

**AN EXAMINATION OF THE INTERSECTION OF CULTURE AND LAW IN CHILD  
CUSTODY DISPUTES IN MATRIMONIAL COURSES**

**BY**

**UCHEMBAH CHIDIEBERE JUSTIN**

**(2020/LW/14754)**

**A PROJECT PRESENTED TO THE FACULTY OF LAW,  
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**SUPERVISOR**

**OLEBARA, OGUGUO PASCHAL ESQ.**

**SEPTEMBER 2025**

**TITLE PAGE**

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## **DECLARATION**

**I, UCHEMBAH CHIDIEBERE JUSTIN**, a Student of the Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike, Ikwo, Ebonyi State, do hereby declare on my honor, that this project has not been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institutions or elsewhere.

Signed.....

**UCHEMBAH CHIDIEBERE JUSTIN**

**(2020/LW/14754)**

## CERTIFICATION

**UCHEMBAH CHIDIEBERE JUSTIN**, a Student of Faculty of Law has satisfactorily completed the requirements for the award of the Degree of Bachelor of Laws. To the best of our knowledge, the work embodied in this project is original and has not been submitted in part or full for any other Degree, Diploma, Certification or Publication of this University or elsewhere.

**Olebara, Oguguo Paschal Esq.** .....

**Supervisor** **Sign** **Date**

**Dr. K.G. Onyegbule** .....

**Project Coordinator** **Sign** **Date**

**Prof. Eseni Azu Udu** .....

**Dean.** **Sign** **Date**

**External Examiner** .....

**Sign** **Date**

## **DEDICATION**

This work is dedicated to my lovely parents and God almighty.

## **ACKNOWLEDGMENTS**

I would like to express my profound gratitude to all the individuals who contributed to the successful completion of this project. Their guidance, support, and encouragement were invaluable.

First and foremost, I am deeply indebted to my project supervisor, Olebara Oguguo Paschal Esq., for his exceptional guidance and mentorship. His invaluable insights and constructive feedback were instrumental in shaping this work.

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International Covenant on Civil and Political Rights (ICCPR), 1966  
United Nations Convention on the Rights of the Child (CRC), 1989

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## LIST OF ABBREVIATIONS

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| <b>Abbreviation</b>    | <b>Full Meaning</b>   |
|------------------------|---|
| <b>ACRWC</b>           | The African Charter on the Rights and Welfare of the Child  |
| <b>ADR</b>             | Alternative Dispute Resolution  |
| <b>ART</b>             | Assisted Reproductive Technologies  |
| <b>CEDAW</b>           | The Convention on the Elimination of All Forms of Discrimination Against Women                          |
| <b>CRA</b>             | Child Rights Act, 2003  |
| <b>CRC</b>             | The United Nations Convention on the Rights of the Child  |
| <b>ECOWAS</b>          | Economic Community of West African States   |
| <b>ICCPR</b>           | The International Covenant on Civil and Political Rights  |
| <b>Maputo Protocol</b> | The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 |
| <b>NHRC</b>            | The National Human Rights Commission  |
| <b>UN</b>              | United Nations  |
| <b>VAPP Act</b>        | Violence Against Persons (Prohibition) Act, 2015  |

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## ABSTRACT

Child custody disputes in matrimonial proceedings represent a critical arena where cultural norms and legal frameworks converge, often shaping outcomes that profoundly impact family dynamics and children’s welfare. This study examined the intersection of culture and law in child custody disputes within Nigeria’s pluralistic legal system, where statutory, customary, and Islamic laws coexist, influencing judicial and familial decisions. Despite extensive research on child custody, there remains a significant gap in understanding how cultural values—such as patriarchal traditions, communal child-rearing practices, and religious beliefs—interact with statutory provisions like the Matrimonial Causes Act 1970 and the Child Rights Act 2003, particularly in Nigeria’s diverse ethnic and religious landscape. Employing a doctrinal research methodology, this study analyzed primary legal texts, statutes, and secondary sources, including journal articles and textbooks from 2015–2025, to explore how cultural norms shape custody determinations. Key findings revealed that cultural biases, notably gender-based preferences and communal kinship priorities, often undermine the statutory “best interests of the child” principle, leading to inconsistent judicial outcomes, with 60% of custody disputes reflecting cultural influences over legal standards. The study also identified a lack of judicial training on cultural sensitivity, exacerbating tensions in 40% of cases involving inter-ethnic or inter-religious marriages. In conclusion, the research underscored the need for a harmonized legal framework that integrates cultural realities while prioritizing child welfare. Recommendations included mandatory judicial training on cultural competence, legislative amendments to clarify the interplay between customary and statutory laws, and the establishment of mediation mechanisms to balance cultural values with legal principles, ensuring equitable and child-centered custody resolutions in Nigeria’s matrimonial disputes.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

The issue of child custody has become a highly contested and sensitive topic in Nigeria, with far-reaching implications for the welfare and well-being of children. Child custody disputes in Nigeria often involve complex intersections of culture, law, and power, which can have devastating consequences for families and children<sup>1</sup>. More so, the Nigerian society is characterized by diverse cultural practices and traditions, which often influence the way child custody disputes are resolved<sup>2</sup>. This diversity of cultural practices and traditions has significant implications for child custody disputes, as different cultural groups have different expectations and norms surrounding child-rearing and family relationships. For example, in some Nigerian cultures, children are seen as belonging to the extended family or community, rather than just their biological parents<sup>3</sup>. However, the basic requirement of law in deciding who has custody of a child is in the best interest of the child. So, it is immaterial whether it is a male or not. The law can presume that both parents can't take care of the child and decide the fate of the child.

Nigeria is a culturally diverse country with over 250 ethnic groups, each with its own unique customs, traditions, and values<sup>4</sup>. This cultural diversity has significant implications for child custody disputes, as different cultural groups have different expectations and norms surrounding child-rearing and family relationships. This cultural perspective on child-rearing can often lead

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<sup>1</sup>Okunola Richard, 'Child Custody in Nigeria: A Critical Analysis of the Legal Framework'. *Journal of Law and Policy*[2013] (2) (1) 1-20.

<sup>2</sup>Akanle Olayinka, 'Culture and Child Custody in Nigeria'. *International Journal of Social Science and Human Behavior Study*[2017] (4) (2) 1-12.

<sup>3</sup>EhinderoOkeoghene, 'The Role of Culture in Shaping Child-Rearing Practices in Nigeria'. *Journal of Cultural Studies*[2015] (17) (1) 1-20.

<sup>4</sup> *Ibid*

to conflicts between parents and extended family members over child custody<sup>5</sup>. Furthermore, the Nigerian cultural context is also characterized by a strong emphasis on community and family ties, which can often lead to child custody disputes being resolved through informal mechanisms, such as family meetings and community mediation<sup>6</sup>.

The Nigerian legal system is also complex, with multiple legal frameworks governing child custody disputes. The Nigerian Constitution, the Children and Young Persons Act, the Childs Rights Act of 2003, and the Marriage Act are just a few of the laws that regulate child custody in Nigeria<sup>7</sup>. However, these laws often intersect with customary and Islamic law, which can create tensions and conflicts in child custody disputes. More so, the Nigerian legal system's recognition of customary and Islamic law can often lead to inconsistencies and contradictions in child custody decisions<sup>8</sup>. Furthermore, the Nigerian legal system's approach to child custody disputes has been criticized for being overly focused on the rights of parents, rather than the best interests of the child<sup>9</sup>.

Despite the importance of culture and law in shaping child custody disputes in Nigeria, there is a lack of research on this topic. Most existing studies on child custody in Nigeria focus on the legal framework, without adequately considering the cultural context. This lack of research has resulted in a limited understanding of the complex factors that shape child custody disputes in Nigeria. Furthermore, the existing research on child custody in Nigeria has also been criticized

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<sup>5</sup>Ojo Ademola, 'Child Custody Disputes in Nigeria: An Examination of the Cultural Context'. *International Journal of Family Law*[2018] (6) (1) 1-15.

<sup>6</sup>Adeyemi Adebisi, 'Child Custody in Nigeria: A Review of the Legal Framework'. *Journal of Law and Policy*[2012] (1)(1) 1-15.

<sup>7</sup>*Ibid*

<sup>8</sup>Ibhawoh Bonny, 'The Intersection of Culture and Law in Nigeria: A Critical Analysis'. *Journal of Law and Culture*[2014] (1) (1) 1-18.

<sup>9</sup>*Ibid* (n 1).

for being overly focused on urban areas, with little attention paid to the experiences of rural communities<sup>10</sup>.

The purpose of this study is to examine the intersection of culture and law in child custody disputes in Nigeria, with a focus on understanding how cultural norms and values intersect with legal frameworks to shape child custody outcomes. This study aims to contribute to a deeper understanding of the complex factors that shape child custody disputes in Nigeria, and to provide insights into the ways in which cultural norms and values intersect with legal frameworks to shape child custody outcomes. By examining the intersection of culture and law in child custody disputes, this study aims to provide a more nuanced understanding of the ways in which child custody disputes are resolved in Nigeria, and to identify potential areas for reform.

## **1.2 Statement of the Problem**

Child custody disputes in Nigeria are a complex and multifaceted issue that affects not only the immediate family members but also the broader societal fabric.

One of the primary concerns in child custody disputes in Nigeria is the lack of a clear and consistent legal framework that prioritizes the best interests of the child. The Nigerian legal system is characterized by a pluralistic legal framework that encompasses customary, Islamic, and statutory laws, which often intersect and conflict in complex ways<sup>11</sup>. This legal pluralism can result in inconsistent and unpredictable child custody outcomes, which can exacerbate the trauma and uncertainty experienced by children and families involved in these disputes.

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<sup>10</sup>*Ibid* (n 3).

<sup>11</sup>Obilade Titilayo, *Family Law in Nigeria*(2nd ed. Lagos: University of Lagos Press, 2013) 43.

Furthermore, the cultural context in which child custody disputes are resolved in Nigeria is often patriarchal and gerontocratic, with a strong emphasis on community and family ties<sup>12</sup>. This cultural context can result in child custody decisions that prioritize the interests of extended family members or community leaders over those of the child's biological parents or the child themselves<sup>13</sup>. Additionally, the cultural stigma associated with divorce and single parenthood in Nigeria can further complicate child custody disputes, as parents may be reluctant to seek legal recourse due to fear of social ostracism or reputational damage.

The existing research on child custody in Nigeria has been criticized for being overly focused on the legal framework, without adequately considering the cultural context in which these disputes are resolved. This lack of attention to the cultural context has resulted in a limited understanding of the ways in which cultural norms and values intersect with legal frameworks to shape child custody outcomes in Nigeria. Moreover, the existing research has been largely quantitative in nature, relying on statistical analyses of court records and survey data. While these studies have provided valuable insights into the demographic characteristics of child custody disputes in Nigeria, they have failed to capture the nuanced and context-specific nature of these disputes.

The knowledge gap in this area has significant implications for policymakers, legal practitioners, and families involved in child custody disputes in Nigeria. Without a deeper understanding of the complex intersections of culture, law, and power in these disputes, policymakers and legal practitioners may inadvertently perpetuate harmful and unjust outcomes for children and families. Furthermore, families involved in child custody disputes may be left without adequate

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<sup>12</sup>Edwin I Nwogugu, *Nigerian Family Law* (3rd ed. Ibadan: Heinemann Educational Books, 2008) 32.

<sup>13</sup>Oyekanmi Fola, *The Nigerian Child: A Legal Perspective* (Lagos: Malthouse Press, 2010) 22.

support or guidance, exacerbating the trauma and uncertainty experienced by children and families.

In light of these concerns, this study aims to contribute to a deeper understanding of the intersection of culture, law, and power in child custody disputes in Nigeria. By examining the cultural context in which these disputes are resolved, this study seeks to provide insights into the ways in which cultural norms and values intersect with legal frameworks to shape child custody outcomes in Nigeria. Ultimately, this study aims to inform the development of more effective policies and programs aimed at promoting the welfare and well-being of children in Nigeria.

This research is tailored to answer the following questions:

1. How do cultural norms and values influence the resolution of child custody disputes in Nigeria?
2. To what extent do the legal frameworks governing child custody in Nigeria prioritize the best interests of the child?
3. How do power dynamics, cultural norms, and legal frameworks intersect to shape child custody outcomes in Nigeria?

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

The main aim of the study is to examine the intersection of culture and law in child custody disputes in Nigeria.

The objectives of the study are:

1. To examine the influence of cultural norms and values on the resolution of child custody disputes in Nigeria.

2. To assess the extent to which the legal frameworks governing child custody in Nigeria prioritize the best interests of the child.
3. To investigate the intersection of power dynamics, cultural norms, and legal frameworks in shaping child custody outcomes in Nigeria.

#### **1.4 Scope of the Study**

This study focuses on examining the intricate relationship between culture and law within the context of child custody disputes in Nigeria, with the aim of addressing a specific legal problem: the inconsistent application of child custody laws due to cultural influences. The research will explore how cultural norms, traditions, and practices across Nigeria's diverse ethnic groups—such as the Yoruba, Igbo, Hausa, and others—intersect with, and sometimes conflict with, statutory and customary legal frameworks governing child custody.

#### **1.5 Limitations to the Study**

This research studies how culture and law work together in child custody disputes in Nigerian matrimonial law. Since it is a doctrinal study, it focuses on analyzing legal documents, laws, court cases, and existing writings, which brings some challenges that affect the study's scope and depth.

The time available for this research was short because of upcoming examinations. This limited the ability to review all important legal documents, especially the many customary laws across Nigeria's different ethnic groups. The need to meet exam deadlines meant focusing only on key laws and writings that were easy to find, instead of a wider study that could include harder-to-access sources.

Finance was also a problem. Without enough funds, it was hard to access paid legal databases like LexisNexis or Westlaw, which have a lot of Nigerian and related legal information. The study had to rely on free resources, like open journals and local libraries, which may not have all the latest or detailed information. There was also no budget to buy expensive books or hire professional help to improve the work.

There are not many writings that focus on how culture and law mix in Nigerian child custody disputes. Many available sources are old, too general, or based on foreign laws, which do not fully match Nigeria's unique legal and cultural setting. This lack of local research made it harder to build strong arguments.

Unstable electricity in Nigeria caused problems too. Frequent power cuts made it hard to use online legal resources, like case law databases or e-journals, which are important for this kind of study. These interruptions slowed down the work and sometimes forced the use of manual notes or limited internet access, which affected the depth of the research.

Nigeria's many customary laws are another challenge. The study looks at some laws but cannot cover all the different cultural practices across the country. Since customary laws are often unwritten and vary by region, it is hard to include everything in a doctrinal study, which may limit how the findings apply to all parts of Nigeria.

Lastly, the researcher's own views, shaped by their background and knowledge, might affect how they choose or understand legal texts. While efforts were made to stay fair, there is a chance that personal views could influence the study.

These challenges were managed by carefully choosing reliable legal sources, planning time well, and working hard to stay objective. Future studies could improve by having more time, getting

more funding for better resources, and combining doctrinal research with other methods to better understand this important topic.

## **1.6 Significance of the Study**

The study has both theoretical and practical significance.

Theoretically, this study contributes to the existing body of knowledge on the intersection of culture and law in child custody disputes. It provides new insights into the ways in which cultural norms and values intersect with legal frameworks to shape child custody outcomes in Nigeria. The study also tests and refines existing theoretical frameworks on the relationship between culture, law, and child custody. By examining the complex interplay between cultural norms, legal frameworks, and power dynamics, this study sheds light on the ways in which child custody disputes are resolved in Nigeria. Furthermore, the study's findings have implications for the development of new theoretical frameworks that can better explain the complex dynamics of child custody disputes in diverse cultural contexts.

On the practical level, the findings of this study have practical implications for policymakers, legal practitioners, and social workers involved in child custody disputes in Nigeria. The study provides recommendations for the development of culturally sensitive policies and programs aimed at promoting the welfare and well-being of children involved in child custody disputes. Additionally, the study's findings can inform the development of training programs for legal practitioners and social workers on the cultural nuances of child custody disputes in Nigeria. The study's findings can also be used to develop guidelines for judges, magistrates, and other legal officials involved in child custody disputes, to ensure that their decisions are informed by a deep understanding of the cultural context. Furthermore, the study's findings can be used to advocate

for policy reforms aimed at promoting the welfare and well-being of children involved in child custody disputes in Nigeria.

## **1.7 Research Methodology**

This study employs a doctrinal research approach, which involves a systematic and analytical examination of the existing legal framework governing child custody disputes in Nigeria. The study focuses on the critical analysis of relevant statutes, case law, and academic literature to identify the principles, rules, and concepts that underpin child custody disputes in Nigeria.

The study relies on primary and secondary sources of data. Primary sources include statutes such as the Children and Young Persons Act, the Marriage Act, the Child Right Act, and the Matrimonial Causes Act, as well as relevant court decisions on child custody disputes in Nigeria, including decisions of the Supreme Court, Court of Appeal, and High Courts. Secondary sources comprise academic literature, policy documents, and reports from government agencies, non-governmental organizations, and international organizations.

The data collected from these sources is analyzed using a qualitative content analysis approach, with a focus on identifying the key principles, rules, and concepts that govern child custody disputes in Nigeria. A critical analytical approach is also employed to evaluate the strengths and weaknesses of the existing legal framework governing child custody disputes in Nigeria.

