It is notable from the foregoing that generally, the domestic status of international agreements on children's maintenance rights, remain internationally binding but lack domestic legal force in Nigeria until domesticated by the National Assembly, as mandated by Section 12(1) of the 1999 Constitution. Nigeria's dualist position on international treaties poses a limit on the direct enforceability of such treaties within Nigeria's legal system.

3.1.2.1 Status of Ratified Treaties in Nigerian law (Section 12 of the Constitution)¹⁰⁶

Nigeria's dualist constitutional framework mandates domestication for treaty enforceability. By virtue of section.12(1) of the 1999 Constitution, international maintenance laws encounter domestic enforcement challenges and absence of access to key international child maintenance treaties, (Nigeria is not a signatory or contracting state to specific international conventions that directly facilitate cross-border enforcement of child maintenance, such as the "Big Four" HCCH children conventions) explains why enforcement of foreign child maintenance orders can be limited because they rely heavily on domestic laws like the Child Rights Act and Matrimonial Causes Act, which provide for maintenance obligations but lack specific cross-border enforcement mechanisms.

In Nigeria, international agreements do not automatically have the force of law after ratification; there is a constitutional requirement for every international treaty to be domesticated before it can have the force of law. Section 12 of the 1999 Constitution

¹⁰⁵ Ibid

¹⁰⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended)

of the Federal Republic of Nigeria (as amended) stipulates that: *"No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly."*

Although section 19 (d) of the Constitution states that Nigeria's foreign policy objectives "shall (d) respect for international law and treaty obligations", that provision does not override the provision of section 12(1) regarding the legal force of un-enacted treaties in Nigerian domestic law.

In the popular case of *Abacha v. Fawehinmi*¹⁰⁷, relating to the unincorporated African Charter of Human and People's Rights, the Supreme Court held that, although an unincorporated treaty might give rise to a legitimate expectation by citizens that the government would observe the terms of the treaty, the African Charter, being unincorporated as required under section 12(1) of the Constitution, had no force of law in Nigeria. Thus, even the principle of legitimate expectation or that of consistent interpretation cannot save an unincorporated treaty in Nigeria's domestic law. This makes the domestication of international agreements crucial in Nigeria, but, as shown below, this rarely happens.¹⁰⁸ As a result of this constitutional provision, judges are usually reluctant to deliver decisions which directly conflict with the provisions of the constitution and would generally refrain from enforcing the provisions of international treaties which have not yet been domesticated. In *Abacha v Fawehinmi* the Nigerian Supreme Court held that: *"It is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory may be, it remains unenforceable, if it is not enacted into the law of the country by the National Assembly."*

¹⁰⁷ (2000 6 NWLR 228, 2001)

¹⁰⁸ Olu Fasan, 'Domestic Effects of International Law in Nigeria: The Case of Trade Agreements' *Afronomics Law* (2021) <<https://www.afronomicslaw.org/category/analysis/domestic-effects-international-law-nigeria-case-trade-agreements>> accessed 11 November 2025.

Nigeria has international obligations to protect children's maintenance rights under major human rights instruments. Where children's rights are concerned, underpinning their protection is Nigeria's (UN Membership, 1960) ratification of the 1989 Convention on the Rights of the Child (UNCRC) and the 1990 African Charter on the Rights and Welfare of the Child (ACRWC). Both international treaties have influenced national laws on matters relating to children, including in a cross-border context so far as possible. Thus, the Nigerian Constitution gives effect to these international treaties through the Child Rights Act, which was enacted in 2003¹⁰⁹. The effect of the constitution's provision under Section 12(1) of the 1999 Nigerian Constitution, portrays Nigeria's dualist approach to international treaties, ensuring that international agreements undergo domestic legislative incorporation through an act of the National Assembly to be enforceable. Hence, the status of ratified treaties is domestication into our local laws.

3.2 Institutional Mechanisms in Nigeria

Under this sub-main title, consideration will be given to institutional mechanisms like the Ministry of Justice and the Ministry of Women Affairs and the role they play as well as the Family Court as an institution safeguarding children's right to maintenance and its capacity to handle international issues on child support. The challenges that hinder Nigerian courts in their ability to effectively cooperate with foreign authorities under private international law and how it affects child maintenance would be considered here also.

3.2.1 The Role of the Ministry of Justice and Ministry of Women Affairs

The Federal Ministry of Women Affairs in Nigeria plays a vital role in safeguarding children's right to maintenance through its Child Development Department whose

¹⁰⁹ Onyoja Momoh, 'Nigeria' <<https://carefulchildrelocation.com/nigeria>> accessed 11 November 2025.

focus is “Protecting and nurturing children through comprehensive development programs and child welfare initiatives.” The broad mandate of the Ministry is to advise the government on Gender and Children issues. Issues affecting Persons with Disabilities and the Aged; initiate policy guidelines and lead the process of gender equality and mainstreaming at both the National and International levels. One of its functions is to promote a multi-sectoral programme synergy for the realization and enhancement of the survival, development, protection and participation of children in Nigeria with particular reference to the achievement of set targets enumerated in the Child’s Right Act, 2003 (CRA); the National Gender Policy, the National Economic Recovery and Growth Plan (ERGP) and the Sustainable Development Goals (SDGs). The objectives of the Ministry’s child development department are;

- i. Ensure child protection and welfare across Nigeria.
- ii. Combat child abuse, trafficking, and exploitation
- iii. Promote children's rights and access to education.¹¹⁰

The department also carries out programs and services for the benefit of children. Altogether and from the foregoing, the Ministry through its Child Development Department, which coordinates policies, programs, and projects aimed at child welfare and protection. It ensures children’s holistic development by advocating for policies against child abuse, exploitation, and neglect, supporting vulnerable children, and coordinating child care institutions. The Ministry leads initiatives such as reviewing the Child Rights Act for full domestication across states, strengthening family cohesion, and promoting public awareness campaigns that empower citizens to report child abuse and neglect. It also supports vulnerable families to ensure

¹¹⁰ Federal Ministry of Women Affairs, <<https://womenaffairs.gov.ng/departments/child-development.php>> accessed 11 November 2025.

children's maintenance rights are met, emphasizing a secure environment for every child.

On the other hand, the Ministry of Justice acts as the legal custodian enforcing child maintenance rights through the judicial and legal system. Via the Ministry's Directorate for Citizens Right, a department in the Lagos State Ministry of Justice, responsible for implementing the State Government policy in providing access to justice, quick and free to all residents of Lagos State by Alternative Dispute Resolution (ADR). The Directorate has several Units one of which is the One Stop Child Justice Centre/ Child Rights Team. This unit, an initiative of Lagos State Ministry of Justice to reduce the spate of child abuse in the State and protect minors, handles all child-related matters which is in collaboration with other Departments, Agencies and Ministries such as the Ministry of Education, Ministry of Youth and Social Development, amongst others"¹¹¹. Besides its collaborative function, other key functions and goal of the unit is child rights advocacy by way of education and sensitization as well as prosecution of child offenders. The Director of the Office of Public Defender, Dr. Babajide Martins during his presentation titled "Strategies of the Lagos State Government in Curbing Defilement and Way Forward" stated that likely perpetrators are usually family members, religious leaders, neighbors and rarely strangers. "Lagos State Government has zero tolerance for Gender Based Violence especially when it involves children, hence the legal framework that has been put in place to prevent, curb and prosecute offenders which includes a policy to make it mandatory for everyone who has contact with a child is to report any suspected child abuse or violence against a child through the Attorney General of the State and failure to report has its consequences as they may be subject to civil and criminal