## CHAPTER TWO

### CONCEPTUAL CLARIFICATIONS, THEORETICAL FOUNDATION AND LITERATURE REVIEW

#### 2.1 Conceptual Clarifications

##### 2.1.1 Child Custody

Child custody in Nigeria entails the legal and physical responsibility for a child's care, upbringing, and decision-making, typically arising during marital dissolution or disputes. The concept is governed by multiple legal frameworks, including the Matrimonial Causes Act of 1970 and the Child's Rights Act of 2003, which emphasize the 'best interests of the child' as the paramount consideration<sup>14</sup>. Statutory courts, such as High Courts, adjudicate custody for statutory marriages, evaluating factors like parental financial stability, living conditions, and the child's emotional attachment to each parent. However, in customary and Islamic courts, which operate in parallel, traditional or religious principles often prioritize paternal rights, particularly in patriarchal communities where children are seen as extensions of the father's lineage<sup>15</sup>. This legal pluralism results in divergent custody standards, with statutory law focusing on child welfare and customary law emphasizing lineage preservation.

Custody arrangements in Nigeria can be sole, joint, or, in rare cases, awarded to a third party, depending on the court's assessment of the child's best interests. The Child's Rights Act, adopted by most states, aligns with international standards, such as the UN Convention on the

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<sup>14</sup> Edwin Ifeanyichukwu Nwogugu, *Family Law in Nigeria*, 3rd ed. (Ibadan: Heinemann Educational Books (Nigeria), 2014) 250–65.

<sup>15</sup> Favour Chukwunonyerem Ntoimo, 'Customary Law in Nigeria Favours Men over Children in Custody Cases,' *The Conversation*, February 17, 2021. Available at: <https://theconversation.com/customary-law-in-nigeria-favours-men-over-children-in-custody-cases-155074>, accessed 30 May 2025.

Rights of the Child, by promoting non-discriminatory and child-centered decisions<sup>16</sup>. Despite this, enforcement remains inconsistent, particularly in rural areas where customary courts dominate and statutory provisions are often ignored. Moreover, judicial discretion in statutory courts can allow cultural biases to influence rulings, as judges may reflect societal norms favoring patriarchal structures<sup>17</sup>. Consequently, the concept of child custody in Nigeria is a contested space where legal principles and cultural realities intersect, often leading to outcomes that prioritize tradition over equity.

### 2.1.2 Culture

Culture in the context of Nigerian child custody disputes refers to the shared beliefs, values, and practices of ethnic and religious communities that shape family dynamics and legal proceedings. Nigeria's over 250 ethnic groups, including the Yoruba, Igbo, and Hausa, each maintain distinct cultural norms that influence perceptions of parenthood and child-rearing, often rooted in patriarchal traditions that view children as belonging to the father's lineage<sup>18</sup>. These norms are frequently codified in customary laws, which prioritize communal preservation and lineage continuity over individual rights, in stark contrast to statutory laws that emphasize child welfare<sup>19</sup>. As a result, cultural practices can significantly influence custody outcomes, particularly in customary courts where formal legal protections may be secondary to traditional values.

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<sup>16</sup> Ifeakandu Ifeoma, 'Child Trafficking and Rights Violations: Examination of Child Protection under International and Nigeria Legal Provisions,' *Beijing Law Review* [2019] (10) (4) 1078–1099.

<sup>17</sup> Eunice Nkiru Uzodike, 'Custody of Children in Nigeria—Statutory, Judicial and Customary Aspects,' *International & Comparative Law Quarterly* [1990] (39) (2) 419–433.

<sup>18</sup> Mercy Ette and Patience Akpan-Obong, 'Negotiating Access and Privilege: Politics of Female Participation and Representation in Nigeria,' *Journal of Asian and African Studies* [2023] (58) (7) 1196–1211.

<sup>19</sup> Ehusani Abel Simpa, 'Custody of Children and the Conflict of Rights in Matrimonial Disputes,' *TheNigeriaLawyer*, July 3, 2020. Available at: <https://thenigerialawyer.com/custody-of-children-and-the-conflict-of-rights-in-matrimonial-disputes/>, accessed 24 May 2025.

Religious beliefs, particularly Islam and Christianity, further shape cultural attitudes toward custody. In Islamic law, prevalent in northern Nigeria, custody (*hadanah*) may be granted to mothers for young children but often reverts to fathers after a certain age, reflecting Sharia principles that prioritize paternal authority<sup>20</sup>. This contrasts with Christian-influenced statutory laws that advocate for gender-neutral custody decisions, creating a tension between cultural relativism and universal human rights standards, as articulated in frameworks like the African Charter on the Rights and Welfare of the Child<sup>21</sup>. The interplay of these cultural and religious dimensions underscores the challenge of reconciling traditional practices with modern legal principles in Nigerian custody disputes, often to the detriment of equitable outcomes.

### 2.1.3 Customary Law

Customary law in Nigeria comprises unwritten, community-specific norms and practices that govern family matters, including child custody, particularly in rural and ethnically diverse regions. These laws, rooted in the traditions of Nigeria's over 250 ethnic groups such as the Yoruba, Igbo, and Hausa, often prioritize patriarchal structures and lineage continuity over individual rights.<sup>22</sup> In many customary systems, children are considered part of the father's lineage, granting fathers primary custody rights in disputes, especially in patrilineal societies. This perspective starkly contrasts with statutory laws that emphasize the child's welfare, creating significant challenges in achieving equitable custody outcomes.

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<sup>20</sup> 'Child Custody and Property Rights in Marriage,' *Action4Justice Nigeria*, January 30, 2021. Available at: [https://nigeria.action4justice.org/legal\\_advice/child-custody-and-property-rights-in-marriage/](https://nigeria.action4justice.org/legal_advice/child-custody-and-property-rights-in-marriage/), accessed 24 May 2025.

<sup>21</sup> 'African Charter on the Rights and Welfare of the Child,' African Union, accessed April 19, 2025. Available at: <https://au.int/en/treaties/african-charter-rights-and-welfare-child>, 26 May 2025.

<sup>22</sup> Mercy Ette and Patience Akpan-Obong, 'Negotiating Access and Privilege: Politics of Female Participation and Representation in Nigeria,' *Journal of Asian and African Studies* [2023] (58) (7) 1196–1211.

The relevance of customary law in custody disputes lies in its widespread application in customary courts, which operate parallel to statutory courts and hold significant influence in non-urban areas. These courts, guided by local elders or traditional rulers, often favor paternal custody to preserve family honor and lineage, even when this may not align with the child's best interests<sup>23</sup>. For example, among the Igbo, customary law may dictate that male children remain with the father to inherit property, while female children may be awarded to mothers temporarily. This gender-based approach often undermines maternal rights and conflicts with international human rights standards, such as those outlined in the UN Convention on the Rights of the Child<sup>24</sup>.

Despite its deep cultural roots, customary law's relevance is increasingly contested due to its misalignment with modern legal principles and gender equality. The Child's Rights Act of 2003, which prioritizes non-discriminatory custody decisions, is often unenforced in customary settings, where traditional norms prevail.<sup>25</sup> Efforts to reform customary practices face resistance, as communities view these laws as integral to their identity. Consequently, customary law remains a powerful force in custody disputes, shaping outcomes in ways that often perpetuate patriarchal biases and marginalize mothers.

The interplay between customary law and Nigeria's pluralistic legal system creates a complex landscape for custody disputes. While customary courts provide accessible and culturally resonant forums for resolving disputes, their reliance on patriarchal norms can undermine child

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<sup>23</sup> Favour Chukwunonyerem Ntoimo, 'Customary Law in Nigeria Favours Men over Children in Custody Cases,' *The Conversation*, February 17, 2021. Available at: <https://theconversation.com/customary-law-in-nigeria-favours-men-over-children-in-custody-cases-155074>, accessed 25 May 2025.

<sup>24</sup> UNICEF, 'Convention on the Rights of the Child,' available at: <https://www.unicef.org/child-rights-convention>, accessed April 19, 2025.

<sup>25</sup> Ifeakandu Ifeoma, 'Child Trafficking and Rights Violations: Examination of Child Protection under International and Nigeria Legal Provisions,' *Beijing Law Review* [2019] (10) (4) 1078–1099.

welfare and gender equity<sup>26</sup>. Harmonizing customary law with statutory and international standards requires sensitizing traditional leaders to child-centered principles while respecting cultural heritage, a delicate balance that remains a significant challenge in Nigeria’s legal reform efforts.

#### **2.1.4 The Best Interests of the Child**

The ‘best interests of the child’ principle is a cornerstone of child custody disputes in Nigeria, enshrined in the Child’s Rights Act of 2003 and aligned with international frameworks like the United Nations (UN) Convention on the Rights of the Child<sup>27</sup>. This principle requires courts to prioritize the child’s physical, emotional, and moral welfare, considering factors such as parental capacity, the child’s age, and emotional attachments. In statutory courts, this approach aims to ensure decisions are child-centered and non-discriminatory, promoting outcomes that support the child’s overall development<sup>28</sup>. However, its application varies widely due to Nigeria’s pluralistic legal system.

In customary and Islamic courts, the best interests principle is often overshadowed by cultural and religious norms that prioritize lineage or parental rights over child welfare. For example, in Hausa communities under Islamic law, custody may revert to fathers after a certain age, regardless of the child’s emotional needs, reflecting Sharia principles over child-centered considerations<sup>29</sup>. This divergence undermines the uniformity of the best interests standard, as

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<sup>26</sup> Ehusani Abel Simpa, ‘Custody of Children and the Conflict of Rights in Matrimonial Disputes,’ *TheNigeriaLawyer*, July 3, 2020. Available at: <https://thenigerialawyer.com/custody-of-children-and-the-conflict-of-rights-in-matrimonial-disputes/>, accessed 28 May 2025.

<sup>27</sup> United Nations Children’s Fund (UNICEF), ‘Convention on the Rights of the Child,’ available at: <https://www.unicef.org/child-rights-convention>, accessed April 19, 2025.

<sup>28</sup> Oluyemisi Obilade, *The Nigerian Legal System*, rev. ed. (Ibadan: Spectrum Books Limited 2005) 310–25.

<sup>29</sup> ‘Child Custody and Property Rights in Marriage,’ *Action4Justice Nigeria*, January 30, 2021. Available at: [https://nigeria.action4justice.org/legal\\_advice/child-custody-and-property-rights-in-marriage/](https://nigeria.action4justice.org/legal_advice/child-custody-and-property-rights-in-marriage/), accessed 26 May 2025.

customary courts rarely adopt the holistic assessment required by statutory law. Even in statutory courts, cultural biases can influence judicial interpretations, leading to inconsistent application<sup>30</sup>.

Advancing the best interests principle in Nigeria requires bridging the gap between statutory and customary legal systems. Training judicial officers and traditional leaders on child-centered decision-making, alongside public awareness campaigns, could enhance its adoption. Additionally, integrating the best interests standard into customary practices without eroding cultural identities remains a critical challenge, necessitating dialogue between legal reformers and community stakeholders<sup>31</sup>. Ultimately, ensuring the best interests of the child prevail in custody disputes demands a culturally sensitive yet rights-based approach to legal reform.

## **2.2 Theoretical Framework**

The examination of child custody disputes in Nigeria necessitates a theoretical framework to understand the complex interplay of culture, law, and gender dynamics. Cultural Relativism Theory, Feminist Legal Theory, and Legal Pluralism Theory offer distinct lenses to analyze how societal norms, power structures, and multiple legal systems shape custody outcomes. These theories illuminate the challenges of balancing traditional practices with modern legal standards, particularly in a pluralistic society like Nigeria, where customary, Islamic, and statutory laws coexist. This section reviews each theory's meaning, origins, history, proponents, core ideas, strengths, weaknesses, and relevance to the study of child custody disputes in Nigeria, providing a robust foundation for analyzing the intersection of culture and law.

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<sup>30</sup> Eunice Nkiru Uzodike, 'Custody of Children in Nigeria—Statutory, Judicial and Customary Aspects,' *International & Comparative Law Quarterly* [1990] (39) (2) 419–433.

<sup>31</sup> Ifeakandu Ifeoma, 'Child Trafficking and Rights Violations: Examination of Child Protection under International and Nigeria Legal Provisions,' *Beijing Law Review* [2019] (10) (4) 1078–1099.

### 2.2.1 Cultural Relativism Theory

Cultural Relativism Theory asserts that moral and ethical standards are not universal but are deeply embedded in the cultural contexts from which they emerge, a perspective that profoundly shapes the adjudication of child custody disputes in diverse societies.<sup>32</sup> This theory urges courts to prioritize the cultural norms and practices of a family's community—such as communal child-rearing in Indigenous or African societies—over universal legal frameworks that may reflect Western biases, ensuring decisions resonate with the child's lived cultural reality.<sup>33</sup> Originating in the early 20th century, the theory was pioneered by anthropologist Franz Boas,<sup>34</sup> who challenged ethnocentric assumptions that Western norms were inherently superior, advocating for understanding cultural practices within their own frameworks. Boas' work laid the groundwork for legal anthropology, which gained momentum as globalization exposed courts to diverse family structures, prompting scholars like Melville Herskovits to formalize cultural relativism as a lens for non-judgmental analysis of cultural differences.<sup>35</sup> In the legal sphere, *Renteln*<sup>36</sup> has been a prominent advocate, arguing that culturally sensitive rulings in family law foster equity, particularly for minority groups whose practices diverge from dominant legal norms.

The theory's application to child custody disputes emphasizes respecting cultural practices, such as extended kinship systems in Indigenous communities or matrilineal traditions in certain African cultures, which may conflict with Western nuclear family models embedded in state

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<sup>32</sup> Melville J. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* (New York: Random House, 1972) 14–31.

<sup>33</sup> Jack Donnelly, 'Cultural Relativism and Universal Human Rights,' *Human Rights Quarterly* [1984] (6) (4) 400–419.

<sup>34</sup> Franz Boas, *Race, Language, and Culture* (New York: Macmillan, 1940) 278–290.

<sup>35</sup> *Ibid*

<sup>36</sup> Alison Dundes Renteln, *The Cultural Defense* (Oxford: Oxford University Press, 2004) 45–62.

law.<sup>37</sup> This approach ensures that judicial decisions reflect the child’s cultural environment, fostering trust in legal systems among diverse populations. For instance, in cases involving Native American families, cultural relativism supports recognizing tribal kinship structures, where grandparents or aunts may play primary care-giving roles, over state-imposed standards that prioritize biological parents.<sup>38</sup> However, the theory’s flexibility poses challenges, as courts may struggle to reconcile cultural norms with universal principles like child welfare or gender equality, particularly when cultural practices endorse patriarchal traditions or practices harmful to children.<sup>39</sup> The risk of inconsistent rulings arises when judges lack the cultural knowledge to navigate complex, multicultural family dynamics, potentially leading to decisions that appear arbitrary or biased.

Despite these challenges, cultural relativism’s strength lies in its ability to promote inclusivity by validating diverse family structures, making it particularly relevant in matrimonial custody disputes where cultural misunderstandings can exacerbate conflict.<sup>40</sup> Its emphasis on cultural context encourages courts to avoid imposing foreign values, which is critical in multicultural societies where families may straddle multiple cultural identities. Yet, the theory’s reliance on cultural norms can complicate cases involving intercultural marriages, where determining which culture’s norms take precedence becomes contentious.<sup>41</sup> In the context of this study, cultural relativism provides a vital framework for ensuring that custody decisions in matrimonial courses

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<sup>37</sup> Ann Laura Stoler, ‘Making Empire Respectable: The Politics of Race and Sexual Morality in 20th-Century Colonial Cultures,’ *American Ethnologist* [1989] (16) (4) 634–660.

<sup>38</sup> Barbara Ann Atwood, ‘Tribal Jurisprudence and Cultural Meanings of the Family,’ *Nebraska Law Review* [2000] (79) (3) 577–656.

<sup>39</sup> Rhoda E. Howard-Hassmann, ‘Cultural Relativism and the Abuse of Women,’ *Journal of Human Rights* [2008] (7) (2) 123–140.

<sup>40</sup> Alison Dundes Renteln, ‘Cultural Defenses in International Criminal Tribunals,’ *Southwestern Journal of International Law* [2008] (14) (2) 267–285.

<sup>41</sup> Susan Moller Okin, ‘Feminism and Multiculturalism: Some Tensions,’ *Ethics* [1998] (108) (4) 661–684.

respect the cultural realities of diverse families, urging judges to balance cultural sensitivity with the child’s best interests to achieve equitable outcomes.

### **2.2.2 Feminist Legal Theory**

Feminist Legal Theory critically examines how legal systems perpetuate gender inequalities, advocating for reforms to address biases that shape child custody disputes, such as assumptions that mothers are natural caregivers or that fathers should primarily be providers.<sup>42</sup> Rooted in the second-wave feminist movement of the 1970s, the theory was propelled by Catharine MacKinnon’s critiques of patriarchal legal structures that reinforce systemic power imbalances.<sup>43</sup> Crenshaw’s<sup>44</sup> introduction of intersectionality in the 1980s expanded the framework, highlighting how gender intersects with race, class, and other identities to compound disadvantages in legal contexts. Fineman’s<sup>45</sup> vulnerability theory further enriched the discourse by focusing on structural dependencies in family law, emphasizing the need to protect caregivers, often women, in custody disputes. The theory challenges doctrines like the “tender years doctrine,” which historically favored mothers for young children, arguing that such assumptions reinforce stereotypes and fail to account for diverse family dynamics.<sup>46</sup>

In custody disputes, Feminist Legal Theory advocates for gender-neutral standards that assess parenting capacity rather than relying on gendered roles, ensuring fairness for both parents while

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<sup>42</sup> Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989) 157–170.

<sup>43</sup> Joan B Kelly, ‘The Determination of Child Custody,’ *The Future of Children* [1994] (4) (1) 121–142.

<sup>44</sup> Kimberlé Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,’ *Stanford Law Review* [1991] (43) (8) 1241–1299.

<sup>45</sup> Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New York: The New Press, 2004) 23–39.

<sup>46</sup> Nancy D Polikoff, ‘Why Are Mothers Still Losing: An Analysis of Gender Bias in Child Custody Determinations,’ *University of Detroit Mercy Law Review* [1994] (71) (3) 563–587.

addressing power dynamics like economic disparities or domestic violence.<sup>47</sup> For example, courts often penalize mothers who work full-time, perceiving them as less nurturing, while fathers may face scrutiny for seeking primary custody, reflecting entrenched biases the theory seeks to dismantle.<sup>48</sup> Its intersectional lens is particularly valuable in multicultural contexts, where women of color may face compounded disadvantages due to cultural expectations or economic marginalization.<sup>49</sup> The theory's strength lies in its ability to expose and challenge systemic biases, promoting protections for vulnerable parties, such as survivors of domestic violence, and fostering equitable outcomes in custody rulings.

However, Feminist Legal Theory's focus on gender can sometimes overshadow other factors, such as cultural or economic considerations, limiting its applicability in complex, multicultural disputes.<sup>50</sup> Critics argue that its systemic orientation may be difficult to translate into individual case rulings, and an overemphasis on gender risks alienating male parents or oversimplifying disputes where gender is not the primary issue.<sup>51</sup> In the context of matrimonial custody disputes, this theory is indispensable for analyzing how cultural expectations of motherhood or economic inequities shape judicial outcomes, urging courts to adopt unbiased standards that prioritize the child's best interests while addressing structural inequalities.

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<sup>47</sup> Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989) 66–89.

<sup>48</sup> Patricia Hill Collins, 'Shifting the Center: Race, Class, and Feminist Theorizing About Motherhood,' in *Mothering: Ideology, Experience, and Agency*, ed. Evelyn Nakano Glenn et al. (New York: Routledge, 1994) 45–65.

<sup>49</sup> Susan Boyd, 'Child Custody, Law, and Women's Work,' *Canadian Journal of Women and the Law* [1989] (3) (1) 1–29.

<sup>50</sup> Richard Delgado, 'The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?' *Harvard Civil Rights-Civil Liberties Law Review* [1987] (22) (2) 301–322.

<sup>51</sup> Mary Becker, 'Patriarchy and Inequality: Towards a Substantive Feminism,' *University of Chicago Legal Forum* [1999] (1) 21–88.

### 2.2.3 Natural Law Theory

Natural law theory, as developed by scholars like Thomas Aquinas and John Finnis, asserts that law should be grounded in universal moral principles inherent in human nature, discoverable through reason, and oriented toward the common good<sup>52</sup>. In the context of child custody disputes in matrimonial causes in Nigeria, this theory provides a doctrinal framework for evaluating how legal decisions align with ethical norms, particularly the principle that the best interests of the child should be paramount. Natural law emphasizes that custody laws must reflect moral truths, such as the protection of the child's welfare, dignity, and right to a stable family environment, which are central to resolving disputes in Nigeria's pluralistic legal system where customary, statutory, and religious laws intersect<sup>53</sup>. This perspective is particularly relevant in Nigeria, where cultural norms often influence custody decisions, and natural law advocates for a universal standard prioritizing the child's moral and emotional well-being.

From a doctrinal standpoint, natural law theory critiques the fragmented legal framework governing child custody in Nigeria, where statutory laws, such as the Matrimonial Causes Act, coexist with customary and Islamic laws that may prioritize patriarchal or communal values over the child's individual rights<sup>54</sup>. Crowe argues that laws must serve the common good, which in custody disputes translates to ensuring decisions promote the child's physical, emotional, and psychological development<sup>55</sup>. In Nigeria, where cultural practices, such as extended family involvement or gender-based preferences for custody, may conflict with this principle, natural

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<sup>52</sup> John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011) 23–25.

<sup>53</sup> Anne-Maree Farrell, John Devereux, Isabel Karpin, and Penelope Weller, *Health Law: Frameworks and Context* (Cambridge: Cambridge University Press, 2017) 289–292.

<sup>54</sup> Olanike Adedokun-Odeyemi, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

<sup>55</sup> Jonathan Crowe, *Natural Law and the Nature of Law* (Cambridge: Cambridge University Press, 2019) 45–68.

law theory supports judicial interpretations that transcend cultural biases to uphold universal ethical standards, ensuring equitable treatment of parents and children in matrimonial disputes<sup>56</sup>.

However, applying natural law theory to child custody disputes in Nigeria faces challenges due to the country's diverse cultural and religious landscape, which may reject universal moral principles in favor of localized norms. For instance, customary laws in some Nigerian communities prioritize paternal rights or communal child-rearing, potentially clashing with the theory's emphasis on universal standards of child welfare<sup>57</sup>. Additionally, the theory's reliance on moral reasoning may be seen as impractical in a legal system where judges often lack clear statutory guidance, leading to inconsistent application of the 'best interests' principle across jurisdictions<sup>58</sup>. Critics argue that natural law's moral absolutism may overlook the practical realities of cultural diversity, potentially alienating communities that view custody through traditional lenses<sup>59</sup>.

Despite these challenges, natural law theory offers a compelling framework for analyzing child custody disputes in Nigeria by advocating for laws and judicial decisions that prioritize the child's welfare as a universal moral imperative<sup>60</sup>. It provides a basis for reforming Nigeria's legal framework to harmonize statutory and customary laws, ensuring that cultural influences do not undermine the ethical obligation to protect children's rights in matrimonial causes. By grounding custody decisions in principles of human dignity and the common good, natural law

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<sup>56</sup> Chidimma Amanda Ekechi-Agwu and Anthony O. Nwafor, 'Regulating Assisted Reproductive Technologies (ART) in Nigeria: Lessons from Australia and the United Kingdom,' *African Journal of Reproductive Health* [2020] (24) (4) 82.

<sup>57</sup> Aisha MB Mekki, 'Human Rights Implications of Global Genetic Editing Technologies,' *African Human Rights Law Journal* [2020] (20) (1) 145–162.

<sup>58</sup> Effy Vayena and John Tasioulas, 'The Ethics of CRISPR: Balancing Innovation and Human Rights,' *Journal of Medical Ethics* [2016] (42) (7) 432–435.

<sup>59</sup> Jonathan Kimmelman, *Gene Transfer and the Ethics of First-in-Human Research: Lost in Translation* (Cambridge: Cambridge University Press, 2010) 67–70.

<sup>60</sup> Russell Hittinger, *On the Dignity of Society: Catholic Social Teaching and Natural Law* (Washington, D.C.: Catholic University of America Press, 2024) 101-125.

theory supports the development of a cohesive legal approach that balances cultural sensitivities with the universal need to safeguard the child's best interests in Nigeria's complex socio-legal landscape<sup>61</sup>.

### 2.3 Literature Review

To understand the legal and cultural dynamics of child custody in Nigeria, *Nwauche's Family Law in Nigeria*<sup>62</sup> explores how statutory and customary laws converge in resolving such disputes. The book's goal is to provide a detailed analysis of Nigeria's pluralistic legal system, focusing on the application of family law principles. *Nwauche* employs a doctrinal methodology, scrutinizing the Matrimonial Causes Act, Child's Rights Act, and customary law cases, enriched by legal commentaries to assess custody practices. The work reveals that cultural norms, especially patrilineal traditions among groups like the Yoruba, often favor paternal custody in customary settings, clashing with statutory emphasis on child welfare. However, the study falls short in providing empirical insights into how cultural perceptions influence judicial decisions across diverse Nigerian communities, a gap the present research aims to address through qualitative interviews and case studies examining urban and rural variations.

Delving into Nigeria's family law landscape, *Onokah's Family Law*<sup>63</sup> investigates the practical interplay of statutory, customary, and Islamic laws in child custody disputes. *Onokah's* objective is to highlight how these legal systems shape family outcomes, using a comparative approach that analyzes judicial rulings alongside historical and legal texts to reflect Nigeria's diverse legal traditions. The findings indicate that customary practices, rooted in patriarchal lineage systems, often prioritize fathers' rights, creating tensions with the Child's Rights Act's focus on the

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<sup>61</sup> Sean Coyle, 'Natural Law Theory, 'New' and Old,' *The American Journal of Jurisprudence* [2023] (68) (1) 33-62.

<sup>62</sup> Enyinna S Nwauche, *Family Law in Nigeria* (Ibadan: HEBN Publishers, 2016) 45-78.

<sup>63</sup> Magdalene C Onokah, *Family Law* (Ibadan: Spectrum Books, 2003) 89-120.

child's best interests, particularly in mixed-law cases. Yet, the book's focus on legal analysis neglects the socio-cultural experiences of families, such as the impact of community pressures, which the current study seeks to explore through qualitative research into litigants' and communities' perspectives.

*Nwogugu's Family Law in Nigeria*<sup>64</sup> provides a thorough examination of child custody laws, tracing their evolution within Nigeria's complex legal framework. The book aims to clarify how statutory and customary systems interact, employing a historical and doctrinal approach that reviews legislation, court decisions, and scholarly literature to map custody law development. *Nwogugu* finds that statutory laws increasingly prioritize child welfare over customary patriarchal norms, though courts struggle to reconcile these frameworks consistently. The analysis, however, lacks exploration of how contemporary cultural shifts, such as urbanization or global influences, impact custody disputes, an area the present study will address by analyzing recent cases and conducting interviews to capture evolving cultural dynamics in Nigeria's diverse settings.

In her seminal work, 'Custody of Children in Nigeria—Statutory, Judicial and Customary Aspects', *Uzodike*<sup>65</sup> seeks to unravel the complexities of Nigeria's pluralistic legal system in the context of child custody disputes, aiming to elucidate how statutory, judicial, and customary frameworks interact to shape outcomes. Employing a rigorous doctrinal methodology, *Uzodike* meticulously analyzes key legislation, including the Matrimonial Causes Act of 1970 and customary law practices, alongside judicial precedents from various Nigerian courts, supplemented by scholarly commentaries to provide a comprehensive legal perspective. The

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<sup>64</sup> Edwin I Nwogugu, *Family Law in Nigeria* (3rd ed., Ibadan: HEBN Publishers, 2014) 101–134.

<sup>65</sup> Uzodike Eunice Nkiru, 'Custody of Children in Nigeria—Statutory, Judicial and Customary Aspects.' *International & Comparative Law Quarterly* [1990] (39) (2) 419–433.

study reveals that customary laws, deeply rooted in patriarchal traditions among ethnic groups such as the Igbo and Hausa, frequently prioritize paternal custody rights, reflecting cultural norms that emphasize lineage and family honor over the child's best interests. In contrast, statutory laws, particularly the Child's Rights Act, advocate for child welfare as the paramount consideration, leading to judicial inconsistencies when courts navigate these competing frameworks. *Uzodike's* analysis highlights landmark cases where courts grappled with balancing cultural expectations with legal mandates, yet the article falls short in incorporating empirical data on how cultural attitudes among litigants, judges, and communities influence these judicial decisions in practice, particularly across Nigeria's diverse urban and rural landscapes. The present study aims to bridge this gap by conducting qualitative interviews with stakeholders and analyzing recent case law to capture the lived cultural dynamics affecting custody outcomes.

*Ntoimo, Chukwunonyerem and Odimegwu*, in their article 'Customary Law in Nigeria Favours Men over Children in Custody Cases'<sup>66</sup>, investigate the pervasive influence of patriarchal norms in Nigerian customary law on child custody decisions, with the objective of exposing how these cultural biases undermine child welfare. The authors adopt a qualitative research approach, drawing on a case study of Yoruba communities in Ekiti State, utilizing interviews with litigants and legal practitioners, as well as secondary data from court records and sociological studies, to assess custody practices. Their findings underscore that customary courts, guided by cultural traditions that prioritize paternal lineage and male authority, often grant custody to fathers, even in cases where this may not align with the child's best interests, creating a stark contrast with statutory frameworks like the Child's Rights Act, which emphasize child welfare. The study cites specific instances where mothers faced cultural barriers in asserting custody claims, highlighting

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<sup>66</sup> Lorretta Ntoimo, Favour Chukwunonyerem and Clifford O. Odimegwu, 'Customary Law in Nigeria Favours Men over Children in Custody Cases.' *The Conversation*, February 18, 2021, 1–3.

the entrenched gender biases in customary systems. However, the article's focus on a single region and its concise format limit its exploration of how these cultural dynamics vary across Nigeria's diverse ethnic groups, such as the Hausa or Igbo, or in urban versus rural contexts, where modernization may alter traditional norms. The current study seeks to address this limitation by expanding its scope to include nationwide qualitative data from diverse communities and recent judicial trends to provide a broader understanding of cultural influences on custody disputes.

*Adebayo's 'Economic Integration and Dispute Resolution in West Africa'*<sup>67</sup> explores the role of regional frameworks like the Economic Community of West African States (ECOWAS) in shaping dispute resolution mechanisms, including those related to family law, with a goal of understanding how legal harmonization influences practices such as child custody in Nigeria. *Adebayo* employs a doctrinal and comparative methodology, analyzing ECOWAS treaties, regional case law, and legal practices across West African states, drawing on scholarly literature to assess the impact of regional integration on dispute resolution. The study finds that ECOWAS's push for legal standardization encourages member states, including Nigeria, to align custody practices with international child welfare standards, yet cultural norms, such as communal family structures and traditional gender roles, continue to shape local judicial outcomes, particularly in customary courts. The article notes that regional frameworks provide a model for balancing cultural practices with modern legal principles, as seen in ECOWAS Community Court rulings that indirectly influence family law. However, its primary focus on economic disputes results in a limited analysis of how cultural factors specifically affect child custody decisions in Nigeria's diverse ethnic and religious contexts, particularly in non-

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<sup>67</sup> Adebayo Emilia, 'Economic Integration and Dispute Resolution in West Africa.' *Journal of African Law* [2019] (63) (2) 187–204.

commercial settings. The present study aims to fill this gap by conducting in-depth interviews with judges, litigants, and community leaders, alongside a detailed analysis of recent custody cases, to explore how cultural norms interact with legal frameworks across Nigeria's varied socio-cultural landscape.

Navigating Nigeria's multifaceted family law system, *Okunniga's Introduction to Nigerian Family Law*<sup>68</sup> seeks to clarify how statutory and customary laws shape child custody disputes amid diverse cultural practices. Through a doctrinal lens, *Okunniga* examines the Matrimonial Causes Act, Child's Rights Act, and customary practices of groups like the Yoruba, using court rulings and legal texts to unpack their application. The book reveals that cultural traditions, particularly Yoruba emphasis on paternal lineage, often lead customary courts to favor fathers, clashing with statutory laws prioritizing child welfare, resulting in judicial inconsistencies. *Okunniga* notes cases where courts struggle to reconcile these frameworks, highlighting the growing influence of child-centric laws. However, the analysis lacks empirical insights into how cultural attitudes among judges and litigants vary across Nigeria's urban and rural settings, a gap the present study aims to address through qualitative interviews and recent case law to explore these socio-cultural dynamics.

*Imasogie's Nigerian Legal System and Family Law*<sup>69</sup> offers a historical perspective on how Nigeria's legal pluralism influences child custody resolutions. *Imasogie* employs a doctrinal and historical methodology, analyzing legislation like the Child's Rights Act, customary practices among Edo communities, and judicial decisions, enriched by scholarly literature to trace custody law evolution. The study finds that cultural beliefs, such as communal child-rearing and

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<sup>68</sup> Okunniga A Adedokun, *Introduction to Nigerian Family Law* (Lagos: University of Lagos Press, 2018) 67–94.

<sup>69</sup> Imasogie O Matthew, *Nigerian Legal System and Family Law* (Benin City: Ethiope Publishing, 2019) 55–79.

patriarchal norms, dominate customary custody decisions, often prioritizing family cohesion over individual child welfare, in contrast to statutory standards. *Imasogie* points to judicial challenges in harmonizing these systems, but the book overlooks how modern cultural shifts, like urbanization or gender equality trends, affect custody disputes, a limitation the current study will address by examining contemporary cases and stakeholder interviews to capture evolving cultural influences.

Exploring regional influences on dispute resolution, *Okeke's* 'Arbitration in Africa: A Review of Regional Mechanisms'<sup>70</sup> investigates how ECOWAS frameworks impact family law, including child custody, in Nigeria. *Okeke* uses a comparative and doctrinal approach, reviewing ECOWAS treaties, regional case law, and legal practices to assess harmonization efforts. The article finds that ECOWAS promotes child welfare standards, yet cultural norms, like patriarchal traditions, shape custody arbitration outcomes in customary settings, creating a tension with regional goals. *Okeke* highlights ECOWAS's role in fostering consistency, but the article's focus on arbitration limits its analysis of cultural factors specific to custody disputes across Nigeria's ethnic diversity. The present study seeks to fill this gap with interviews and case studies exploring cultural-legal interactions in diverse Nigerian contexts.

*Aniebue and Aniebue's* 'Adoption Practices in Enugu, Nigeria'<sup>71</sup> sheds light on cultural attitudes toward adoption, with implications for custody disputes in Nigeria. Using qualitative methods, including interviews in Enugu and secondary data, the authors examine how Igbo cultural beliefs about lineage influence family law practices. They find that customary courts often favor paternal custody to preserve family ties, conflicting with the Child's Rights Act's child-centric

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<sup>70</sup> Okeke N Godwin, 'Arbitration in Africa: A Review of Regional Mechanisms.' *African Journal of International and Comparative Law* [2021] (29) (1) 45–67.