¹¹¹ Lagos State Ministry of Justice, 'Citizens Rights' <<https://lagosstatemoj.org/tag/citizens-rights/#:~:text=The%20sensitization%20campaign%20is%20in,as%20citizens%20of%20Lagos%20State>> accessed 11 November 2025.

liabilities”. Dr Martins said that the section 370 of the ACJL 2021, mandates the State to establish a crime data register also known as the Lagos Criminal Information System. He said that the register contains information of suspects and offenders either convicted or awaiting trial and would also serve as a criminal record database, wherein, organizations and employers in the State may apply to obtain criminal records in order to forestall employing a sex offender into an organization. In addition, he listed the Domestic and Violence Agency (DSVA), Nigeria Police Force (NPF), Office of the Public Defender (OPD) and Medical/Health Care Centers as first responders of Sexual and Gender based Violence in the State.¹¹² From the foregoing, it can be gleaned that the Ministry's role in this regard includes prosecuting neglectful parents or guardians who fail to provide maintenance as required by law and ensuring legal remedies and enforcement of court orders that are in the best interests of the child. The Ministry's departments may work on recovering maintenance fees to support a child who may have been neglected, protect children who are unlawfully deprived of proper guardianship, uphold laws such as the Child Rights Act, Matrimonial Causes Act, and state-specific regulations in the promotion of justice in child sensitive matters and sensitize families and children on such matters while providing them with access to justice. These ministries complement each other. While the Ministry of Women Affairs mainly focuses on policy, advocacy, family support, and child welfare programs, while the Ministry of Justice ensures legal enforcement, protection, and redress. These institutional frameworks function towards safeguarding the child's right to maintenance within Nigeria's legal and social system.

3.2.2 Family Courts and Their Capacity to Handle International Claims

¹¹² Lagos Retiretates on Protecting the Rights of Children, <<https://lagosstatemoj.org/tag/onigbanjo/page/4/#:~:text=He%20further%20revealed%20that%20the,before%20the%20age%20of%2018>> accessed 11 November 2025.

It has previously been stated in this essay that under the Child's Rights Act 2003, Section 149 precisely, a Family court shall be established in every State of the Federation and the Federal Capital Territory, Abuja to hear and determine matters pertaining to children. This is the family court (as an institution) that this sub-sub title focuses on. In Nigeria, these courts have exclusive jurisdiction over children matters¹¹³ and by extension, possess legal capacity to handle child maintenance matters including claims that may have international elements although the direct handling of cross-border claims faces practical and legal limitations due to Nigeria's domestic law framework. The Child Rights Act 2003 grants the child the independent right to enforce maintenance obligations in the family court, whether or not matrimonial proceedings are ongoing. This widens access to maintenance claims beyond and independent of divorce proceedings and supports enforcement of children's rights to support by parents or guardians.¹¹⁴

Another statutory provision empowering family courts to adjudicate on child maintenance matters is the Matrimonial Causes Act which provides the family courts with authority to issue maintenance orders for children as ancillary to a matrimonial cause proceedings like divorce, judicial separation, or nullity.¹¹⁵ Maintenance can be extended to children above 21 years in exceptional cases.¹¹⁶ Also, powers of the Court to make orders on maintenance matters are stated elaborately in the Act.¹¹⁷ The Court is also authorized to increase and decrease the amount ordered to be paid in the appropriate circumstances where the conditions stipulated in the statute are met. With respect to international claims, our domestic laws are silent on cross-border child maintenance claims. There is no specific Nigerian statute explicitly granting family

¹¹³ Section 162 CRA

¹¹⁴ Section 14(2) CRA

¹¹⁵ Section 70 MCA

¹¹⁶ Ibid Section 70(4)

¹¹⁷ Section 73 MCA

courts' jurisdiction over foreign claims. However, as regards enforcement of foreign maintenance orders, the Maintenance Orders Act 1921, a statute which prescribes a uniform method of enforcement of maintenance to facilitate mutual enforcement of orders made in one country in another, establishes a system that requires registration and recognition by Nigerian courts, specifically the High Court or Magistrate Court (in accordance with CRA S.150) maintenance orders given abroad in line with practice derived from the Act and domestic enforcement procedures (such as registration of foreign judgments). Also, it is imperative to reiterate here that according to the Constitution (cite S.12 CFRN 1999), Nigeria's dualist position stipulates domestication as precedent for entry into force of international agreements. For instance, Nigeria is signatory to international instruments like the African Charter on the Rights and Welfare of the Child (ACRWC) and the UN Convention on the Rights of the Child (UNCRC), domesticated by the Child Rights Act allowing its provisions to have force in the country. However, no direct statutory framework exists to streamline cross-border maintenance claims jurisdictionally within the family courts. The provisions of the Child Rights Act and Matrimonial Causes Act contain robust provisions that allow family courts handle domestic child maintenance claims with some capacity to enforce foreign maintenance orders through court registration and enforcement procedures. Sadly, there is no statutory regime designated with jurisdiction over international maintenance claims.

3.3 Procedural Aspects and Judicial Practice

At this juncture it is relevant to look into the procedure for registration and enforcement of foreign judgement, judicial practice in this regard and the procedure for invoking international child maintenance orders to reveal the complexities and resolve the issues.

3.3.1 Recognition and Enforcement of Foreign Judgments in Nigeria

Enforcement under the extant statutory dispensation is by registration. The 1922 Reciprocal Enforcement of Judgment Ordinance¹¹⁸ stipulates that the judgment creditor seeking to enforce a foreign Judgment in Nigeria should apply to the High Court for leave to register the said judgment by means of petition made either ex parte or on notice and the 1961 Act also stipulates that a judgment creditor may apply to a superior court in Nigeria for registration of a foreign judgment from countries within the scope of the Act¹¹⁹. The effect of registration is to give the registering court control over the execution of the said judgment, as if it was the original judgment of the registering court. In the case of *Shona-jason Ltd v. Omega Air Ltd*¹²⁰, it was held that, the effect of registration of a foreign judgment in a Nigerian court is for all intent and purposes, to make the registered judgment the judgment of the Nigerian Court. A foreign judgment that does not emanate from any jurisdiction within the purview of the statutory coverage cannot be automatically registered and enforced in Nigeria. Such judgments can only be enforced by commencing a fresh action that is predicated on the foreign judgment sought to be enforced before the relevant court in Nigeria. A foreign judgment, at common law constitutes a debt, giving rise to a fresh cause of action in favour of the judgment creditor. The judgment creditor may therefore, apply for summary judgment or proceed against the judgment debtor under the undefended list procedure where applicable, where the plaintiff contends that the defendant has no defence to the claim or vide a writ of summons where there is need for a full trial. The grounds for challenging the enforcement of foreign judgment at Common Law are similar to those outlined under the statutory regime, which are essentially founded on

¹¹⁸ Cap 175 Laws of the Federation of Nigeria and Lagos 1958

¹¹⁹ Section 4(1) Foreign Judgment (reciprocal Enforcement) Act, cap F35, LFN,2004 (FJREA)

¹²⁰ (2006) 1 NWLR (Pt.960) 28)

common law principles. Similarly, for a foreign judgment to be enforced at Common Law, there are some conditions that has to be satisfied including the requirement that: the original court must not have acted without jurisdiction, the judgment must be for a fixed sum of money, the judgment must also be final and conclusive in the country of origin, the judgment must not have been obtained by fraud and the judgment should not be in respect of a cause of action which is contrary to public policy in Nigeria.¹²¹

The general procedure and judicial practice in Nigeria with respect to recognition and enforcement of foreign judgments is shaped by Nigeria's dualist legal system and constitutional framework (Section 12(1) of the 1999 Constitution). Nigerian courts require that foreign judgments must undergo a process of recognition and registration or re-litigation within Nigerian courts before they can be enforceable domestically. This system ensures that foreign judgments do not have automatic domestic effect and are subject to scrutiny according to Nigerian law and public policy. To this extent, the Foreign Judgments (Reciprocal Enforcement) Act, complementary to the procedural demands of Nigerian courts, which require formal registration and verification processes to ensure due process and sovereignty considerations provides a structured, reciprocity-based legal mechanism for recognizing and enforcing foreign judgments in Nigeria. The Act stipulates the procedure for recognition and enforcement as follows:

i. Recognition of foreign judgments based on reciprocity¹²²

¹²¹ Sani Emmanuel, 'An Appraisal Of The Legal Framework For The Recognition And Enforcement Of Foreign Judgments And International Arbitral Awards In Nigeria' (2024) 3043-4548 <<https://ssrn.com/abstract=4955347>> accessed 11 November 2025.