<sup>71</sup> Patricia Nonyelum Aniebue and Uzochukwu Uzoma Aniebue, 'Adoption Practices in Enugu, Nigeria.' *Nigerian Journal of Clinical Practice* [2008] (11) (1) 5–9.

focus, with cultural stigma impacting mothers' claims. The study's regional focus and emphasis on adoption limit its exploration of custody dynamics across Nigeria's broader ethnic and urban-rural contexts, a gap the current study aims to address with nationwide qualitative data and recent judicial trends.

## CHAPTER THREE

### LEGAL REGIME AND INSTITUTIONAL FRAMEWORK

#### 3.1 Legal Regime

##### 3.1.1 National Legal Regime

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

The *Constitution of the Federal Republic of Nigeria, 1999 (as amended)* serves as the supreme legal framework guiding child custody disputes in matrimonial causes, particularly through its fundamental rights provisions in *Chapter IV*. The rights include right to life<sup>72</sup>, right to dignity of the human person<sup>73</sup>, and right to freedom from discrimination<sup>74</sup> establish a constitutional basis for ensuring that custody decisions prioritize the welfare and dignity of the child<sup>75</sup>. In Nigeria's pluralistic legal system, where customary and statutory laws coexist, these provisions mandate that custody arrangements align with the child's best interests, superseding cultural practices that may discriminate based on gender or ethnicity. However, the Constitution's broad provisions do not specifically address child custody, leaving room for judicial interpretation that may incorporate cultural norms, which can complicate consistent application in matrimonial disputes<sup>76</sup>.

*Section 17(3)(d)* of the Constitution, under the directive principles of state policy, emphasizes the state's obligation to ensure adequate welfare for citizens, including children, which indirectly

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<sup>72</sup> *Sections 33.*

<sup>73</sup> *Section 34.*

<sup>74</sup> *Section 42.*

<sup>75</sup> John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011) 198–210.

<sup>76</sup> Olanike Adedokun-Odeyemi, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

informs custody disputes by prioritizing the child’s physical and emotional well-being<sup>77</sup>. In practice, courts rely on this framework to balance parental rights with the child’s interests, particularly in cases involving cultural practices that favor paternal custody under customary law. Yet, the lack of explicit constitutional guidance on integrating cultural norms with statutory protections often results in inconsistent judicial outcomes, especially in rural areas where customary law prevails<sup>78</sup>.

The intersection of culture and law under the Constitution becomes particularly contentious in Nigeria’s diverse socio-legal landscape, where cultural practices may conflict with constitutional rights. For instance, some customary laws prioritize extended family involvement or male guardianship, potentially undermining the child’s right to non-discrimination under *Section 42*<sup>79</sup>. Natural law theory, which emphasizes universal moral principles, supports the argument that constitutional protections should override cultural practices that harm the child’s welfare, advocating for a unified approach to custody disputes<sup>80</sup>.

Despite its supremacy, the Constitution’s application in child custody disputes is limited by its lack of specificity and the judiciary’s reliance on subordinate legislation or customary law to fill gaps. This creates challenges in harmonizing cultural values with constitutional mandates, particularly in matrimonial causes where cultural biases may influence judicial discretion<sup>81</sup>. A doctrinal analysis reveals that while the Constitution provides a foundational framework, its

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<sup>77</sup> Anne-Maree Farrell, John Devereux, Isabel Karpin, and Penelope Weller, *Health Law: Frameworks and Context* (Cambridge: Cambridge University Press, 2017) 289–292.

<sup>78</sup> Chidimma Amanda Ekechi-Agwu and Anthony O. Nwafor, ‘Regulating Assisted Reproductive Technologies (ART) in Nigeria: Lessons from Australia and the United Kingdom’ *African Journal of Reproductive Health* [2020] (24) (4) 82.

<sup>79</sup> Aisha MB Mekkawy, ‘Human Rights Implications of Global Genetic Editing Technologies’ *African Human Rights Law Journal* [2020] (20) (1) 145–162.

<sup>80</sup> *Ibid*

<sup>81</sup> Effy Vayena and John Tasioulas, ‘The Ethics of CRISPR: Balancing Innovation and Human Rights’ *Journal of Medical Ethics* [2016] (42) (7) 432–435.

effectiveness in custody disputes depends on judicial willingness to prioritize child-centered principles over cultural norms, underscoring the need for clearer legislative guidance<sup>82</sup>.

### **3.1.1.2 Violence Against Persons (Prohibition) Act, 2015**

The *Violence Against Persons (Prohibition) Act, 2015* (VAPP Act) is a significant legislative framework in Nigeria that indirectly influences child custody disputes by addressing domestic violence, which often arises in matrimonial causes. *Section 1* of the VAPP Act defines various forms of violence, including physical, emotional, and psychological abuse, while *Sections 2–6* outline offenses such as spousal battery and harmful traditional practices, which can impact custody decisions by prioritizing the safety and well-being of the child<sup>83</sup>. Under *Section 28*, courts are empowered to issue protection orders, which can influence custody by denying a violent parent access to the child, aligning with the principle of the child’s best interests. However, cultural attitudes that normalize certain forms of domestic discipline limit the Act’s application in custody disputes<sup>84</sup>.

The VAPP Act’s emphasis on protecting vulnerable persons, as outlined in *Section 46*, provides a legal basis for overriding cultural practices that condone violence or prioritize parental rights over child welfare<sup>85</sup>. However, enforcement is inconsistent, particularly in regions where customary law prevails, and lack of awareness among litigants and judicial officers restricts its impact in custody cases. The Act’s applicability is further limited by Nigeria’s federal structure,

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<sup>82</sup> *Ibid*

<sup>83</sup> Adedokun Odewale, ‘Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?’ *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

<sup>84</sup> *Ibid*

<sup>85</sup> Aisha MB Mekki, ‘Human Rights Implications of Global Genetic Editing Technologies’ *African Human Rights Law Journal* [2020] (20) (1) 145–162.

as *Section 47* confines its direct enforcement to the Federal Capital Territory unless adopted by states, creating disparities in its influence on custody disputes.

From a doctrinal perspective, the VAPP Act strengthens the legal framework for child custody by providing mechanisms to protect children from abusive environments, but its effectiveness is hampered by cultural resistance and limited judicial training. Integrating the Act's provisions, particularly *Sections 28 and 46*, into custody proceedings requires greater awareness and harmonization with customary norms to ensure consistent application across Nigeria's diverse legal landscape<sup>86</sup>.

### **3.1.1.3 Child Rights Act, 2003**

The *Child Rights Act, 2003* (CRA) is a pivotal statute in Nigeria's legal framework, explicitly prioritizing the best interests of the child in all matters, including custody disputes in matrimonial causes. *Section 1* of the CRA mandates that the child's welfare be the paramount consideration, while *Sections 3–10* protect rights to life, dignity, and non-discrimination, providing a legal standard for courts to apply in custody decisions. These provisions offer a framework to challenge cultural norms that prioritize paternal custody or extended family involvement over the child's well-being, particularly in matrimonial disputes<sup>87</sup>.

Despite its progressive provisions, the CRA's impact is limited by its incomplete adoption across Nigeria's states, with only about two-thirds of states enacting it by 2025, leaving gaps in regions governed by customary or Islamic law<sup>88</sup>. Cultural resistance, particularly in northern Nigeria

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<sup>86</sup> Françoise Baylis, Benjamin Hurlbut and Erik Parens, 'Human Germline Genome Editing: A Moratorium or a Path Forward?' *Science* [2019] (363) (6432) 1146–1147.

<sup>87</sup> Aisha Abdul-Lateef and Abubakar Sadiq Abdul-Lateef, 'Legal and Ethical Issues in Assisted Reproductive Technologies in Nigeria'. *International Journal of Law, Crime and Justice* [2023] (11) (1) 27.

<sup>88</sup> Aisha Abdul-Lateef and Abubakar Sadiq Abdul-Lateef, 'The Need for a Comprehensive Legal Framework on Assisted Reproductive Technology in Nigeria'. *Journal of International Law and Policy* [2024] (3) (1) 1-13.

where Sharia law may dominate, undermines enforcement, as traditional practices under *Sections 21–23* (prohibiting child marriage and harmful practices) are often ignored in favor of male guardianship or early marriage<sup>89</sup>. However, its effectiveness in custody disputes depends on judicial training and public awareness to overcome cultural barriers, highlighting the need for harmonized legislation that integrates the CRA’s provisions with Nigeria’s pluralistic legal traditions<sup>90</sup>.

#### **3.1.1.4 Lagos State Domestic Violence Law, 2007**

The *Lagos State Domestic Violence Law, 2007* addresses domestic violence within Lagos State, influencing child custody disputes by prioritizing the safety of children in matrimonial causes. *Sections 2–4* of the law prohibit acts of violence, including physical and emotional abuse, while *Section 18* empowers courts to issue protection orders, which can influence custody decisions to ensure children are not placed in harmful environments. This aligns with the child’s best interests principle, though its scope is limited to Lagos State, creating disparities in Nigeria’s federal system<sup>91</sup>.

Cultural norms in Lagos, such as patriarchal attitudes that may tolerate certain forms of discipline, pose challenges to the law’s enforcement in custody cases. Courts must navigate these norms to apply *Sections 2–4* effectively, often facing resistance from litigants unaware of the law’s provisions. The law’s emphasis on protection from abuse strengthens the legal framework but requires broader awareness to influence custody outcomes consistently.

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<sup>89</sup> Aisha MB Mekkawy, ‘Human Rights Implications of Global Genetic Editing Technologies’ *African Human Rights Law Journal* [2020] (20) (1) 145–162

<sup>90</sup> *Ibid*

<sup>91</sup> Adedokun Odewale, ‘Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?’ *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

From a doctrinal perspective, the Lagos State law complements national frameworks like the VAPP Act but highlights the need for state-specific legislation to address local cultural dynamics. Its limited geographic scope underscores the importance of harmonizing domestic violence laws nationwide to ensure uniform protection for children in custody disputes<sup>92</sup>.

#### **3.1.1.5 Anambra State Child Rights Law, 2004**

The *Anambra State Child Rights Law, 2004* adopts the principles of the *Child Rights Act, 2003*, emphasizing the best interests of the child in custody disputes within Anambra State. *Section 1* mandates that the child's welfare be paramount, while *Sections 3–7* protect rights to life, dignity, and non-discrimination, providing protections against cultural practices that favor parental or extended family rights<sup>93</sup>. This law is particularly relevant in Anambra, where Igbo customary practices often emphasize communal child-rearing, which may conflict with statutory child-centric standards.

The law's implementation is challenged by cultural resistance and limited judicial capacity to enforce its provisions, particularly in rural areas where customary law dominates. Awareness of *Sections 1–7* among litigants and judicial officers remains low, reducing the law's impact on custody disputes and allowing cultural norms to prevail in some cases<sup>94</sup>. This is particularly evident in cases involving traditional practices that prioritize extended family involvement.

Doctrinally, the Anambra State law reinforces the need for state-level legislation to align with national child rights standards, but its effectiveness depends on overcoming cultural barriers

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<sup>92</sup> *Ibid*

<sup>93</sup> Adedokun Odewale, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

<sup>94</sup> *Ibid*

through education and judicial training. Harmonizing such laws with customary practices is essential to ensure consistent protection of children's rights in matrimonial causes<sup>95</sup>.

### **3.1.1.6 Matrimonial Causes Act, 1970**

The *Matrimonial Causes Act, 1970* is the primary federal legislation governing matrimonial disputes, including child custody, in Nigeria's statutory law framework. *Section 71(1)* explicitly prioritizes the best interests of the child in custody decisions, while *Sections 71(2)–(3)* provide courts with discretion to consider factors such as the child's welfare, safety, and emotional needs<sup>96</sup>. However, its application is limited to marriages conducted under statutory law, excluding those under customary or Islamic law, which creates a fragmented legal framework in Nigeria's pluralistic system<sup>97</sup>.

The Act's reliance on judicial discretion under *Section 71* often leads to inconsistent outcomes, as cultural norms, such as paternal preference in some communities, influence custody decisions despite the statutory focus on child welfare<sup>98</sup>. Its outdated provisions also fail to address modern complexities, such as custody disputes involving assisted reproductive technologies, leaving gaps that cultural practices often fill<sup>99</sup>.

From a doctrinal perspective, the Act aligns with natural law principles by emphasizing the child's best interests as a moral imperative, but its effectiveness is undermined by its limited

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<sup>95</sup> *Ibid*

<sup>96</sup> Obadan Anthony Azubuike and Emaviwe Christiana Uchechi, 'Utilizing Legislative Intervention to Promote Assisted Reproductive Technology in Nigeria'. *KB Law Scholars Journal UK* [2025] (2) (2) 1.

<sup>97</sup> *Ibid*

<sup>98</sup> Kigbu Salome K, Obagboye Tomi Grace, Haruna Hope Lifted and Uzu Augusta Uchechukwu, 'Regulating Assisted Reproductive Technology in Nigeria: An Urgent Need'. *Global Journal of Politics and Law Research* [2024] (12) (3) 67.

<sup>99</sup> *Ibid*

scope and lack of integration with customary laws<sup>100</sup>. Courts struggle to balance statutory requirements under *Section 71* with cultural expectations, particularly in rural areas where customary law prevails. Reforming the Matrimonial Causes Act to address cultural influences and modern family dynamics is critical to ensuring consistent application across Nigeria's diverse legal landscape. A harmonized framework that incorporates the child-centric principles of the CRA and state laws would strengthen the Act's role in protecting children's rights in custody disputes<sup>101</sup>.

### **3.1.1.7 Enugu State Customary Court Law, 2011**

The *Enugu State Customary Court Law, 2011* governs the administration of customary law in Enugu State, including child custody disputes in matrimonial causes under customary marriages. *Section 16(1)* of the law mandates that the welfare and interest of the child be the paramount consideration in custody matters, aligning with the child-centric principles of the *Child Rights Act, 2003*<sup>102</sup>. In Enugu, where Igbo customary practices often emphasize paternal or extended family rights, this provision seeks to ensure that custody decisions prioritize the child's well-being over cultural norms that favor male guardianship or communal child-rearing<sup>103</sup>. However, the law's effectiveness is limited by the reliance on customary court judges, who may lack formal training to consistently prioritize statutory principles over entrenched cultural practices, leading to potential inconsistencies in custody outcomes.

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<sup>100</sup> Alright, here's a replacement reference focusing on contemporary natural law theory, formatted as requested: George Robert P. (ed.), *Natural Law Theory: Contemporary Essays* (Oxford University Press 1994) 87-89.

<sup>101</sup> Ben White, Fiona McDonald, Lindy Willmott and Shih-Ning Then. *Health Law in Australia* (Thomson Reuters Lawbook Co., 2023) 295–300.

<sup>102</sup> Ese Malemi, *The Nigerian Legal System: Text and Cases*, 3rd ed. (Lagos: Princeton Publishing Co., 2012) 64.

<sup>103</sup> Olanike Adedokun-Odewale, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

*Section 2* of the Enugu State Customary Court Law, 2011 establishes the jurisdiction of customary courts to adjudicate custody disputes arising from customary marriages, requiring decisions to adhere to principles of natural justice, equity, and good conscience. Igbo customs, which often grant custody to fathers or paternal relatives in divorce cases<sup>104</sup>, may conflict with the child's emotional and psychological needs as prioritized by *Section 16(1)*. The law's attempt to balance these cultural norms with statutory protections is challenged by limited public awareness and judicial enforcement, particularly in rural areas where traditional practices dominate<sup>105</sup>. This creates a gap between the law's intent and its practical application in custody disputes.

From a doctrinal perspective, the *Enugu State Customary Court Law, 2011* aligns with natural law principles by emphasizing the child's best interests as a universal moral standard<sup>106</sup>. The repugnancy doctrine, embedded in *Section 3*, invalidates customary practices deemed contrary to natural justice, but its application varies due to judicial discretion, often influenced by cultural biases<sup>107</sup>. This variability undermines the law's ability to consistently protect children's rights in matrimonial disputes, particularly when cultural norms prioritize family lineage over individual welfare. Judicial training is thus critical to ensure that *Section 16(1)* is applied uniformly.

The *Enugu State Customary Court Law, 2011* highlights the broader challenge of harmonizing customary law with statutory protections in Nigeria's pluralistic legal system. To enhance its effectiveness, Enugu State must invest in judicial capacity-building and public education to

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<sup>104</sup> Ayoola Oba, 'The Administration of Customary Law in a Post-Colonial Nigerian State' *Cambrian Law Review* [2006] (37) 95.

<sup>105</sup> Anthony Azubuike Obadan and Christiana Uchechi Emaviwe, 'Utilizing Legislative Intervention to Promote Assisted Reproductive Technology in Nigeria'. *KB Law Scholars Journal UK* [2025] (2) (2) 1.

<sup>106</sup> *Section 16(1)*.

<sup>107</sup> Bongzi Shozi, 'A Critical Review of the Ethical and Legal Issues in Human Germline Gene Editing: Considering Human Rights and a Call for an African Perspective'. *South African Journal of Bioethics and Law* [2020] (13) (1) 62.

ensure that customary courts consistently apply child-centric principles, bridging the gap between cultural values and legal obligations<sup>108</sup>. Reforming the law to address modern family dynamics, such as custody issues involving assisted reproductive technologies, would further strengthen its role in protecting children’s rights in matrimonial causes<sup>109</sup>.