¹²² Section 3 Foreign Judgment (reciprocal Enforcement) Act

- ii. Applies only to foreign judgments that are final and conclusive and said foreign judgment must originate from a superior court in a reciprocating country recognized by Nigeria¹²³
- iii. The judgment must involve a payable sum of money excluding taxes, fines and penalty¹²⁴
- iv. Procedure to apply for enforcement foreign judgments in Nigerian courts. 6 years after the date of the judgment for the applicant to apply to a superior court and register the judgment¹²⁵.
- v. Grounds on which a registered foreign judgment may be set aside or refused enforcement. Likely grounds are fraud, failure to give notice to judgment debtor, jurisdiction of court in original country is in question e.t.c¹²⁶

The Act provides that the Minister of Justice is empowered to make orders recognizing particular foreign countries as reciprocating and thus eligible for enforcement provisions under the Act¹²⁷. These provisions establish the procedural framework by which foreign judgments may be registered with Nigerian courts for the purpose of recognition and enforcement subject to conditions like finality, jurisdictional competence, and reciprocity thereby revealing the structured but conditional approach adopted by Nigeria for foreign judgment enforcement under the doctrine of reciprocity and domestic judicial oversight.

3.3.2 The Procedure for Invoking International Child Maintenance

Child support and maintenance payments are crucial aspects of family law, often arising in cases of divorce, separation, or disputes over child custody. In Nigeria, these financial obligations are designed to ensure the well-being and proper

¹²³ Ibid Section 3(2)

¹²⁴ Ibid Section 3(2)(b)

¹²⁵ Ibid Section 4(1)

¹²⁶ Ibid Section 6

¹²⁷ Ibid Section 12

upbringing of a child, reflecting the legal and moral responsibility of parents to provide for their children, regardless of marital status. While the concept of child support may seem straightforward, navigating the practicalities, legal frameworks, and societal expectations that surround it in Nigeria can be far more complex than many anticipate. Statutorily, the procedure for invoking child maintenance orders in Nigeria, a critical legal process that ensures financial support for children particularly when parents reside in different countries. Governed domestically by the Child's Rights Act (CRA) 2003 and the Matrimonial Causes Act, the framework seeks to uphold the best interests of children and addresses their maintenance needs. However, the Nigerian legal system, which blends customary, statutory, and Islamic law, adds layers of complexity to child support issues.

Generally, Nigerian courts prioritize the welfare of the child above all else when making decisions about maintenance. The guiding principle is the best interest of the child, a standard that transcends legal texts and is grounded in both national and international child protection frameworks. In practice, however, enforcing child support orders can be difficult. The many issues that underscore enforcement of child maintenance rights resounds the urgent need for reforms that promote clarity, efficiency, and fairness in the enforcement of child support arrangements.

The procedure for filing for child maintenance in Nigeria includes:

- i. Initiating a Petition: The process begins by filing a petition in a family court or a high court with the requisite jurisdiction. The petition should detail the grounds for seeking child support and the financial needs of the child.
- ii. Evidence Submission: Both parties are required to submit evidence of income, expenses, and any other financial documentation that can assist the court in determining the appropriate amount.

iii. Court Hearing: The court evaluates the evidence presented, including testimonies from both parents, to make an informed decision on maintenance.

iv. Issuance of a Maintenance Order: After the hearing, the court issues a maintenance order outlining the specifics of the child support payments, including the amount, payment frequency, and duration.

v. Engaging a family law expert is crucial for navigating the complexities of child support cases.

Child support and maintenance orders are legally binding and failure to comply with a court order can result in a contempt of court charge, leading to fines or imprisonment. If a parent fails to comply, enforcement measures can be taken. The court may order that the maintenance amount be deducted directly from the paying parent's salary or income or in extreme cases the court can authorize the seizure of the paying parent's assets to fulfill the maintenance obligation¹²⁸. The court may face certain challenges in enforcing child maintenance orders. These enforcement issues may arise especially where a paying parent resides outside Nigeria or in a different legal jurisdiction. The differing legal systems can create obstacles to enforcing court orders, leading to financial uncertainties for custodial parents.

To facilitate enforcement, the petitioner may request reciprocal enforcement through international treaties, ensuring that maintenance orders issued in Nigeria are recognized and enforced in other jurisdictions based on reciprocity. This may be carried out subject to the provisions of the Foreign Judgments (Reciprocal Enforcement) Act and the presentation of specific documents to the foreign courts as dictated by international law. In some cases, it is possible to obtain a support order in the US against an obligor who resides outside of the US if the obligor made him- or

¹²⁸ Chamanlawfirm, 'Navigating Child Support and Payments in Nigeria' <<https://chamanlawfirm.com/child-support-and-maintenance-payment/>> accessed 11th November 2025.

herself subject to service and personal jurisdiction in the state where the support order is sought¹²⁹.

In international contexts, legal representation becomes even more critical. Lawyers must be familiar with the specific laws on maintenance in the relevant countries, as these laws can differ significantly from those in Nigeria. Legal professionals can also facilitate the reciprocal enforcement of orders through international treaties, ensuring that maintenance obligations are upheld across borders¹³⁰. In addition to the varying legal procedures that can complicate the pursuit of child support across borders, systemic issues, including delays in court proceedings and inconsistent rulings, hinder the effective enforcement of child maintenance orders.¹³¹ The lack of a unified framework for international enforcement means that many custodial parents may face insurmountable hurdles in obtaining the necessary financial support for their children. For instance, South African law allows its citizens to claim maintenance from a parent living in a foreign country. The Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 is the legislation which regulates foreign maintenance processes. To obtain maintenance for minor children in any foreign country it is advisable that an order for the maintenance of the minor children has first been made by a South African court¹³². From the foregoing, the Nigerian legal system poses procedural and institutional barriers by way of its constitutional dualism, limited treaty reciprocity, procedural delays, and enforcement difficulties that hinder the effective invocation and enforcement of international child maintenance orders. The absence of a unified legal

¹²⁹ Inna Loring, 'Enforcing Child Support Orders Across State and Country Lines' (2020) <<https://www.zfamilylaw.com/blog/2020/12/child-support-orders-state-and-country>> accessed 11 November 2025.

¹³⁰ Law Office of Patrick O'Kennedy, 'International Child Custody: Legal Strategies and Challenges' (2020) <<https://okennedylaw.com/international-child-custody-legal-strategies-and-challenges/>> accessed 11 November 2025.

¹³¹ Chamanlawfirm (n52)

¹³² Alcock and Associates, 'Claiming maintenance from parents living in foreign countries' (2018) <<https://alcock.co.za/claiming-maintenance-parents-living-foreign-countries/>> accessed 11 November 2025.

framework makes it difficult to lay out a specific procedure to invoke international child maintenance emphasizing that the need to employ the expertise of a family lawyer cannot be forgone in navigating these multifaceted issues and safeguarding the rights of children in this regard. Also a law reform on these issues is necessary to improve outcomes and foster international cooperation in the matters

3.4 Practical Challenges in Nigeria

Protection of children's maintenance rights in Nigeria faces significant practical challenges, primarily due to lack of enabling legislation for some international treaties, capacity constraints among judges and family law practitioners, and bureaucratic delays coupled with inadequate international coordination. These obstacles critically hamper effective enforcement of children's maintenance rights across borders.

3.4.1 Lack of Enabling Legislation for some Treaties

Nigeria struggles with domestication and implementation of international children's rights treaties. Where there is an enabling legislation enacted to provide the legal framework and permission needed for the administration or enforcement of a law to occur practically it can in the context of international treaties give effect to treaty obligations within a country's legal system on matters of children's maintenance rights making the treaty's provisions binding and enforceable domestically. However, the domestication of child-related treaties is not a straightforward process in Nigeria. Unlike treaties with another thematic focus, the majority of constituent states must give their full consent before any child-related instrument may be domesticated at the federal level and subsequently re-enacted in the domestic states. In many ways, the plural legal orders in the country and the differing perceptions of childhood make consensus difficult to achieve in terms of child rights legislation. In this regard, even though the UN Convention on the Rights of the Child has been domesticated (through

a contestable procedure), 11 of Nigeria's 36 constituent states have failed to re-enact the domesticating instrument.¹³³ This fragmentation of laws renders some treaties related to child maintenance as not binding in jurisdictions where these laws have not been reenacted creating gaps in enforcement. It is to this extent that the domestic status of international agreements on children's maintenance rights, remain internationally binding but lack domestic legal force in Nigeria until domesticated by the National Assembly, as mandated by Section 12(1) of the 1999 Constitution. Nigeria's dualist position on international treaties poses a limit on the direct enforceability of such treaties within Nigeria's legal system. Since Nigeria is not a signatory or contracting state to specific international conventions that directly facilitate cross-border enforcement of child maintenance, such as the "big four" HCCH children conventions, enforcement of foreign child maintenance orders can be limited because they rely heavily on domestic laws like the Child Rights Act and Matrimonial Causes Act, which provide for maintenance obligations but lack specific cross-border enforcement mechanisms¹³⁴. These gaps in enforcement stemming from fragmentation of laws and lack of enabling legislation in addition to Nigeria not being signatory to relevant international conventions that directly facilitate cross-border enforcement of child maintenance such as the Hague Conventions on child abduction and parental responsibility poses a limit on the direct enforceability of such treaties within Nigeria's legal system. A weak legal framework is all that is left to support transnational cases involving maintenance rights enforcement and this weakness to

¹³³ D Ogunniyi, 'The Challenge of Domesticating Children's Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children' *Journal of African Law* (2018) 447-470 <<https://www.cambridge.org/core/journals/journal-of-african-law/article/abs/challenge-of-domesticating-childrens-rights-treaties-in-nigeria-and-alternative-legal-avenues-for-protecting-children/AF4EFC026AAF73D8FE51920C1BC11543>> accessed 11 November 2025.

¹³⁴ Onyoja Momoh (n33)

uphold children's maintenance rights in transnational contexts, jeopardizes children's welfare and financial protection in the long run.

3.4.2 Capacity Issues among Judges and Family Law Practitioners

Capacity issues among judges and family law practitioners in Nigeria may arise from a complex interplay of issues ranging from inadequate training of practitioners, insufficient resources, and systemic corruption within the judicial framework. As a result, many children in Nigeria face challenges in securing necessary financial support and maintenance despite existing laws that mandate parental obligations for maintenance in Nigeria thereby significantly posing a hindrance to the effective safeguarding of children's rights to maintenance.

These factors at the root of Judges and practitioners capacity challenges the effective safeguard of children's rights to maintenance are explicated thus:

i. Inadequate Training and Continuing Legal Education: A primary concern is the lack of mandatory continuing legal education for judges and practitioners, which hinders their ability to make informed decisions regarding maintenance orders. Legal practitioners in Nigeria play a crucial role in guiding families through these processes. From filing applications in the appropriate courts to negotiating settlements and advocating for their clients' rights, lawyers are instrumental in ensuring that justice is served and that children's needs are met. The role of the judiciary in shaping the narrative and setting precedents cannot be overlooked. Nigerian courts must continue to interpret and enforce child support laws in ways that uphold the constitutional principle of non-discrimination and the paramount interest of the child. Judicial officers should be trained continuously on issues related to child welfare and international best practices in child maintenance. Consistency in court decisions and adherence to the principles outlined in the Child Rights Act will go a long way in

boosting public confidence in the system and encouraging compliance by all parties¹³⁵.

Nigeria has made strides in enhancing access to fair trials. Some notable best practices include judicial reforms in the aspect of continuing legal education mandatorily for judges and lawyers to improve the quality of legal services and judicial decisions.

ii. Corruption and Resource Constraints: The prevalence of corrupt practices within the judicial and law enforcement systems lead to inadequate enforcement of maintenance orders, leaving vulnerable children without necessary support. Additionally, resource constraints hinder the ability of the judiciary to effectively process cases related to child maintenance. For instance, where there is an insufficient number of trained judges or magistrates who specialize in family or child-related cases, leading to heavy caseloads and prolonged delays or financial constraints like poor funding leading to delays, limited staff, and poor case management systems. This can adversely affect parties seeking relief.

iii. Judicial Discretion and its Consequences: Finally, Judges in Nigeria are granted broad discretionary powers in sentencing and decision-making, which can lead to inconsistencies in the application of maintenance laws. This discretion may result in inadequate awards for children's maintenance, particularly when judges fail to consider the best interests of the child or the economic realities faced by the custodial parent. Judges should consider the children's best interests and the economic reality when determining feeding and maintenance fees. Awarding inadequate amounts, such as N30,000 for three children when the actual cost is N180,000 or more, can be detrimental to the children's well-being. Such decisions can have devastating consequences, effectively sentencing the children and their mother to financial hardship. Courts should prioritize the best interests of the child, ensuring that

¹³⁵ Chamanlawfirm (n52)

decisions regarding custody, maintenance, and support prioritize the child's well-being and stability. By doing so, we can protect the rights and welfare of Nigerian children and their mothers.¹³⁶

¹³⁶ The African Women Lawyers Association, 'The State of Child Rights in Nigeria Progress and Challenges' (2025) <<https://awla.international/2025/05/27/the-state-of-child-rights-in-nigeria-progress-and-challenges/>> accessed 11 November 2025.