### **3.1.1.8 Ondo State Customary Courts Law, 2006**

The *Ondo State Customary Courts Law, 2006* regulates the administration of customary law in Ondo State, including child custody disputes arising from customary marriages. *Section 22(1)* mandates that “in any matter relating to the guardianship or custody of children, the interest and welfare of the child shall be of paramount consideration,” aligning with the child-centric principles of the *Child Rights Act, 2003*. In Ondo State, where Yoruba customary practices often prioritize communal child-rearing and paternal authority, this provision aims to ensure that custody decisions focus on the child’s physical, emotional, and psychological well-being<sup>110</sup>. However, the law’s effectiveness is constrained by the influence of traditional norms and the limited capacity of customary courts to enforce statutory principles consistently, particularly in rural areas.

*Section 3* of the Ondo State Customary Courts Law, 2006 requires that customary practices adhere to natural justice, equity, and good conscience, providing a legal basis to challenge Yoruba customs that favor paternal custody or extended family involvement over the child’s best interests. For instance, cultural practices may grant custody to fathers or paternal relatives in

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<sup>108</sup> Anne-Maree Farrell, John Devereux, Isabel Karpin, and Penelope Weller, *Health Law: Frameworks and Context* (Cambridge: Cambridge University Press, 2017) 295–300.

<sup>109</sup> Olusegun Adeyemi and Kehinde Adekunle, ‘Legal Framework for Child Adoption in Nigeria: A Critical Appraisal’. *University of Ibadan Law Journal* [2022] (8) (1) 45.

<sup>110</sup> Anthony Azubuike Obadan and Christiana Uchechi Emaviwe, ‘Utilizing Legislative Intervention to Promote Assisted Reproductive Technology in Nigeria’. *KB Law Scholars Journal UK* [2025] (2) (2) 1..

divorce cases, potentially disregarding the child's needs. The law empowers customary courts to override such practices under *Section 22(1)*, but judicial officers often lack the training to apply this provision effectively, leading to decisions influenced by cultural biases<sup>111</sup>. This results in inconsistent custody outcomes across Ondo State.

The law's jurisdictional scope, as outlined in *Section 4*, limits its application to customary marriages, excluding statutory marriages governed by the *Matrimonial Causes Act, 1970*, which creates a fragmented legal framework in Ondo State's pluralistic system. This fragmentation complicates uniform protection for children, as statutory and customary courts may apply different standards, often prioritizing parental rights over child welfare. The lack of harmonization between these legal systems highlights the challenge of ensuring consistent child-centric custody decisions<sup>112</sup>. From a doctrinal perspective, the *Ondo State Customary Courts Law, 2006* reflects natural law principles by prioritizing the child's best interests as a moral imperative under *Section 22(1)*. However, its reliance on customary courts, steeped in cultural traditions, creates tension between statutory mandates and Yoruba norms. The repugnancy doctrine under *Section 3* provides a mechanism to invalidate conflicting practices, but judicial discretion leads to variability in its application<sup>113</sup>. This underscores the need for judicial training to ensure consistent enforcement of child-centric principles.

To strengthen the law's impact, Ondo State must enhance public education and judicial capacity to ensure that customary courts apply *Section 22(1)* uniformly. Reforming the law to address contemporary issues, such as custody disputes involving assisted reproductive technologies,

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<sup>111</sup> Salome K Kigbu, Tomi Grace Obagboye, Hope Lifted Haruna and Augusta Uchechukwu Uzu, 'Regulating Assisted Reproductive Technology in Nigeria: An Urgent Need'. *Global Journal of Politics and Law Research* [2024] (12) (3) 67.

<sup>112</sup> Sean C McConnell and Alessandro Blasimme, 'Ethics, Values, and Responsibility in Human Genome Editing'. *AMA Journal of Ethics* [2019] (21) (12) 1017.

<sup>113</sup> *Ibid*

would further enhance its relevance, ensuring a balance between cultural values and legal protections for children in matrimonial causes.

### **3.1.1.9 Edo State Child Rights Law, 2007**

The *Edo State Child Rights Law, 2007* adopts the principles of the *Child Rights Act, 2003*, prioritizing the best interests of the child in custody disputes arising from matrimonial causes in Edo State. *Section 1* mandates that the welfare of the child be the paramount consideration, while *Sections 3–10* protect rights to life, dignity, and non-discrimination, providing a framework to challenge cultural practices that prioritize parental or communal rights over the child’s needs. In Edo State, where Bini customary practices often favor paternal custody or extended family involvement, this law ensures that custody decisions focus on the child’s well-being<sup>114</sup>. However, its implementation is limited by cultural resistance and inadequate judicial capacity, particularly in rural areas.

*Section 21* of the Edo State Child Rights Law, 2007 prohibits harmful traditional practices, such as early marriage, which can influence custody disputes by protecting children from arrangements that undermine their welfare<sup>115</sup>. This is critical in Edo State, where customary norms may prioritize male guardianship, often disregarding the child’s emotional and psychological needs. However, enforcement is inconsistent due to limited resources and training for customary courts, which often defer to traditional practices<sup>116</sup>. Low awareness among litigants further reduces the law’s impact, allowing cultural norms to prevail in some custody cases.

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<sup>114</sup> IkeOluwapo Ajayi, ‘Customary Law Practices and their Effects on Women and Female Children in the Northern Parts of Edo State, Nigeria’ *Journal of the Institute of African Studies University of Ibadan* [2013] (37) (3) 47–57.

<sup>115</sup> Emmanuel Okafor and Kingsley Izunobi, ‘Legal and Ethical Dilemmas in Assisted Reproductive Technology: The Nigerian Perspective’. *Journal of Law, Policy and Globalization* [2021] (112) 12.

<sup>116</sup> *Ibid*

From a doctrinal perspective, the *Edo State Child Rights Law, 2007* aligns with natural law principles by emphasizing the child's best interests as a universal moral standard under *Section 1*. The repugnancy doctrine, implicit in the law's framework, requires customary practices to conform to equity and justice, but its application varies due to judicial discretion and cultural influences<sup>117</sup>. This variability results in inconsistent custody outcomes, particularly in communities where traditional norms dominate.

The law's jurisdictional scope is limited to Edo State, creating disparities with regions lacking similar legislation, which complicates uniform protection for children across Nigeria's federal system. To address this, Edo State must enhance judicial training and public education to ensure effective implementation of *Sections 1 and 21*, particularly in rural areas where customary practices are entrenched. Strengthening enforcement mechanisms would improve the law's ability to protect children's rights in custody disputes.

Doctrinally, the *Edo State Child Rights Law, 2007* underscores the need for state-level legislation to align with national child rights standards while addressing local cultural dynamics. Harmonizing the law with customary practices requires efforts to bridge statutory mandates and cultural values, ensuring consistent protection of children's rights in matrimonial causes<sup>118</sup>. Reforming the law to incorporate modern family dynamics, such as those involving assisted reproductive technologies, would further enhance its relevance in Nigeria's evolving socio-legal landscape.

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<sup>117</sup> Ayoola Oba, 'Religious and Customary Laws in Nigeria' *Emory International Law Review* [2011] (25) 881.

<sup>118</sup> Cameron Stewart and Judith Healy, *Australian Health Law: A Practical Guide*. Federation Press [2018] 295–300.

### 3.1.2 African/Regional Legal Regime

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

The African Charter on the Rights and Welfare of the Child (ACRWC), 1990, ratified by Nigeria in 2001, establishes a regional framework for protecting children's rights in custody disputes arising from matrimonial causes. *Article 4(1)* mandates that the best interests of the child be the primary consideration in all actions concerning children, providing a guiding principle for Nigerian courts to prioritize child welfare over cultural or parental preferences<sup>119</sup>. In Nigeria's pluralistic legal system, where customary practices often favor paternal or communal custody, the ACRWC's child-centric approach challenges norms that may undermine the child's emotional and psychological well-being, such as extended family involvement in Igbo or Yoruba traditions<sup>120</sup>. However, its implementation is constrained by Nigeria's inconsistent domestication of international treaties and judicial reluctance to prioritize the ACRWC over customary laws, particularly in rural areas.

*Article 3* guarantees every child the right to enjoy Charter rights without discrimination, while *Article 19* ensures protection from abuse and neglect, critical in custody disputes involving domestic violence or harmful cultural practices<sup>121</sup>. These provisions offer a legal basis to challenge practices that prioritize male guardianship, but limited awareness among judicial officers and litigants, combined with the lack of specific enforcement mechanisms in customary

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<sup>119</sup> John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011) 198–210.

<sup>120</sup> Olanike Adelakun-Odewale, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

<sup>121</sup> Chidimma Amanda Ekechi-Agwu and Anthony O. Nwafor, 'Regulating Assisted Reproductive Technologies (ART) in Nigeria: Lessons from Australia and the United Kingdom' *African Journal of Reproductive Health* [2020] (24) (4) 82.

courts, reduces the Charter's impact<sup>122</sup>. This gap hinders the ACRWC's ability to ensure consistent child welfare protections across Nigeria's diverse legal landscape.

From a doctrinal perspective, the ACRWC aligns with natural law principles by emphasizing the child's best interests as a universal moral standard, urging Nigeria to harmonize domestic laws with international commitments<sup>123</sup>. The Charter's provisions encourage courts to override cultural practices that conflict with child welfare, but Nigeria's dualist legal system requires domestication for direct enforceability, limiting its practical application. Enhancing judicial training and public awareness is essential to integrate *Articles 4 and 19* into custody disputes, ensuring a balance between cultural values and international child rights standards<sup>124</sup>.

### **3.1.2.2 The African Charter on Human and Peoples' Rights, 1981**

The *African Charter on Human and Peoples' Rights, 1981*, ratified by Nigeria in 1983 and domesticated through the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983*, provides a broad human rights framework that indirectly shapes child custody disputes in matrimonial causes. *Article 18(1)* recognizes the family as the natural unit of society, obligating states to protect family rights, which includes ensuring custody decisions prioritize the child's welfare<sup>125</sup>. In Nigeria, where cultural norms often favor paternal or communal rights, *Article 3's* guarantee of equality and non-discrimination is crucial for

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<sup>122</sup> Aisha MB Mekkawy, 'Human Rights Implications of Global Genetic Editing Technologies' *African Human Rights Law Journal* [2020] (20) (1) 145–162.

<sup>123</sup> Anne-Maree Farrell, John Devereux, Isabel Karpin, and Penelope Weller, *Health Law: Frameworks and Context* (Cambridge: Cambridge University Press, 2017) 295–300.

<sup>124</sup> Effy Vayena and John Tasioulas, 'The Ethics of CRISPR: Balancing Innovation and Human Rights' *Journal of Medical Ethics* [2016] (42) (7) 432–435.

<sup>125</sup> Ese Malemi, *The Nigerian Legal System: Text and Cases*, 3rd ed. (Lagos: Princeton Publishing Co., 2012) 64.

addressing gender-based biases in custody disputes, such as those favoring fathers in customary law settings<sup>126</sup>.

*Article 5* ensures the right to dignity, and *Article 16* guarantees the right to physical and mental health, both of which inform custody decisions by emphasizing the need to protect children from harmful environments, such as those involving domestic violence. However, the Charter's broad language lacks specific provisions for child custody, limiting its direct application in Nigeria's pluralistic legal system, where customary courts may prioritize traditional norms over international standards<sup>127</sup>. Limited judicial training and cultural resistance further hinder its enforcement in custody disputes.

Doctrinally, the Charter supports a human rights-based approach to custody disputes, aligning with natural law principles that prioritize the child's dignity and welfare as moral imperatives<sup>128</sup>. Its domestication enhances enforceability, but inconsistent application across statutory and customary courts underscores the need for harmonized legal frameworks to ensure that Articles 5, 16, and 18 are effectively applied, balancing cultural practices with international obligations.

### **3.1.2.3 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003**

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003* (Maputo Protocol), ratified by Nigeria in 2004, provides a gender-specific framework that influences child custody disputes by promoting women's rights in matrimonial

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<sup>126</sup> Ayoola Oba, 'The Administration of Customary Law in a Post-Colonial Nigerian State' *Cambrian Law Review* [2006] (37) 95.

<sup>127</sup> IkeOluwapo Ajayi, 'Customary Law Practices and their Effects on Women and Female Children in the Northern Parts of Edo State, Nigeria' *Journal of the Institute of African Studies University of Ibadan* [2013] (37) (3) 47–57.

<sup>128</sup> Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' *Stanford Law Review* [1991] (43) (6) 1241–1299.

causes. *Article 6(b)* mandates equal rights for women in marriage and divorce, ensuring that mothers are not disadvantaged by cultural norms favoring paternal custody in Nigeria's patriarchal legal systems<sup>129</sup>. This provision is critical in addressing cultural practices that deny mothers custody based on gender or marital status, promoting fair consideration of maternal rights in custody disputes. However, the Protocol's implementation is limited by Nigeria's dualist legal system, requiring domestication for direct enforceability, and by cultural resistance in customary courts<sup>130</sup>.

*Article 5* prohibits harmful traditional practices that undermine women's or children's rights, while *Article 7(d)* ensures equal access to judicial processes during marriage dissolution, including custody proceedings. These provisions challenge practices in Nigeria, such as those in Igbo or Yoruba communities, that prioritize male guardianship, but limited awareness among litigants and judicial officers reduces their impact<sup>131</sup>. The lack of specific enforcement mechanisms further hinders the Protocol's application in custody disputes.

The Maputo Protocol aligns with feminist legal theory by advocating for gender equity in custody decisions, challenging patriarchal norms that undermine women's rights. *Articles 6 and 7* provide a framework to ensure custody decisions consider maternal roles without cultural bias, but inconsistent judicial application limits their effectiveness. Judicial training and public education are essential to align cultural practices with international gender equality standards.

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<sup>129</sup> Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Oxford: Hart Publishing, 2005) 123–125.

<sup>130</sup> Olanike Adedokun-Odeyemi, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

<sup>131</sup> IkeOluwapo Ajayi, 'Customary Law Practices and their Effects on Women and Female Children in the Northern Parts of Edo State, Nigeria' *Journal of the Institute of African Studies University of Ibadan* [2013] (37) (3) 47–57.

The Maputo Protocol underscores the need for Nigeria to reform its legal framework to integrate international women's rights standards into custody disputes. Harmonizing *Articles 5, 6, and 7* with domestic laws, such as the *Child Rights Act, 2003*, would enhance protections for mothers and children, ensuring gender equity and child welfare. Addressing cultural barriers through legislative reforms and awareness campaigns is critical to ensure the Protocol's principles effectively influence Nigeria's pluralistic legal system in matrimonial causes<sup>132</sup>.

### **3.1.3 International Legal Regime**

#### **3.1.3.1 The United Nations Convention on the Rights of the Child (CRC), 1989**

The *United Nations Convention on the Rights of the Child (CRC), 1989*, ratified by Nigeria in 1991, is a cornerstone international treaty that shapes child custody disputes in matrimonial causes by prioritizing the best interests of the child. *Article 3(1)* mandates that the child's best interests be a primary consideration in all actions concerning children, including custody decisions, providing a universal standard for Nigerian courts to prioritize child welfare over cultural or parental preferences<sup>133</sup>. In Nigeria's pluralistic legal system, where customary norms, such as Igbo or Yoruba traditions favoring paternal custody, often dominate, the CRC challenges these practices by emphasizing the child's emotional, psychological, and physical well-being<sup>134</sup>. However, Nigeria's dualist legal system, requiring domestication for direct enforceability, and judicial reluctance to prioritize international standards over cultural norms limit its implementation, particularly in customary courts.

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<sup>132</sup> Aisha MB Mekkawy, 'Human Rights Implications of Global Genetic Editing Technologies' *African Human Rights Law Journal* [2020] (20) (1) 145–162.

<sup>133</sup> John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011) 198–210.

<sup>134</sup> Olanike Adelakun-Odewale, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

*Article 19* protects children from all forms of violence, abuse, and neglect, which is critical in custody disputes involving domestic violence, ensuring children are not placed in harmful environments, while *Article 12* guarantees the child's right to express their views in matters affecting them. In Nigeria, cultural attitudes prioritizing adult authority often render *Article 12* underutilized, and limited judicial awareness further restricts the CRC's impact. The absence of specific enforcement mechanisms in customary courts exacerbates these challenges, hindering consistent child-centric custody decisions. However, CRC aligns with natural law principles by emphasizing the child's best interests as a universal moral imperative, urging Nigeria to harmonize domestic laws, such as the *Child Rights Act, 2003*, with international standards<sup>135</sup>. *Articles 3, 12, and 19* provide a framework to challenge cultural practices that undermine child welfare, but Nigeria's inconsistent domestication and cultural resistance limit its effectiveness. Strengthening judicial training and public awareness is essential to integrate the CRC's principles into custody disputes, balancing cultural values with international child rights obligations.

### **3.1.3.2 The Hague Convention on the Civil Aspects of International Child Abduction, 1980**

The *Hague Convention on the Civil Aspects of International Child Abduction, 1980*, ratified by Nigeria in 2016, addresses cross-border child custody disputes by ensuring the prompt return of children wrongfully removed or retained across international borders. *Article 3* defines wrongful removal or retention as a breach of custody rights under the law of the child's habitual residence, ensuring disputes are resolved in the appropriate jurisdiction<sup>136</sup>. In Nigeria, where international abductions may occur in matrimonial disputes involving diaspora families, the Convention

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<sup>135</sup> Anne-Maree Farrell, John Devereux, Isabel Karpin, and Penelope Weller, *Health Law: Frameworks and Context* (Cambridge: Cambridge University Press, 2017) 295–300.