3.4.3 Bureaucratic Delays and Inadequate International Cooperation

Bureaucratic delays present significant challenges in the international enforcement of child maintenance that adversely affect the well-being of children and custodial parents alike. These delays stem from a complex interplay of factors like administrative barriers, inefficient legal processes, and varying jurisdictional frameworks that can differ substantially between countries.

i. **Administrative Barriers:** The current system of international child support is fraught with administrative obstacles like delays in processing applications resulting in uncertainty or extended periods of hardship for parties seeking relief, and the rigorous bureaucratic processes involved in these cases are often characterized by rigid procedures and inefficiencies, making it difficult for parents to navigate the complexities of maintenance enforcement.

ii. **Varying Jurisdictional Frameworks:** Legal systems around the world vary significantly in their approach to custody disputes and child maintenance matters complicating international cooperation. For instance, these disputing laws resulting in jurisdictional conflicts when determining a child's habitual residence, may lead to prolonged legal battles and conflicting orders. Where parties to a maintenance dispute live in separate jurisdictions that share reciprocal agreements, recognition and enforcement of child support orders are possible abroad but the process may take longer and require the involvement of both the U.S. Office of Child Support Enforcement and the appropriate foreign agency¹³⁷.

iii. **Legal and Procedural Delays:** Also, delays in the legislative process can impede timely resolution of child support cases. For instance, where the legislative process is slow, correcting existing laws that have proven ineffective or unworkable is

¹³⁷ Bobby Dale Barina, 'Navigating the Legal Landscape of Cross-Jurisdictional Child Support Enforcement' (2025) <<https://www.bobbybarinalaw.com/navigating-the-legal-landscape-of-cross-jurisdictional-child-support-enforcement/>> accessed 11 November 2025.

slowed down and can leave families in precarious situations unattended for extended periods. Bureaucracy in Nigeria has been identified as a significant barrier not just to safeguarding children's rights but to effective governance as a whole. The legal system, characterized by complex procedures and technicalities, often results in delays that are detrimental to the welfare of children. These bureaucratic processes can impede timely decision-making and service delivery, worsening the challenges faced by vulnerable populations. It is a common parlance that where elephants fight, it is the grasses that suffer. No doubt, both the political representatives and top civil servants as bureaucrats play important roles in public policy making and outcomes. In scenarios where the interactions of these important actors in public policy turn hostile, its effects would be negative and could explain the failures of public policy outcomes in Nigeria as major policy issues (poverty, unemployment, insecurity, etc.) besetting the country from independence are still much with us decades after¹³⁸.

¹³⁸ Dominic Shimawua and Dr GI Ayogu, 'Politics of Bureaucracy and Public Policy Outcomes in Nigeria' (2025) <https://www.researchgate.net/publication/396969117_Politics_of_Bureaucracy_and_Public_Policy_Outcomes_in_Nigeria> accessed 11 November 2025.

CHAPTER FOUR

INTERNATIONAL AND REGIONAL FRAMEWORKS FOR ENFORCING CHILD MAINTENANCE RIGHTS ACROSS BORDERS

4.1 The Hague Convention on the International Recovery of Child Support (2007)

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted in 2007, is a pivotal international treaty designed to streamline and enhance the enforcement of child support obligations across borders. This convention establishes a cooperative framework for countries to recognize and enforce each other's child support orders, significantly impacting parents seeking child maintenance across international jurisdictions. With the increasing globalization of families, the convention is notable for its potential to improve financial security for children in cross-border situations, particularly in countries like Nigeria, where challenges in enforcement of existing child support laws persist due to socio-cultural and legal inconsistencies¹³⁹. In Nigeria, the legal landscape governing child maintenance is primarily dictated by the Matrimonial Causes Act and the Child Rights Act, which underscore the importance of the child's best interests in support matters¹⁴⁰. However, the lack of formal international arrangements complicates enforcement, especially when one parent resides abroad. The incorporation of the Hague Convention into Nigeria's legal framework could provide much-needed alignment with international standards, facilitating more effective enforcement mechanisms and ensuring that children's rights to financial support are upheld in cross-border contexts. Despite the convention's promising

¹³⁹ JS Cunha, 'West Palm Beach Attorney on International Child Support' (2025) <<https://www.pbclegal.com/west-palm-beach-child-support-attorney-discusses-international-child-support/>> accessed 10 November 2025.

¹⁴⁰ Ibid

framework, various challenges remain in Nigeria, including widespread misconceptions about child support obligations and the limited awareness of legal recourse available to custodial parents.¹⁴¹ These challenges can result in significant hardships for custodial parents, often mothers, who bear the financial burden of raising children without adequate support.

4.1.1 Implementation in the United States

The United States was the first country to sign the Convention, which entered into force for the U.S. on January 1, 2017¹⁴². The U.S. Department of Health and Human Services has been designated as the Central Authority responsible for implementing the provisions of the Convention within the United States¹⁴³. The ratification of the treaty necessitated amendments to existing state laws, particularly the Uniform Interstate Family Support Act (UIFSA), to ensure that all states comply with the uniform procedures established by the Convention¹⁴⁴. To qualify for federal Child Support Enforcement funding, each state must enact the 2008 amendments to UIFSA, which streamline processes and requirements for both interstate and international child support cases. This move is expected to enhance the reliability of child support payments for families, thus promoting the financial stability of children across borders.

4.1.2 Influence on Child Maintenance Rights in Nigeria

In Nigeria, child maintenance obligations are primarily determined by the Matrimonial Causes Act and the Child Rights Act, depending on the marital status of the parents. The laws emphasize that child support is designed to serve the best

¹⁴¹ Onyoja Momoh, 'Why Nigeria should welcome the value and feasibility of acceding to the Hague Conference Children's Conventions' (2022) <<https://www.abdn.ac.uk/law/blog/why-nigeria-should-welcome-the-value-and-feasibility-of-acceding-to-the-hague-conference-childrens-conventions/>> accessed 10 November 2025.

¹⁴² JS Cunha (n1)

¹⁴³ Ibid

¹⁴⁴ Olanike Odewale, 'Situation Report On Child Maintenance In Africa: Report On Nigeria' (2013) <https://childsupport-worldwide.org/files/care/downloads-abstracts/abstracts-ab-3-3-2013/Abstract_Odewale.pdf> accessed 10 November 2025.

interests of the child, taking into account the financial capacities and needs of both parents, as well as the child's standard of living.¹⁴⁵ The application of the Hague Convention provides a pathway for enforcement of these rights, especially when one parent resides outside Nigeria or when the child is taken abroad.¹⁴⁶

The enforcement of child maintenance rights in Nigeria can be pursued through various legal remedies¹⁴⁷. Nigerian courts are equipped to handle cases of non-compliance with maintenance orders. This includes the authority to deduct payments directly from the defaulter's salary or bank account, thereby ensuring that the child's needs are met despite any parental conflicts.¹⁴⁸ The influence of the Hague Convention can enhance these mechanisms, particularly in establishing procedures for cross-border enforcement and ensuring that maintenance decisions are recognized internationally.

4.1.3 Challenges and Misinformation

Despite the existing legal frameworks, many parents, particularly fathers, often ignore their child support responsibilities due to misconceptions about the law. This neglect can lead to significant hardships for custodial parents, usually mothers, who bear the brunt of financial burdens associated with raising a child alone.¹⁴⁹ The Hague Convention seeks to address these challenges by promoting awareness and understanding of child support obligations across borders, which is particularly relevant in Nigeria's increasingly global context.

¹⁴⁵ Tollestrup Jessica, 'Child Support Enforcement and the Hague Convention on Recovery of International Child Support' (2016) <<https://www.congress.gov/crs-product/R43779>> accessed 10 November 2025.

¹⁴⁶ Ibid

¹⁴⁷ Bobby Dale Barina, 'Navigating the Legal Landscape of Cross-Jurisdictional Child Support Enforcement' (2025) <<https://www.bobbybarinalaw.com/navigating-the-legal-landscape-of-cross-jurisdictional-child-support-enforcement/>> accessed 11 November 2025.