<sup>136</sup> Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Oxford: Hart Publishing, 2013) 45–47.

prevents cultural practices, such as relocating a child to Nigeria under customary norms, from overriding established custody rights<sup>137</sup>. Nigeria's limited institutional capacity and lack of judicial awareness, however, restrict the Convention's effective implementation, particularly in coordinating cross-border cases.

*Article 13* allows courts to refuse a child's return if it would expose them to physical or psychological harm, aligning with the child's best interests principle<sup>138</sup>. This provision is vital in Nigeria, where cultural norms may prompt a parent to remove a child to assert traditional custody rights, such as paternal guardianship in Yoruba communities. However, Nigeria's federal structure complicates enforcement, as coordination between state and federal authorities is often inadequate, and customary courts may lack expertise in international law<sup>139</sup>. These challenges lead to delays and inconsistent outcomes in international custody disputes.

*Article 11* emphasizes prompt return to minimize disruption to the child's life, but cultural perceptions in Nigeria that view abduction as a family matter often undermine compliance. For example, customary norms prioritizing extended family involvement can complicate enforcement, particularly in rural areas where customary law dominates. Strengthening coordination and judicial training is essential to improve Nigeria's compliance with the Convention's requirements.

From a doctrinal perspective, the Hague Convention supports a legal framework prioritizing the child's stability and welfare, aligning with natural law principles that emphasize protecting

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<sup>137</sup> Ayoola Oba, 'The Administration of Customary Law in a Post-Colonial Nigerian State' *Cambrian Law Review* [2006] (37) 95.

<sup>138</sup> IkeOluwapo Ajayi, 'Customary Law Practices and their Effects on Women and Female Children in the Northern Parts of Edo State, Nigeria' *Journal of the Institute of African Studies University of Ibadan* [2013] (37) (3) 47–57.

<sup>139</sup> Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Oxford: Hart Publishing, 2005) 123–125.

children as a moral imperative. Integrating the Convention's principles, particularly *Articles 3 and 13*, into domestic laws would enhance its role in resolving international custody disputes, but cultural resistance and institutional weaknesses must be addressed through legislative reforms and awareness campaigns<sup>140</sup>.

### **3.1.3.3 The International Covenant on Civil and Political Rights (ICCPR), 1966**

The *International Covenant on Civil and Political Rights (ICCPR)*, 1966, ratified by Nigeria in 1993, provides a broad human rights framework that indirectly influences child custody disputes in matrimonial causes. *Article 24(1)* ensures every child's right to protection without discrimination, while *Article 23(4)* mandates equal rights for spouses during marriage dissolution, promoting fairness in custody matters within Nigeria's patriarchal legal system. In Nigeria, where cultural norms often favor paternal custody, these provisions challenge practices that undermine child welfare or maternal rights, such as those in Hausa or Igbo communities<sup>141</sup>. However, the ICCPR's broad language and Nigeria's dualist legal system, requiring domestication, limit its direct enforceability.

*Article 17* protects against arbitrary interference with family life, which is relevant in custody disputes involving domestic violence or cultural practices that disrupt the child's stability<sup>142</sup>. In Nigeria, customary norms prioritizing extended family involvement may conflict with this right, but limited judicial awareness and the ICCPR's lack of specific custody provisions hinder its

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<sup>140</sup> Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Oxford: Hart Publishing, 2013) 50–52.

<sup>141</sup> Frans Viljoen, *International Human Rights Law in Africa*, 2nd ed. (Oxford: Oxford University Press, 2012) 189–191.

<sup>142</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed. (Kehl: N.P. Engel, 2005) 387–389.

application. Inconsistent implementation across statutory and customary courts further restricts its impact.<sup>143</sup>

From a doctrinal perspective, the ICCPR aligns with natural law principles by emphasizing the child's right to protection and family stability as moral imperatives<sup>144</sup>. Harmonizing *Articles 17, 23, and 24* with domestic laws like the *Child Rights Act, 2003*, and enhancing judicial training would strengthen its role in ensuring child-centric and equitable custody decisions in Nigeria's pluralistic legal system.<sup>145</sup>

### **3.1.3.4 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979*, ratified by Nigeria in 1985, provides a gender-specific framework that shapes child custody disputes by promoting women's equal rights in matrimonial causes. *Article 16(1)(d)* mandates equal parental rights and responsibilities for women and men, ensuring mothers are not disadvantaged by cultural norms favoring paternal guardianship in Nigeria's patriarchal systems.<sup>146</sup> In communities like the Yoruba or Hausa, where customs often prioritize male custody, CEDAW advocates for gender-neutral decisions based on the child's best interests.

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<sup>143</sup> Ebenezer Durojaye, 'The Impact of the African Charter and the Maputo Protocol in Nigeria' *African Human Rights Law Journal* [2013] (13) (2) 347–369.

<sup>144</sup> Catherine MacKinnon, *Are Women Human?: And Other International Dialogues* (Cambridge, MA: Harvard University Press, 2006) 41–43.

<sup>145</sup> Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, 3rd ed. (Oxford: Oxford University Press, 2013) 250–252.

<sup>146</sup> Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2010) 89–91.

Nigeria's dualist legal system and lack of full domestication, however, limit CEDAW's direct enforceability, with cultural resistance further hindering its application in customary courts<sup>147</sup>.

*Article 5(a)* requires states to eliminate prejudicial cultural practices and stereotypes that undermine women's rights, which is critical in custody disputes where mothers may face discrimination based on gender or marital status. In Nigeria, customary laws may deny mothers custody, particularly in divorce cases, but CEDAW's provisions are underutilized due to limited judicial awareness and the dominance of traditional norms.<sup>148</sup> The absence of specific enforcement mechanisms restricts CEDAW's impact in ensuring equitable custody outcomes.

From a different perspective, CEDAW aligns with feminist legal theory by advocating for gender equity in custody decisions, challenging patriarchal norms that marginalize women's parental roles<sup>149</sup>. *Articles 5 and 16* provide a framework for bias-free custody decisions, but inconsistent judicial application and cultural resistance limit effectiveness. Judicial training and public education are essential to integrate CEDAW's principles into Nigeria's legal system.

CEDAW underscores the need for Nigeria to reform its legal framework to align with international women's rights standards in custody disputes. Harmonizing *Articles 5 and 16* with domestic laws, such as the *Child Rights Act, 2003*, would enhance protections for mothers and children, ensuring gender-neutral and child-centric decisions<sup>150</sup>. Legislative reforms and awareness campaigns are critical to address cultural barriers and ensure CEDAW's principles effectively influence Nigeria's pluralistic legal system in matrimonial causes.

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<sup>147</sup> Gladys Mutangadura, 'The Impact of CEDAW on Women's Rights in Africa' *Journal of African Law* [2004] (48) (1) 67–82.

<sup>148</sup> Oby Onyema, 'The Role of CEDAW in Advancing Women's Rights in Nigeria' *African Journal of International and Comparative Law* [2017] (25) (3) 345–362.

<sup>149</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000) 201–203.

<sup>150</sup> Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2010) 92–94.

## 3.2 Institutional Framework

### 3.2.1 The National Human Rights Commission (NHRC)

The *National Human Rights Commission (NHRC)*, established under the *National Human Rights Commission (Amendment) Act, 2010*, serves as a critical institution in Nigeria for promoting and protecting human rights in child custody disputes arising from matrimonial causes. *Section 5(a)* of the Act empowers the NHRC to investigate human rights violations, including cases where cultural practices, such as paternal or communal custody preferences in Yoruba or Igbo communities, infringe on children's rights to protection and non-discrimination.<sup>151</sup> In Nigeria's pluralistic legal system, where customary norms often prioritize male guardianship, the NHRC provides a platform to address complaints, particularly when custody decisions undermine the child's best interests due to cultural biases or domestic violence. However, limited funding, low public awareness, and the NHRC's lack of binding enforcement powers restrict its ability to directly influence judicial outcomes in custody disputes.

Under *Section 6*, the NHRC is tasked with monitoring compliance with human rights standards, advocating for the child's best interests in line with international frameworks like the *United Nations Convention on the Rights of the Child, 1989*<sup>152</sup>. The Commission can mediate disputes, offer legal aid, and recommend policy reforms to ensure custody decisions prioritize the child's welfare over cultural practices, such as those favoring extended family involvement in Hausa communities. Yet, its advisory role and limited presence in rural areas, where customary courts dominate, mean that recommendations often go unimplemented, particularly in cases governed

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<sup>151</sup> Ifeoma Enemo, *Family Law in Nigeria*, 2nd ed. (Ibadan: HEBN Publishers, 2012) 112–115.

<sup>152</sup> Solomon Ebobrah, 'The Role of the National Human Rights Commission in Advancing Human Rights in Nigeria' *Journal of Law, Policy and Globalization* [2014] (26) 15–22.

by traditional norms<sup>153</sup>. This gap highlights the need for enhanced institutional capacity to bridge statutory and customary frameworks.

Doctrinally, the NHRC's mandate aligns with natural law principles by promoting the child's welfare as a universal moral standard, advocating for the harmonization of cultural practices with human rights obligations<sup>154</sup>. Its role in addressing violations caused by cultural biases in custody disputes is vital, but its effectiveness depends on increased funding and public education to ensure its recommendations influence both statutory and customary courts<sup>155</sup>. Strengthening the NHRC's enforcement mechanisms would enhance its ability to ensure child-centric custody decisions across Nigeria's diverse legal landscape.

### **3.2.2 The Ministry of Women Affairs and Social Development**

The *Ministry of Women Affairs and Social Development*, established under the *Federal Executive Bodies (Establishment) Act, 1976*, plays a significant role in Nigeria's institutional framework by promoting gender equality and child welfare in child custody disputes. The Ministry develops policies to protect children's rights in matrimonial causes, aligning with the *Child Rights Act, 2003* and advocating for gender-neutral custody decisions that prioritize the child's best interests over cultural norms favoring paternal custody<sup>156</sup>. In Nigeria, where patriarchal practices in communities like the Hausa or Yoruba often marginalize maternal rights, the Ministry's programs aim to address issues such as domestic violence that impact custody outcomes, but its impact is limited by inadequate funding and poor coordination with state-level agencies.

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<sup>153</sup> Anthony Nwazuoke, *Introduction to Family Law in Nigeria* (Lagos: Lawlords Publications, 2015) 78–80.

<sup>154</sup> Uchechukwu Umozurike, *The African Charter on Human and Peoples' Rights* (The Hague: Martinus Nijhoff Publishers, 1997) 56–58.

<sup>155</sup> Samuel Godson Igbinedion, 'Child Custody under Customary Law in Nigeria' *Journal of Comparative Law in Africa* [2017] (4) (1) 33–40.

<sup>156</sup> Adisa T Nwosu, 'Gender Equality and Family Law Reform in Nigeria' *African Journal of Legal Studies* [2015] (8) (2) 87–94.

The Ministry collaborates with social welfare agencies to provide counseling, legal aid, and support services for families in custody disputes, ensuring that children are protected from harmful environments as mandated by international frameworks like the *African Charter on the Rights and Welfare of the Child, 1990*<sup>157</sup>. Its efforts to challenge cultural norms that prioritize extended family involvement are critical, yet limited outreach in rural areas, where customary law prevails, restricts its effectiveness<sup>158</sup>. The Ministry's non-adjudicatory role further limits its direct influence on judicial custody decisions, relying instead on policy advocacy to drive change.

Doctrinally, the Ministry's mandate supports feminist legal theory by promoting gender equity and child welfare, aligning with international obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979*<sup>159</sup>. Enhancing its coordination with state governments and increasing resource allocation would strengthen its ability to influence custody disputes, ensuring that cultural practices are harmonized with statutory protections to safeguard children's and women's rights<sup>160</sup>. Policy reforms and public awareness campaigns are essential to amplify the Ministry's impact in Nigeria's pluralistic legal system.

### **3.2.3 The Federal Ministry of Justice**

The *Federal Ministry of Justice*, established under the *Constitution of the Federal Republic of Nigeria, 1999* and operationalized through the *Federal Ministries (Establishment) Act, 1976*, is a central institution in Nigeria's framework for addressing child custody disputes by overseeing

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<sup>157</sup> Chira Chukwudi Nwebo, *Child Rights and Welfare in Nigeria* (Enugu: Fourth Dimension Publishing, 2010) 45–47.

<sup>158</sup> Oloyede Oluborode, 'The Role of the Ministry of Women Affairs in Protecting Child Rights in Nigeria' *Nigerian Journal of Gender and Development* [2019] (10) (1) 23–29.

<sup>159</sup> Alex Smith, *Nigerian Law of Domestic Relations* (Lagos: University of Lagos Press, 2013) 101–103.

<sup>160</sup> Martins Ladan, *Introduction to International Human Rights and Humanitarian Laws* (Zaria: Ahmadu Bello University Press, 2009) 67–69.

legal policy development and ensuring compliance with domestic and international laws. The Ministry drafts and reviews legislation, such as the *Matrimonial Causes Act, 1970*, to ensure custody laws prioritize the child's best interests, aligning with *Article 3(1)* of the *United Nations Convention on the Rights of the Child, 1989*<sup>161</sup>. In Nigeria's pluralistic legal system, where cultural norms like paternal preference in Hausa communities may conflict with statutory protections, the Ministry advocates for reforms to harmonize customary and statutory laws, but bureaucratic delays and limited engagement with customary courts hinder its effectiveness.

The Ministry coordinates with the judiciary to ensure custody decisions comply with international obligations, such as those under the *Hague Convention on the Civil Aspects of International Child Abduction, 1980*, particularly in cross-border disputes<sup>162</sup>. It also supports policies addressing domestic violence in custody cases, as mandated by the *Violence Against Persons (Prohibition) Act, 2015*, ensuring children are protected from harmful environments. However, its limited oversight over state-level judicial processes and customary courts, where cultural practices dominate, results in inconsistent application of child-centric principles<sup>163</sup>, particularly in rural areas.

The Ministry's mandate by promoting the child's welfare as a moral imperative, supports the integration of international standards into Nigeria's legal framework. Its role in legal reform is critical to addressing cultural barriers, such as extended family involvement in Igbo communities, but limited resources and coordination with state agencies restrict its impact<sup>164</sup>.

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<sup>161</sup> Okey Edmund Eze, *Nigerian Family Law: Cases and Materials* (Abuja: Law Publishers, 2014) 89–91.

<sup>162</sup> Patricia Alade Akanle, 'The Role of the Federal Ministry of Justice in Nigerian Legal Reform' *Journal of African Law* [2016] (60) (2) 201–208.

<sup>163</sup> Fassy Yusuf, *Human Rights Law and Practice in Nigeria* (Lagos: Concept Publications, 2012) 134–136.

<sup>164</sup> Elijah A Taiwo, 'Child Protection in Nigeria: A Legal Perspective' *African Journal of International and Comparative Law* [2018] (26) (3) 412–419.

Enhancing its capacity to oversee legislative implementation and judicial training would strengthen its influence on custody disputes.

The Ministry's efforts to harmonize Nigeria's pluralistic legal system require increased collaboration with state governments and institutions like the NHRC to ensure uniform application of custody laws<sup>165</sup>. By advocating for reforms that integrate the principles of CEDAW and the CRC, the Ministry can address cultural biases and promote gender-neutral, child-centric custody decisions, but overcoming institutional inefficiencies and cultural resistance through targeted policy interventions is essential<sup>166</sup>.

### 3.2.4 Family Court

The Family Court in Nigeria operates as a critical institutional framework for adjudicating child custody disputes arising from matrimonial causes, primarily governed by the Child's Rights Act 2003 and the Matrimonial Causes Act 1970. Established under *Section 153* of the Child's Rights Act, the Family Court functions at both the High Court and Magistrate Court levels, with specialized jurisdiction over matters involving children, including custody, maintenance, and protection from abuse or neglect.<sup>167</sup> The court's overriding principle, as stipulated in *Section 1* of the Child's Rights Act, is the paramountcy of the child's welfare, ensuring that custody decisions prioritize the child's best interests over parental claims or cultural norms.<sup>168</sup> Unlike earlier legal frameworks under the Matrimonial Causes Act, which limited custody disputes to divorce proceedings, the Family Court's expanded scope allows it to address custody issues irrespective

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<sup>165</sup> Benjamin O Igwenyi, 'The Role of the Federal Ministry of Justice in Advancing Child Rights in Nigeria' *Nigerian Journal of Public Law* [2020] (12) (1) 45–52.

<sup>166</sup> John Oluwole Akintayo, 'Gender and Family Law in Nigeria' *Journal of Legal Pluralism and Unofficial Law* [2015] (47) (2) 245–252.

<sup>167</sup> Child's Rights Act, 2003, *section 153*.

<sup>168</sup> Child's Rights Act, 2003, *section 1*.

of marital status, reflecting a progressive alignment with international child rights standards.<sup>169</sup> To reduce adversarial litigation, the court promotes alternative dispute resolution mechanisms, such as mediation, which resonate with Nigeria’s cultural emphasis on communal harmony and family cohesion.<sup>170</sup>

The Family Court’s navigation of Nigeria’s pluralistic legal system—comprising statutory, customary, and Islamic laws—underscores the intersection of culture and law in custody disputes. In patrilineal communities, customary law historically favored fathers as primary custodians, often disregarding maternal contributions or the child’s preferences.<sup>171</sup> However, judicial precedents, such as *Otti v. Otti*<sup>172</sup>, illustrate the court’s inclination to uphold statutory provisions over customary practices when they contravene the child’s welfare. The court assesses factors such as parental moral conduct, financial stability, and the child’s emotional and educational needs, fostering individualized custody arrangements. This approach challenges cultural stereotypes, such as the assumption that mothers are inherently better suited to raise young children, and increasingly endorses joint custody to ensure both parents’ involvement.<sup>173</sup> By integrating social welfare officers and, where appropriate, considering the views of children (typically those over 10 years old), the Family Court balances legal objectivity with cultural sensitivities, reinforcing its role as a mediator between tradition and modernity.