¹⁴⁸ Ibid

¹⁴⁹ Onyoja Momoh (n3)

The ratification and implementation of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (2007) hold significant promise for enhancing the enforcement of child maintenance rights in Nigeria. As international mobility of families increases, the demand for effective child support systems has become critical, particularly in cross-border situations where custodial and non-custodial parents reside in different jurisdictions. The current landscape reveals substantial challenges in enforcing child support obligations, which can lead to significant financial strain on custodial parents and children.¹⁵⁰

4.2 African Regional Instruments

The African Regional Instruments, particularly the African Charter on the Rights and Welfare of the Child (African Children's Charter), significantly influence the enforcement of child maintenance rights in Nigeria. Adopted in 1990 and enforced since 1999, the Charter provides a comprehensive legal framework aimed at safeguarding children's rights across Africa, emphasizing the necessity for state parties to integrate these rights into national legal systems.¹⁵¹ With 51 of the 55 African Union member states having ratified the Charter, its role in enhancing the protection of children's rights including the crucial issue of child maintenance is increasingly recognized as vital to addressing ongoing challenges in member states, particularly Nigeria.¹⁵² In Nigeria, the legal framework for child maintenance is primarily established through the Nigerian Child Rights Act of 2003, which aligns with international obligations under various treaties, including the African Children's

¹⁵⁰ Ibid

¹⁵¹ MPhil Pretoria and BA Kent, 'African Committee of Experts on the Rights and Welfare of the Child' <<https://orcid.org/0009-0006-2709-4950>> accessed 10 November 2025.

¹⁵² Julia Sloth-Nielsen and others, 'The African Charter on the Rights and Welfare of the Child: A Commentary' (2024) <<https://www.pulp.up.ac.za/latest-publications/the-african-charter-on-the-rights-and-welfare-of-the-child-a-commentary>> accessed 10 November 2025.

Charter.¹⁵³ However, the enforcement of these rights faces significant hurdles due to inadequate state mechanisms, lack of public awareness, and systemic inefficiencies in the judiciary.¹⁵⁴ The historical context highlights a struggle between traditional practices and modern legal standards, underscoring the need for robust mechanisms to ensure compliance with child maintenance obligations and promote equitable treatment for all children, regardless of their parents' marital status.¹⁵⁵ Despite the adoption of progressive laws, practical implementation remains inconsistent across Nigeria. The interplay between domestic law and regional instruments reflects ongoing tensions and controversies, particularly regarding the recognition of children born out of wedlock and the varying interpretations of maintenance rights under different legal systems, including Islamic law.¹⁵⁶ Consequently, the effectiveness of these instruments is contingent on both legislative reforms and the commitment of government and non-governmental organizations to advocate for and enforce these rights, ensuring the welfare of vulnerable children is prioritized. The challenges surrounding the enforcement of child maintenance rights in Nigeria exemplify the broader issues of child welfare and human rights within the African context. As regional instruments like the African Children's Charter continue to shape legal frameworks, their practical application in countries like Nigeria remains a critical area for ongoing advocacy, reform, and public education to foster a more equitable society for children.

¹⁵³ AS ASONIBARE and OT WURAOLA, 'Rights of a Child to Maintenance Under the Nigerian Legal System' *KIU Journal of Social Sciences* (2018) <<https://api-kwasuspace.kwasu.edu.ng/server/api/core/bitstreams//content>> accessed 10 November 2025.

¹⁵⁴ OM Lalude and others, 'A promise fulfilled? African human rights system and West African state mechanisms in the protection of domestic child workers' *African Human Rights Yearbook* (2024) 339-360

¹⁵⁵ MPhil Pretoria and BA Kent (n7)

¹⁵⁶ OS Adegun, 'Nigeria's African Charter Act: The Question of the National Assembly's Exclusive Legislative Competence to Enact for the Nigerian Federation' Centre for Human Rights, University of Pretoria (2025) <<https://africlaw.com/2025/02/17/nigerias-african-charter-act-the-question-of-the-national-assemblys-exclusive-legislative-competence-to-enact-for-the-nigerian-federation/>> accessed 10 November 2025.

4.3 Comparative Analysis of Other Jurisdictions

The comparative analysis of child maintenance rights enforcement in the United Kingdom (UK) and Canada reveals significant insights that can inform similar efforts in Nigeria. Both nations have established legal frameworks designed to ensure that non-residential parents meet their financial obligations to their children following separation or divorce. These frameworks differ markedly in their approaches, reflecting variations in legal authority, administrative efficiency, and international cooperation, ultimately impacting the welfare of children across jurisdictions.

4.3.1 Legal Framework in the UK

The enforcement of child maintenance rights in the UK is governed by a complex legal framework that incorporates various international agreements and national laws. This framework enables parents to secure maintenance payments from non-resident parents, particularly when they reside in different jurisdictions.

UK courts retain jurisdiction over certain international cases, especially if the paying parent has assets located in the UK or maintains significant ties to the country, such as owning property or having business interests¹⁵⁷. In cases where the Child Maintenance Service (CMS) cannot enforce payment directly, parents may seek a court order for maintenance. This legal avenue may involve applying for a freezing order to prevent the transfer of funds offshore while legal proceedings are ongoing.

4.3.1.1 Challenges in Enforcement

¹⁵⁷ Annabel Hayward, 'How to Enforce Child Support on Offshore Income' *Hawkins Family Law* (2025) <<https://hawkinsfamilylaw.co.uk/family-law-advice/how-to-enforce-child-support-on-offshore-income/>> accessed 10 November 2025.

Despite the established mechanisms, enforcing child maintenance payments can be complex, particularly when the paying parent resides in a country that lacks a REMO agreement. In such instances, parents may need to pursue private legal action in the non-compliant country, which can be time-consuming and costly¹⁵⁸. The UK's legislative framework continuously evolves, aiming to streamline enforcement processes and improve outcomes for receiving parents¹⁵⁹.

4.3.2 Legal Framework in Canada

The legal framework for child maintenance in Canada is characterized by both federal and provincial legislation, reflecting the dual jurisdiction over family law matters. The Federal Divorce Act governs issues of divorce and custody across Canada, while provinces have their own specific laws addressing child support, spousal support, and property division, leading to some variability in implementation across the country¹⁶⁰. In 1997, the Canadian federal government introduced the Federal Child Support Guidelines (FCSG) to establish a more consistent approach to child support determinations. These guidelines are legally binding, providing tables that indicate the amount of child support payable based on the payor's income. Deviations from these schedules are permitted only under limited circumstances, such as when the payor's income exceeds C\$150,000 annually or in cases of shared parenting arrangements. Enforcement of child support obligations in Canada involves several key mechanisms, particularly through the Family Orders and Agreements Enforcement Act (FOAEA), which enables the interception of federal funds owed to individuals who are in default

¹⁵⁸ Connaught Law, 'Understanding What is Child Maintenance: Complete UK Legal Framework 2025' (2025) <<https://connaughtlaw.com/what-is-child-maintenance/>> accessed 10 November 2025.

¹⁵⁹ Ajay Aggarwal, 'Cross-Jurisdictional Enforcement of UK Child Support Orders: A Legal Perspective (Part One)' AAGA Solicitors (2025) <<https://aagasolicitors.com/cross-jurisdictional-enforcement-of-uk-child-support-orders-a-legal-perspective-part-one/>> accessed 10th November 2025.

¹⁶⁰ 'Government launches new crackdown on parents who refuse to pay child maintenance' (2023) <<https://www.gov.uk/government/news/government-launches-new-crackdown-on-parents-who-refuse-to-pay-child-maintenance>> accessed 10 November 2025.

of their support obligations. This act has led to significant collections, with over \$300 million garnished for family support obligations between 1996 and 2001, indicating its effectiveness in ensuring compliance.¹⁶¹

The enforcement of child support orders is further enhanced by Canada's participation in international agreements. The 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance is applicable in certain provinces, allowing for cooperation in enforcing child support orders across borders. As of February and March 2024, Manitoba, Ontario, and British Columbia are set to implement this convention, expanding the ability to enforce child maintenance rights internationally¹⁶².

Despite the federal framework, variations exist among provinces and territories regarding the application of child support guidelines and enforcement mechanisms. For instance, Ontario has introduced expedited procedures for child support variations, enhancing case management and financial disclosure requirements in family law cases¹⁶³. Similarly, provinces like Saskatchewan and Nova Scotia have established lawyer referral lines to assist low- and middle-income parents in navigating support agreements, highlighting efforts to improve access to legal resources in family law matters.¹⁶⁴

4.3.3 Comparative Insights

One significant difference between the two systems is the degree of federal involvement. Canada's enforcement of child maintenance is characterized by a

¹⁶¹ Government of Canada, 'Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines' <https://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/rp/v2/v2_8.html> accessed 10 November 2025.

¹⁶² Ibid

¹⁶³ Dr Samantha Callan, 'Independent review of the Child Maintenance Service (CMS) response to domestic abuse' (2023) <<https://www.gov.uk/government/publications/independent-review-of-the-child-maintenance-service-cms-response-to-domestic-abuse/independent-review-of-the-child-maintenance-service-cms-response-to-domestic-abuse>> accessed 10 November 2025.

¹⁶⁴ Ibid

structured, cooperative framework among provinces and territories, which is less pronounced in the UK's system where CMS acts as the primary enforcement body with considerable autonomy. Furthermore, while both countries recognize the importance of international cooperation, Canada has made substantial strides in developing reciprocal agreements that facilitate enforcement across a wider range of jurisdictions, benefiting families in diverse contexts. Another aspect worth noting is the emphasis on administrative versus judicial processes. The UK's recent reforms aim to streamline enforcement through administrative actions, reducing the reliance on courts and expediting compliance measures, whereas Canada continues to integrate both judicial and administrative tools in a more traditional framework.

4.3.4 Lessons for Nigeria

The enforcement of child maintenance rights is a critical aspect of ensuring the welfare of children in the context of parental separation or divorce. The experiences of the UK and Canada in managing and enforcing child maintenance payments can provide valuable insights for improving the enforcement mechanisms in Nigeria. Both countries have made significant strides in developing structured systems for child maintenance, which could inform reforms in Nigeria's approach.

i. Effective Training and Support Systems: One of the key lessons from the UK is the emphasis on enhancing training for staff involved in child maintenance services. The Child Maintenance Service (CMS) has implemented targeted training programs, particularly focusing on issues surrounding domestic abuse. This includes the use of the Complex Needs Toolkit, which helps staff identify and support vulnerable customers, including those who have experienced domestic violence. Incorporating survivor testimonies into training has proven effective, as these narratives resonate with staff and foster empathy, encouraging better support for

clients¹⁶⁵. Nigeria could benefit from adopting similar training programs to empower staff and ensure they are equipped to handle sensitive cases effectively.

ii. Streamlined Enforcement Procedures: The introduction of the Child Support (Enforcement) Act 2023 in the UK exemplifies how streamlined enforcement procedures can enhance the effectiveness of child maintenance systems. This Act allows for administrative liability orders, which enable faster intervention by bypassing lengthy court processes, thereby reducing enforcement timelines significantly¹⁶⁶. Nigeria could consider reforming its enforcement mechanisms to minimize bureaucracy and improve response times when payments become irregular.

iii. Comprehensive Support for Domestic Abuse Victims: Both the UK and Canada have developed specific support systems for parents affected by domestic abuse. In the UK, the CMS has created specialized teams to handle cases involving complex domestic abuse situations, ensuring that victims receive tailored support¹⁶⁷. Implementing a similar framework in Nigeria would provide necessary assistance to vulnerable populations, ensuring that their needs are prioritized within the child maintenance system.

iv. International Cooperation and Information Sharing: In the context of international child maintenance enforcement, the UK has enhanced cooperation agreements with other countries, which include improved information-sharing mechanisms between national authorities. This is crucial for the effective recovery of

¹⁶⁵ Government of Canada, 'Provincial and territorial child protection legislation and policy - 2018' <<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/provincial-territorial-child-protection-legislation-policy-2018.html>> accessed 10 November 2025.

¹⁶⁶ Michael Allum, 'Spousal Maintenance by Formula: The Canadian Experience' (2023) <<https://iflg.uk.com/blog/spousal-maintenance-by-formula-the-canadian-experience>> accessed 10 November 2025.

¹⁶⁷ L Cuesta and others, 'Child support policy in middle- and low-income countries: current approaches and policy dilemmas' *Journal of International and Comparative Social Policy* (2023) 64-83 <<https://www.cambridge.org/core/journals/journal-of-international-and-comparative-social-policy/article/child-support-policy-inDD244B2B93ECBCFBC060705ACF0401FF>> accessed 10 November 2025.

maintenance payments from parents living abroad. Nigeria could explore the establishment of similar international agreements, recognizing that many non-custodial parents may reside outside the country, complicating enforcement efforts.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This study reveals a deep structural inconsistency between the legal recognition of the child's right to maintenance and the actual mechanisms available for its enforcement across borders. While Nigerian domestic law and several international instruments clearly articulate a child's entitlement to maintenance, the gap between law and practice remains wide. This disconnect arises from constitutional, institutional, and procedural challenges that collectively impede effective transnational enforcement. The study shows that Nigeria's constitutional framework plays a pivotal role in limiting the direct application of international treaties that concern maintenance obligations. Section 12 of the 1999 Constitution requires domestication of any international treaty before it can have the force of law. This provision creates a procedural bottleneck that delays or even prevents the implementation of international conventions and bilateral agreements on maintenance enforcement. As a result, despite Nigeria's membership in the international community and its expressed commitment to child protection, international obligations do not automatically produce domestic effect.

The Child Rights Act (CRA) of 2003 represents a significant advancement in the domestic articulation of children's rights, including the right to maintenance. However, because Nigeria operates a federal system of government, the CRA applies only in those states that have domesticated it. Consequently, there is an uneven legal landscape across the federation, with some states providing robust child maintenance frameworks while others rely on outdated statutes that inadequately address transnational maintenance issues. This fragmented implementation undermines

consistency and predictability in enforcement. The study also finds that the gendered nature of maintenance disputes intensifies the social consequences of weak enforcement. Custodial parents most often women bear the primary responsibility for the welfare of children and are disproportionately affected when maintenance payments are not enforced. The lack of effective cross-border mechanisms results in economic vulnerability, emotional strain, and limited access to justice for these parents. Legal aid schemes are either unavailable or inaccessible to most individuals pursuing enforcement against an absent parent living abroad, compounding the inequality between parties.

From a comparative standpoint, the study highlights that jurisdictions with efficient cross-border enforcement systems share certain features absent in Nigeria. These include administrative enforcement models that permit direct wage deduction or bank account attachment without prolonged court involvement; specialized family maintenance units with trained personnel; harmonized procedural rules for recognition and registration of foreign orders; and active participation in international conventions that facilitate cooperation and reciprocity. The Nigerian system lacks these elements, resulting in systemic inefficiency and limited international cooperation.

Furthermore, the findings emphasize that ratification of international treaties, without corresponding domestic implementation measures, produces no practical benefit. Ratification must be accompanied by enabling legislation that specifies enforcement procedures, establishes a central coordinating body, and provides for automatic or simplified recognition of foreign maintenance orders. The study demonstrates that countries which have successfully operationalized international maintenance

frameworks do so through a combination of legislative precision, administrative coordination, and technological integration.