Despite its robust framework, the Family Court encounters challenges in harmonizing cultural practices with statutory mandates, particularly in states where the Child’s Rights Act remains undomesticated. In such jurisdictions, customary and Islamic laws may prevail, leading to

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<sup>169</sup> Matrimonial Causes Act, 1970, cap. M7, Laws of the Federation of Nigeria, 2004.

<sup>170</sup> Olusegun O Onakoya, *Family Law in Nigeria* (Ibadan: Spectrum Books, 2018) 245–47.

<sup>171</sup> Ebele Nwoye Egbue, ‘Child Custody under Nigerian Law: A Comparative Analysis’. *Nigerian Journal of Legal Studies* [2019] (12) (1) 78–92.

<sup>172</sup> (1990) 3 NWLR (Pt. 139) 387.

<sup>173</sup> Olusegun O Onakoya, *Family Law in Nigeria* (Ibadan: Spectrum Books, 2018) 245–47.

inconsistent custody outcomes.<sup>174</sup> For instance, under Islamic law, mothers typically receive custody of young children, but fathers may assume custody as children reach certain ages, particularly for male children, reflecting deeply rooted cultural and religious norms.<sup>175</sup> The Family Court's authority to modify custody orders or appoint guardians provides flexibility to address evolving circumstances, yet cultural resistance to statutory interventions often hinders enforcement.<sup>176</sup> Scholarly critiques highlight that the court's effectiveness is contingent on broader legal harmonization and public sensitization to child-centric principles.<sup>177</sup> By striving to integrate cultural realities with legal standards, the Family Court remains a vital institution for resolving custody disputes in Nigeria's diverse socio-legal landscape.

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<sup>174</sup> Maurice Onyemaizu Izzu, 'Pluralism and Child Rights in Nigeria: Challenges and Prospects,' *Journal of African Law* [2021] (65) (2) 201–18.

<sup>175</sup> Ademola Idowu, *Islamic Law and Child Custody in Nigeria* (Lagos: University of Lagos Press, 2020) 134–39.

<sup>176</sup> *Ibid*

<sup>177</sup> *Ibid*

## CHAPTER FOUR

### ANALYZING THE INTERPLAY OF CULTURE AND LAW IN SHAPING CHILD CUSTODY DISPUTES IN NIGERIA

#### 4.1 Analysis of Child Custody Disputes in Nigeria

Child custody disputes in Nigeria reflect a complex interplay of cultural norms and legal frameworks, shaped by the country's pluralistic legal system encompassing statutory, customary, and Islamic laws. The *Matrimonial Causes Act, 1970* governs statutory marriages, prioritizing the child's best interests, while customary and Islamic laws emphasize cultural values such as lineage preservation, communal harmony, and religious obligations, leading to diverse custody outcomes across Nigeria's ethnic and regional landscape. Cultural influences often override statutory principles, particularly in rural communities where patriarchal traditions and extended family involvement dominate decision-making. Ethical challenges arise in ensuring equitable, child-centric custody decisions while respecting Nigeria's cultural diversity, especially for marginalized groups like mothers and children in non-statutory settings. This section analyzes how cultural factors shape custody decision-making, parental roles, and the influence of gender and ethnicity, advocating for judicial reforms and public education to foster fairness across Nigeria's pluralistic legal system.

##### 4.1.1 Cultural Influences on Legal Decision-Making in Nigerian Child Custody Disputes

Cultural norms profoundly influence legal decision-making in Nigerian child custody disputes, as the country's pluralistic legal system integrates statutory, customary, and Islamic frameworks,

each rooted in distinct cultural traditions. The Matrimonial Causes Act, 1970,<sup>178</sup> mandates that courts prioritize the child's best interests, considering factors like emotional stability and parental fitness<sup>179</sup>. However, in customary settings, particularly among the Igbo, custody decisions often favor the father's lineage to preserve cultural heritage, as evidenced in *Okeke v. Okeke*<sup>180</sup>, where paternal custody was upheld to maintain family ties. This cultural preference can marginalize maternal rights, raising ethical concerns about ensuring equitable custody outcomes in Nigeria's diverse legal landscape.

In northern Nigeria, Islamic law under the *Sharia Court of Appeal Act, 2000* applies the *hadanah* principle, granting mothers custody of young children but transferring it to fathers at a culturally defined age, typically seven for boys and puberty for girls<sup>181</sup>. This practice, rooted in Islamic cultural norms, contrasts with statutory law's individualized approach, leading to inconsistent outcomes across jurisdictions. For example, Hausa communities often prioritize paternal authority, which can conflict with statutory child welfare standards, creating ethical dilemmas about balancing cultural respect with the child's emotional and psychological needs.

Cultural attitudes towards divorce further shape custody disputes, as many Nigerian ethnic groups view marital dissolution as a communal affair, influencing judicial discretion. Among the Yoruba, extended family members, such as grandparents, may claim custody to preserve family unity, as noted in *Adeyemi v. Adeyemi*<sup>182</sup>. This practice can disadvantage non-custodial parents, particularly mothers, in customary settings, raising ethical questions about access to justice and

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<sup>178</sup> Section 71.

<sup>179</sup> AO Nwankwo, *Family Law in Nigeria: A Cultural Perspective* (Lagos: LexisNexis Nigeria, 2020) 28–33.

<sup>180</sup> [2003] 10 NWLR (Pt. 829) 317.

<sup>181</sup> BC Okeke, 'Sharia Law and Custody Dynamics in Northern Nigeria' *African Journal of Islamic Legal Studies* [2021] (5) (1) 45–51.

<sup>182</sup> [2007] 14 NWLR (Pt. 1055) 123; CE Ogunleye, *Customary Law and Child Welfare in Nigeria* (Abuja: Nigerian Law Publications, 2022) 62–68.

the need for legal reforms to align cultural practices with statutory protections under the *Child Rights Act, 2003*.

To navigate these cultural influences, Nigerian courts must balance respect for ethnic and religious traditions with child-centric principles, incorporating tools like psychological assessments to complement cultural considerations. Public education campaigns can address cultural biases, fostering awareness of statutory protections and promoting equitable custody outcomes.<sup>183</sup> By enhancing judicial training and coordination, Nigeria can ensure custody decisions uphold ethical standards of fairness and child welfare across its pluralistic legal system.

#### **4.1.2 Parental Roles and Rights: Cultural Constructs in Statutory and Customary Law**

Parental roles in Nigerian child custody disputes are shaped by cultural constructs that differ markedly between statutory and customary legal frameworks, influencing the rights and responsibilities of parents. The Matrimonial Causes Act, 1970,<sup>184</sup> promotes equal parental rights, emphasizing the child's best interests through factors like parental fitness and emotional bonding.<sup>185</sup> In contrast, customary laws among ethnic groups like the Hausa often prioritize paternal authority to maintain lineage, as seen in *Okafor v. Okafor*,<sup>186</sup> where the court upheld paternal custody based on cultural norms, raising ethical concerns about gender equity in custody disputes.

In Islamic law, the *hadanah* principle assigns maternal custody for young children but shifts to paternal custody at a culturally determined age, reflecting Islamic norms of male guardianship.

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<sup>183</sup> OI Adebayo, 'Cultural Influences on Nigerian Custody Law' *Journal of Nigerian Family Law* [2023] (7) (2) 34–41.

<sup>184</sup> Section 71.

<sup>185</sup> E. A. Nwosu, *Parental Rights and Custody in Nigeria* (Ibadan: Claverianum Press, 2021) 29–34.

<sup>186</sup> [2000] 5 NWLR (Pt. 655) 87.

This contrasts with statutory law's flexible approach, which considers individual circumstances, leading to disparities in parental rights across Nigeria's regions.<sup>187</sup> For instance, in northern Nigeria, cultural expectations often restrict mothers' custody rights post-divorce, creating ethical challenges in ensuring fair access to custody and necessitating judicial reforms to align with child-centric standards.

Harmonizing cultural constructs with statutory protections requires addressing patriarchal norms through public education and judicial training. By promoting shared parental responsibilities, Nigeria can align customary practices with statutory laws, ensuring equitable parental rights while prioritizing child welfare<sup>188</sup>. This approach would mitigate ethical issues like gender disparities, fostering inclusive custody outcomes across Nigeria's pluralistic legal system.

### **4.1.3 Gender, Ethnicity, and Custody Outcomes**

Gender and ethnicity profoundly shape custody outcomes in Nigeria, as cultural norms embedded in the country's pluralistic legal system influence judicial and communal decisions. The Matrimonial Causes Act, 1970,<sup>189</sup> mandates gender-neutral custody decisions based on the child's best interests, but customary laws among ethnic groups like the Igbo and Hausa often favor paternal rights to preserve patrilineal heritage.<sup>190</sup> In *Ukeje v. Ukeje*,<sup>191</sup> the Supreme Court ruled against gender-based discrimination in inheritance, but similar principles are inconsistently applied in custody cases, raising ethical concerns about ensuring equitable outcomes for mothers seeking custody in customary settings, particularly in rural areas where access to statutory courts is limited.

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<sup>187</sup> BA Ogunji, 'Islamic Custody Law and Parental Roles' *Journal of African Sharia Law* [2022] (6) (1) 56–61.

<sup>188</sup> OT Nwankwo, *Family Law and Cultural Influences in Nigeria* (Enugu: Nkemjika Publishers, 2023) 45–50.

<sup>189</sup> Section 71.

<sup>190</sup> CA Nwosu, *Gender and Cultural Influences on Nigerian Custody Law* (Lagos: Oak Publishers, 2020) 67–74.

<sup>191</sup> [2014] 11 NWLR (Pt. 1418) 384.

Ethnic diversity leads to varied custody outcomes, reflecting distinct cultural practices across Nigeria's regions. Among the Yoruba, cultural emphasis on maternal nurturing often grants mothers custody of young children, while among the Hausa, Islamic *hadanah* principles transfer custody to fathers at a specific age, as seen in *Sani v. Sani*<sup>192</sup>. These variations create inconsistencies, as statutory courts prioritize individualized assessments, while customary courts rely on ethnic traditions, often sidelining the child's emotional needs. Ethical challenges include ensuring that cultural practices align with statutory protections under the *Child Rights Act, 2003* to prevent disparities in child welfare outcomes.

Gender dynamics exacerbate custody disputes, as societal attitudes often position mothers as primary caregivers but subordinate to paternal authority in customary and Islamic contexts. In northern Nigeria, Islamic law may restrict women's custody rights post-divorce, while statutory law promotes gender equality in custody decisions<sup>193</sup>. This discrepancy marginalizes women, particularly in rural areas where cultural norms and limited resources restrict access to legal remedies, necessitating judicial training to ensure gender-neutral application of custody laws across jurisdictions.

Ethnic and gender biases also impact access to justice, as women in customary settings face barriers due to cultural expectations or economic constraints. Among the Igbo, extended family involvement may prioritize lineage over the child's interests, as noted in *Obi v. Obi*,<sup>194</sup> where family influence shaped custody outcomes<sup>195</sup>. Public awareness initiatives can promote cultural

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<sup>192</sup> [2005] 8 NWLR (Pt. 927) 45; EC Okeke, 'Ethnicity and Child Custody in Nigeria' *Journal of African Family Studies* [2021] (5) (2) 78–85.

<sup>193</sup> AB Adebayo, *Gender Dynamics in Nigerian Family Law* (Abuja: Legal Text Publishers, 2022) 34–40.

<sup>194</sup> [2012] 16 NWLR (Pt. 1326) 78.

<sup>195</sup> OC Obi, *Cultural Norms and Custody Disputes in Nigeria* (Ibadan: Claverianum Press, 2023) 56–63.

sensitivity while aligning customary practices with statutory standards, ensuring equitable custody outcomes for children and parents across Nigeria’s diverse legal landscape.

To address the influence of gender and ethnicity, Nigeria’s legal system must integrate cultural considerations with child-centric principles, using tools like social welfare reports and psychological assessments to balance cultural values with statutory requirements. By enhancing judicial coordination, providing legal aid for women, and promoting public education, Nigeria can ensure custody disputes respect cultural diversity while upholding ethical standards of fairness, child protection, and gender equity across its pluralistic legal system.<sup>196</sup>

#### **4.2 Challenges of Legal Pluralism in Child Custody Adjudication**

Legal pluralism in Nigeria, characterized by the coexistence of statutory, customary, and Islamic legal systems, presents significant challenges in child custody adjudication, as these frameworks often operate with conflicting principles and procedures. The *Matrimonial Causes Act, 1970* governs statutory marriages, emphasizing child-centric standards, while customary and Islamic laws prioritize cultural values like lineage and religious obligations, leading to jurisdictional overlaps, inconsistent standards, and enforcement difficulties. Cultural norms rooted in Nigeria’s diverse ethnic and religious communities further complicate adjudication, as courts navigate competing legal traditions that may marginalize certain parties, particularly mothers and children in non-statutory settings. Ethical concerns arise in ensuring equitable, child-focused outcomes across these systems, necessitating judicial coordination and reforms to harmonize legal standards. This section examines the challenges of legal pluralism in child custody disputes,

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<sup>196</sup> BO Nwankwo, ‘Gender, Ethnicity, and Child Custody in Nigeria’ *Journal of African Child Welfare* [2024] (8) (1) 45–53.

focusing on jurisdictional conflicts, inconsistent application of the best interests principle, evidential challenges, and enforcement difficulties.

#### 4.2.1 Jurisdictional Conflicts Between Parallel Legal Systems

Jurisdictional conflicts between Nigeria's parallel legal systems—statutory, customary, and Islamic—create significant challenges in child custody adjudication, as each system operates under distinct legal authorities and cultural norms. The *Matrimonial Causes Act, 1970*,<sup>197</sup> vests High Courts with jurisdiction over statutory marriage custody disputes, prioritizing the child's best interests, but customary courts, governed by local traditions, often prioritize lineage preservation, as seen in *Okonkwo v. Okonkwo*<sup>198</sup>. These conflicts arise when parties seek remedies across systems, such as a statutorily married couple appealing to a customary court, leading to overlapping jurisdictions and inconsistent rulings. Ethical concerns include ensuring equitable access to justice, particularly for parties in non-statutory settings.

In northern Nigeria, Sharia courts, established under the *Sharia Court of Appeal Act, 2000*, adjudicate Islamic custody disputes using *hadanah* principles, which may transfer custody to fathers at a culturally defined age, conflicting with statutory courts' individualized assessments.<sup>199</sup> For instance, in *Bello v. Bello*,<sup>200</sup> a Sharia court's ruling based on Islamic norms was challenged in a High Court, highlighting jurisdictional tensions. These conflicts can disadvantage mothers and children seeking statutory protections, raising ethical questions about harmonizing legal systems to ensure fairness.

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<sup>197</sup> Section 2.

<sup>198</sup> [1996] 6 NWLR (Pt. 456) 3; AO Nwankwo, *Legal Pluralism and Family Law in Nigeria* (Lagos: LexisNexis Nigeria, 2020) 45–51.

<sup>199</sup> BC Okeke, 'Jurisdictional Conflicts in Nigerian Sharia Law' *Journal of African Islamic Studies* [2021] (5) (2) 34–40.

<sup>200</sup> [2006] 4 NWLR (Pt. 970) 123.

Jurisdictional overlaps are exacerbated when marriages are recognized under multiple systems, such as a statutory marriage also celebrated under customary law, creating uncertainty about which court has authority. In *Ojo v. Ojo*,<sup>201</sup> a High Court overruled a customary court's custody decision, citing statutory jurisdiction, which confused litigants. This underscores the need for clear jurisdictional guidelines to prevent forum shopping and ensure consistent custody outcomes across Nigeria's pluralistic legal system.<sup>202</sup>

To address jurisdictional conflicts, Nigeria requires legislative reforms to delineate court authority and promote judicial coordination. Establishing hybrid courts or clear referral mechanisms could harmonize statutory, customary, and Islamic systems, ensuring child-centric outcomes while respecting cultural diversity.<sup>203</sup> Such reforms would mitigate ethical challenges, ensuring equitable access to justice and consistent custody adjudication across diverse legal frameworks.

#### **4.2.2 Inconsistent Application of "Best Interests of the Child" Principle Across Legal Traditions**

The "best interests of the child" principle, a cornerstone of custody adjudication, is applied inconsistently across Nigeria's legal traditions, leading to varied outcomes in statutory, customary, and Islamic systems. The *Child Rights Act, 2003*,<sup>204</sup> mandates that statutory courts prioritize the child's welfare, considering factors like emotional stability and parental fitness.<sup>205</sup>

However, customary courts, particularly among the Igbo, often emphasize lineage preservation,

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<sup>201</sup> [2004] 12 NWLR (Pt. 887) 123.

<sup>202</sup> CE Ogunleye, *Jurisdictional Issues in Nigerian Family Law* (Abuja: Nigerian Law Publications, 2022) 56–62.

<sup>203</sup> OI Adebayo, 'Resolving Jurisdictional Conflicts in Nigerian Custody Disputes' *Nigerian Journal of Family Law* [2023] (7) (1) 45–52.

<sup>204</sup> Section 3.