In summary, the findings establish that the right to maintenance, though legally recognized, remains practically unenforceable across borders in many Nigerian cases. The combination of constitutional dualism, inconsistent state adoption of the Child Rights Act, inadequate institutional infrastructure, procedural inefficiency, and limited international cooperation constitutes the core of the enforcement problem. Unless these issues are addressed holistically, the legal right to maintenance will continue to be undermined by structural and administrative realities.

5.2 Recommendations

Although Nigeria's national and international duties clearly include legal acknowledgement of a child's right to maintenance, the study's results show that the means for cross-border enforcement are mostly useless. This discrepancy between awareness and action points to structural, procedural, and institutional flaws that call for synchronized legal and policy change. Effective enforcement calls for an integrated framework matching legislation, administrative practice, and foreign collaboration; it cannot be accomplished via separate amendments or court rulings only.

Thus, in order to overcome the detected flaws and create a consistent and long-lasting framework for the execution of child support duties internationally, the following advice is offered. Based on the analytical results of the study, these ideas are useful next actions that may be reasonably executed within the present constitutional and institutional framework of Nigeria..

- i. There is need for a comprehensive legislative reform that enables the domestication and practical application of key international instruments relating to

cross-border maintenance. An enabling act should be enacted to provide a clear legal foundation for the recognition and enforcement of foreign maintenance orders, define jurisdictional rules, and create procedural uniformity across states. Such legislation should also authorize the establishment of a central authority empowered to process international maintenance requests and act as Nigeria's official liaison in cross-border cases.

ii. A national maintenance enforcement authority should be created within an appropriate ministry or as an independent agency. Its mandate would include receiving and transmitting maintenance requests, coordinating enforcement with domestic and foreign institutions, maintaining a database of cases, and ensuring timely execution of orders. A centralized system would replace the current *ad hoc*, fragmented processes and promote efficiency, transparency, and accountability.

iii. Nigeria's procedural rules should be harmonized to simplify recognition and enforcement of foreign maintenance orders. Courts should be empowered to register foreign orders without a complete retrial of the merits, subject only to limited defences such as fraud, public policy violation, or lack of jurisdiction. Uniform procedural guidance should be developed and disseminated across all family courts to eliminate disparities in judicial practice.

iv. Administrative enforcement mechanisms should be introduced to complement judicial remedies. These could include direct wage deductions, automatic garnishment of income or social benefits, and administrative liability orders issued by enforcement officers. Such procedures would relieve the courts of routine enforcement burdens and deliver faster outcomes for beneficiaries.

v. Treaty engagement should be expanded strategically. Nigeria should prioritize ratification and domestication of conventions and regional agreements that establish

reciprocal enforcement of maintenance obligations, while simultaneously creating the administrative infrastructure necessary for their implementation. Ratification alone is not sufficient; it must be integrated with domestic practice and supported by technical capacity.

vi. Institutional capacity must be strengthened through targeted training for judges, family law practitioners, and enforcement officials. Regular professional development on international maintenance frameworks, cross-border procedural cooperation, and gender-sensitive case management should become mandatory. Additionally, simplified legal guides should be developed to assist litigants, especially those representing themselves.

vii. Access to justice must be enhanced through improved legal aid schemes. The government should allocate funding for cross-border maintenance cases and ensure that assistance is available to custodial parents regardless of income. Partnerships with civil society organizations can extend outreach and provide counselling, mediation, and logistical support to affected families.

Finally, systematic data collection and performance monitoring should be introduced. Agencies and courts should maintain statistics on applications received, enforcement timelines, success rates, and arrears recovered. These data should be published annually to inform policy and legislative review. Empirical evaluation will allow policymakers to identify trends, assess the effectiveness of reforms, and allocate resources efficiently.

5.3 Contributions to Knowledge

This essay makes several significant contributions to the body of knowledge on child maintenance enforcement, particularly within the Nigerian and cross-border legal context. First, it provides one of the most comprehensive doctrinal examinations of

the intersection between domestic family law, international child rights instruments, and cross-border enforcement challenges faced by custodial parents in Nigeria. By synthesizing statutory frameworks such as the Child Rights Act, Matrimonial Causes Act, Maintenance Orders Act, and Nigeria's dualistic treaty system, the essay clarifies how fragmented legislation and uneven domestication of child-rights treaties hinder uniform nationwide enforcement. It also advances scholarship by exposing the jurisdictional ambiguities that arise when Nigerian courts attempt to enforce foreign maintenance orders in the absence of the Hague Child Support Convention, demonstrating how this gap undermines children's welfare in transnational family disputes. Another major contribution is the essay's detailed analysis of institutional mechanisms, such as the Ministries of Justice and Women Affairs and the Family Courts, highlighting their operational limits in cross-border cases. Additionally, the essay expands academic discourse by foregrounding gendered and socio-economic inequities that shape access to maintenance remedies, an area often neglected in Nigerian family-law research. Overall, the work fills a significant literature gap by providing a structured assessment of Nigeria's legal readiness for international child-maintenance cooperation, proposing doctrinal, procedural, and institutional reforms needed to protect financially vulnerable children.

5.4 Areas for Further Studies

Although the essay provides extensive doctrinal and institutional analysis, several areas warrant deeper investigation to strengthen future scholarship. First, there is a need for empirical field research involving judges, family-law practitioners, and custodial parents to capture real-world enforcement barriers that doctrinal analysis alone cannot fully reveal, particularly regarding delays, bureaucratic failures, and corruption within enforcement agencies. Further study should also explore

comparative models of cross-border child-maintenance enforcement especially from African countries that have adopted the Hague Child Support Convention to evaluate which mechanisms can be adapted to Nigeria's plural legal system. Another promising area is the examination of digital or technological solutions, such as centralized maintenance-tracking systems or cross-border cooperation platforms, which could streamline enforcement procedures. In addition, future research should investigate the impact of Nigeria's non-domestication of key international treaties on custodial parents living abroad and children of dual-national households. There is also room to explore harmonization challenges between customary, Islamic, and statutory law on maintenance obligations, especially in states that have not adopted the Child Rights Act. Finally, given the gendered nature of child maintenance enforcement, more research is needed on how economic vulnerability, maternal poverty, and social norms affect compliance, as well as possible policy reforms to improve support for single mothers navigating cross-border disputes.

5.5 Conclusion

The long essay concludes that the child's right to maintenance cannot be effectively realized without an integrated framework that bridges the divide between legal recognition and practical enforcement. Nigeria's current system, although grounded in well-intentioned legislation, remains limited by constitutional constraints, procedural complexity, and institutional weakness. The result is a legal structure that recognizes rights in theory but delivers inconsistent outcomes in practice, especially when enforcement crosses national boundaries.

Effective protection of this right requires a deliberate, coordinated response that combines legislative precision, administrative functionality, and international cooperation. The creation of a central authority, harmonization of procedures, and

adoption of administrative enforcement mechanisms would transform maintenance enforcement from a purely judicial process into a more accessible and efficient system. Furthermore, capacity building and data-driven monitoring are essential to sustain these reforms and ensure accountability.

In the long term, the reform of cross-border maintenance enforcement will not only protect children's welfare but also promote social justice and gender equality. Ensuring that maintenance obligations are respected across borders upholds the integrity of family law and strengthens Nigeria's compliance with its international human rights commitments. The study therefore underscores the urgent need for Nigeria to modernize its legal and institutional approach so that the right to maintenance becomes a lived reality rather than an unfulfilled legal promise.

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