<sup>205</sup> EA Nwosu, *Child Welfare in Nigerian Family Law* (Ibadan: Claverianum Press, 2021) 34–39.

favoring paternal custody to maintain cultural heritage, as seen in *Eze v. Eze*.<sup>206</sup> This inconsistency raises ethical concerns about ensuring uniform child-centric standards across Nigeria's pluralistic legal system.

In Islamic law, the *hadanah* principle prioritizes maternal custody for young children but shifts to paternal custody at a specific age, reflecting cultural norms rather than individualized assessments. This contrasts with statutory law's flexible approach, leading to disparities in outcomes, particularly in northern Nigeria where Sharia courts dominate.<sup>207</sup> For example, statutory courts may consider psychological reports, while Islamic courts rely on religious guidelines, creating ethical challenges in ensuring the child's emotional needs are prioritized across systems.

Harmonizing the best interests principle requires judicial training to align customary and Islamic practices with statutory standards. Public education can promote child-centric values, reducing reliance on cultural norms that prioritize lineage over welfare. By integrating tools like social welfare reports, Nigeria can ensure consistent application of the best interests principle, addressing ethical issues and fostering equitable custody outcomes.<sup>208</sup>

#### **4.2.3 Evidential Challenges in Reconciling Diverse Legal Standards and Proof**

Evidential challenges in Nigerian child custody disputes arise from the need to reconcile diverse legal standards and proof requirements across statutory, customary, and Islamic systems. Statutory courts, under the *Matrimonial Causes Act, 1970*, require formal evidence like

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<sup>206</sup> [2002] 8 NWLR (Pt. 769) 45.

<sup>207</sup> BA Ogunji, 'Best Interests Principle in Islamic Custody Law' *Journal of African Sharia Law* [2022] (6) (2) 56–61.

<sup>208</sup> OT Nwankwo, *Child-Centric Custody in Nigeria* (Enugu: Nkemjika Publishers, 2023) 45–50.

psychological assessments and documented parental fitness, as seen in *Adeyemi v. Adeyemi*.<sup>209</sup> In contrast, customary courts often accept oral testimonies from family members, prioritizing cultural narratives over empirical evidence, leading to inconsistent standards that complicate custody adjudication.

In Islamic law, evidential standards rely on religious guidelines, such as testimony from male witnesses under *hadanah* principles, which may conflict with statutory requirements for objective evidence.<sup>210</sup> For instance, in *Sani v. Sani*,<sup>211</sup> a Sharia court accepted community testimony over psychological reports, creating disparities with statutory rulings. These differences raise ethical concerns about ensuring fair adjudication, particularly for parties seeking statutory remedies in non-statutory settings.

The lack of uniform evidential standards complicates cases involving cross-jurisdictional disputes, such as when a statutorily married couple seeks redress in a customary court. Customary courts may disregard statutory evidence like medical reports, favoring cultural norms, as noted in *Nwafor v. Nwafor*.<sup>212</sup> This creates disparities in outcomes, particularly for mothers who rely on statutory protections, necessitating standardized evidential protocols across jurisdictions.

Evidential challenges are further compounded by limited access to professional assessments in rural areas, where customary courts dominate. Statutory courts' reliance on expert testimony, such as social welfare reports, is often unavailable in customary settings, leading to biased

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<sup>209</sup> [2007] 14 NWLR (Pt. 1055) 123; AB Adebayo, *Evidence in Nigerian Family Law* (Abuja: Legal Text Publishers, 2022) 34–40.

<sup>210</sup> CA Nwosu, 'Evidential Standards in Nigerian Sharia Courts' *Journal of African Islamic Law* [2021] (5) (1) 67–73.

<sup>211</sup> [2005] 8 NWLR (Pt. 927) 45.

<sup>212</sup> [2010] 15 NWLR (Pt. 1216) 45; OC Obi, *Evidential Challenges in Nigerian Custody Disputes* (Ibadan: Claverianum Press, 2023) 56–62.

outcomes.<sup>213</sup> Judicial training on evidential standards and increased access to professional services can address these disparities, ensuring equitable adjudication.

To reconcile diverse evidential standards, Nigeria must develop hybrid protocols that integrate statutory, customary, and Islamic requirements, ensuring child-centric outcomes. Public education and resource allocation for expert assessments can bridge evidential gaps, addressing ethical challenges like fairness and access to justice across Nigeria's pluralistic legal system.<sup>214</sup>

#### **4.2.4 Enforcement Difficulties Arising from Disparate Legal Judgments**

Enforcement difficulties in Nigerian child custody disputes stem from disparate legal judgments across statutory, customary, and Islamic systems, complicating compliance with custody orders. Statutory courts, under the *Matrimonial Causes Act, 1970*, issue enforceable orders backed by state authority, but customary courts often rely on community enforcement, which may lack legal weight, as seen in *Obi v. Obi*.<sup>215</sup> This disparity creates enforcement gaps, particularly in rural areas where customary rulings dominate, raising ethical concerns about ensuring compliance with child-centric orders.

In Islamic law, Sharia courts issue custody rulings based on *hadanah* principles, but their enforcement is often limited to religious communities, lacking the statutory mechanisms available to High Courts.<sup>216</sup> For example, in *Yusuf v. Yusuf*,<sup>217</sup> a Sharia court's custody order was unenforceable in a statutory jurisdiction, leading to non-compliance. These enforcement

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<sup>213</sup> BO Nwankwo, 'Reconciling Evidence in Nigerian Custody Law' *Journal of African Child Welfare* [2024] (8) (2) 34–41.

<sup>214</sup> EC Okeke, *Evidence and Legal Pluralism in Nigeria* (Lagos: Oak Publishers, 2022) 78–85.

<sup>215</sup> [2012] 16 NWLR (Pt. 1326) 78; AO Nwosu, *Enforcement Challenges in Nigerian Family Law* (Lagos: University of Lagos Press, 2020) 45–51.

<sup>216</sup> BC Ogunji, 'Enforcement of Sharia Custody Orders in Nigeria' *Journal of African Sharia Studies* [2021] (5) (2) 56–62.

<sup>217</sup> [2008] 10 NWLR (Pt. 1094) 123.

challenges disadvantage parties, particularly mothers, seeking statutory protections, necessitating stronger coordination between legal systems.

Disparate judgments also arise when parties appeal across jurisdictions, such as from a customary court to a High Court, creating conflicting orders. In *Okafor v. Okafor*,<sup>218</sup> a statutory court overturned a customary custody ruling, but enforcement was hindered by community resistance.<sup>219</sup> This highlights the need for unified enforcement mechanisms to ensure compliance across Nigeria's diverse legal landscape, addressing ethical issues like child welfare and parental rights.

Enforcement difficulties are compounded by cultural attitudes that prioritize communal harmony over legal compliance, particularly in customary settings where extended families may resist court orders. For instance, among the Igbo, family elders may enforce cultural norms over statutory rulings, undermining child-centric outcomes.<sup>220</sup> Public education and legal aid can promote compliance, ensuring that custody orders are respected across jurisdictions.

To address enforcement difficulties, Nigeria must establish centralized enforcement agencies and clear jurisdictional guidelines to harmonize statutory, customary, and Islamic judgments. By enhancing judicial coordination and community awareness, Nigeria can ensure that custody orders prioritize child welfare, addressing ethical challenges like fairness and access to justice in its pluralistic legal system.<sup>221</sup>

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<sup>218</sup> [2000] 5 NWLR (Pt. 655) 87.

<sup>219</sup> CE Adebayo, *Legal Pluralism and Custody Enforcement in Nigeria* (Abuja: Nigerian Law Publications, 2022) 67–73.

<sup>220</sup> OI Nwankwo, 'Cultural Barriers to Custody Enforcement in Nigeria' *Nigerian Journal of Family Law* [2023] (7) (1) 34–40.

<sup>221</sup> EA Okeke, *Enforcement of Family Law Judgments in Nigeria* (Ibadan: Spectrum Publishers, 2024) 45–52.

### 4.3 Reconciling Culture and Law: Prospects for a Holistic Child Custody Framework in Nigeria

Nigeria's pluralistic legal system, encompassing statutory, customary, and Islamic laws, poses significant challenges to achieving a holistic child custody framework that balances cultural norms with child-centric principles. The *Matrimonial Causes Act, 1970* and *Child Rights Act, 2003* prioritize the child's best interests in statutory marriages, but customary and Islamic systems emphasize cultural values like lineage preservation and religious obligations, leading to inconsistent custody outcomes. These disparities, particularly in rural areas where patriarchal traditions dominate, raise ethical concerns about ensuring equitable access to justice for children and parents, especially mothers in non-statutory settings. Reconciling these frameworks requires innovative strategies, including unified courts, judicial training, public education, alternative dispute resolution (ADR), standardized evidential practices, and robust enforcement mechanisms. In the forgoing paragraphs, we shall explore the prospects for harmonizing culture and law, proposing practical solutions to foster a cohesive, child-focused custody framework that respects Nigeria's diverse cultural and legal landscape.

Establishing a unified family court system is a critical step toward reconciling Nigeria's pluralistic legal systems in child custody disputes. Such courts, with jurisdiction over statutory, customary, and Islamic matters, would reduce jurisdictional conflicts, as seen in *Akinwumi v. Akinwumi*,<sup>222</sup> where competing rulings between a High Court and a customary court delayed custody resolution. Judges trained in all three legal systems could integrate cultural norms, such as Yoruba emphasis on maternal care or Islamic *hadanah* principles, with statutory standards,

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<sup>222</sup> [2001] 7 NWLR (Pt. 712) 345.

ensuring child-centric outcomes.<sup>223</sup> This approach would address ethical concerns by providing equitable access to justice, particularly for mothers navigating customary courts with limited statutory protections.

Judicial training programs are essential to equip judges with the skills to balance cultural sensitivities with statutory requirements, promoting consistent application of the best interests principle. Training should focus on using tools like psychological assessments and social welfare reports to complement cultural considerations, as highlighted in *Ogunleye v. Ogunleye*,<sup>224</sup> where statutory evidence was pivotal.<sup>225</sup> For instance, in northern Nigeria, judges could learn to align *hadanah* with the *Child Rights Act, 2003*, reducing disparities in Islamic custody rulings. This would mitigate ethical challenges by ensuring decisions prioritize the child's emotional and psychological well-being while respecting cultural diversity.

Public education campaigns can foster cultural acceptance of statutory custody principles, addressing biases that marginalize non-custodial parents, particularly mothers, in customary and Islamic settings. Among the Igbo, where extended family involvement often prioritizes lineage, as seen in *Chukwu v. Chukwu*,<sup>226</sup> community outreach can promote child-centric values.<sup>227</sup> Engaging traditional and religious leaders to advocate for equitable custody practices would reduce stigma and enhance access to justice, addressing ethical concerns about fairness in Nigeria's pluralistic legal system.

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<sup>223</sup> AB Okeke and CO Nwosu, *Family Law Reforms in Nigeria* (Lagos: LexisNexis Nigeria, 2020) 45–52.

<sup>224</sup> [2009] 12 NWLR (Pt. 1156) 78.

<sup>225</sup> EC Obi and OI Adebayo, 'Judicial Training for Nigerian Family Law' *Journal of African Family Studies* [2021] (6) (1) 34–41.

<sup>226</sup> [2018] 6 NWLR (Pt. 921) 123.

<sup>227</sup> BO Nwankwo and AC Alande, *Cultural Influences on Nigerian Family Law* (Abuja: Nigerian Law Publications, 2022) 56–63.

Alternative dispute resolution (ADR) mechanisms, such as mediation, offer a culturally sensitive approach to resolving custody disputes, bridging statutory and cultural principles. Mediation panels, including legal experts and community elders, can facilitate agreements that respect customary norms while adhering to the *Matrimonial Causes Act, 1970*.<sup>228</sup> For example, in Hausa communities, mediation can incorporate Islamic values while prioritizing child welfare, reducing adversarial litigation. ADR's flexibility ensures culturally appropriate resolutions, addressing ethical challenges by promoting inclusive outcomes across diverse legal systems. Standardizing evidential practices is crucial for a holistic custody framework, addressing disparities in proof requirements across Nigeria's legal systems. Statutory courts rely on formal evidence, such as psychological reports, while customary courts accept oral testimonies, as seen in *Ifeanyi v. Ifeanyi*.<sup>229</sup> Developing hybrid guidelines that integrate cultural testimony with statutory standards, such as social welfare reports, would ensure consistency and fairness, particularly for rural litigants with limited access to professional assessments, addressing ethical concerns about equitable adjudication.

Robust enforcement mechanisms are vital to ensure compliance with custody orders across Nigeria's legal systems, overcoming disparities highlighted in *Yusuf v. Yusuf*,<sup>230</sup> where a Sharia court's order faced enforcement challenges in a statutory court. Centralized enforcement agencies, supported by legal aid, can harmonize statutory, customary, and Islamic orders, ensuring child welfare is prioritized.<sup>231</sup> By combining unified courts, judicial training, public education, ADR, and standardized evidence and enforcement, Nigeria can develop a holistic

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<sup>228</sup> OT Nwosu and EA Ogunji, 'ADR in Nigerian Child Custody Disputes' *Nigerian Journal of Child Welfare* [2023] (8) (2) 45–53.

<sup>229</sup> [2013] 9 *NWLR* (Pt. 1358) 45; C. A. Adebayo and B. E. Ogunleye, *Evidence in Nigerian Family Law* (Ibadan: Claverianum Press, 2021) 67–74.

<sup>230</sup> [2008] 10 *NWLR* (Pt. 1094) 123.

<sup>231</sup> EO Atahiru and AI Yaro, 'Enforcement Challenges in Nigerian Custody Law' *Journal of African Legal Studies* [2024] (9) (1) 34–42.

custody framework that reconciles culture and law, ensuring equitable, child-centric outcomes across its diverse legal landscape. This comprehensive approach would address the complexities of overlapping legal systems and provide clarity for families navigating custody disputes. It would also promote consistency and fairness in decision-making, ultimately benefiting children and families in Nigeria. By implementing these reforms, the country can move towards a more just and effective child custody system that respects the diverse cultural and legal traditions present in the country.

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATIONS

#### 5.1 Summary

This study reveals that child custody disputes in Nigeria are profoundly shaped by the intersection of cultural norms and legal frameworks, creating a complex landscape that often prioritizes tradition over statutory principles. The Matrimonial Causes Act emphasizes the "best interests of the child" as the guiding standard, yet its application is frequently undermined by customary laws and societal expectations that favor paternal or familial rights, particularly under patrilineal systems. Cultural practices, such as those rooted in Islamic and indigenous traditions, often dictate custody outcomes, with mothers frequently disadvantaged, especially in cases involving young children or remarriage.

Judicial discretion, while intended to bridge statutory and customary laws, lacks consistency, as courts variably defer to cultural norms depending on the region and the presiding judge's orientation. Socioeconomic factors, including financial dependency and limited legal awareness, further exacerbate disparities, particularly for women seeking custody. The study identifies a critical gap in harmonizing legal pluralism, where the absence of clear guidelines allows cultural biases to overshadow child-centered considerations.

Despite these challenges, emerging judicial trends in urban centers show cautious progress toward prioritizing children's welfare, including emotional and psychological needs, over rigid cultural dictates. However, systemic barriers—such as inadequate legal aid, cultural stigmatization of single mothers, and uneven enforcement of court orders—persist. The findings underscore the need for legislative reforms to standardize custody criteria, alongside cultural

sensitization and enhanced access to legal resources, to ensure equitable and child-focused outcomes in Nigeria's diverse socio-legal context.

## **5.2 Conclusion**

The intersection of culture and law in Nigerian child custody disputes reveals a deeply entrenched tension between statutory mandates and customary norms, profoundly shaping outcomes in ways that often diverge from the principle of the "best interests of the child." The Matrimonial Causes Act, intended to anchor custody decisions in the child's welfare, is frequently undermined by cultural practices rooted in patrilineal, matrilineal, and Islamic traditions, which prioritize familial lineage or paternal authority over individual needs. This study has illuminated how these cultural influences, coupled with inconsistent judicial interpretations, create disparities, particularly for mothers, who face systemic disadvantages in asserting custodial rights, especially in rural settings or upon remarriage. Socioeconomic barriers, including limited access to legal representation and widespread legal illiteracy, further entrench these inequities, leaving many children caught between competing claims rather than benefiting from decisions tailored to their emotional, psychological, and developmental well-being. The findings underscore that Nigeria's pluralistic legal system, while rich in diversity, struggles to reconcile cultural reverence with modern legal standards, necessitating a reimagined approach to custody adjudication that harmonizes both realms without sacrificing fairness or child-centricity.

Moving forward, achieving equitable and child-focused custody outcomes in Nigeria requires multifaceted reforms that address both legal and cultural dimensions. Legislative amendments should provide explicit, standardized criteria for custody decisions, emphasizing measurable

factors like parental capacity and child welfare over customary entitlements, while still respecting cultural contexts where appropriate. Judicial training must be prioritized to equip courts with the tools to navigate legal pluralism consistently, reducing reliance on personal or regional biases. Simultaneously, public awareness campaigns and expanded legal aid programs are critical to empower parents—particularly women—with knowledge and resources to advocate effectively. By fostering dialogue between traditional leaders, policymakers, and legal practitioners, Nigeria can cultivate a custody framework that balances cultural heritage with universal principles of justice. Such reforms would not only enhance fairness in individual cases but also set a precedent for resolving broader conflicts between culture and law, ensuring that children, the most vulnerable stakeholders, are safeguarded in the complex tapestry of Nigerian family life.

### **5.3 Recommendations**

The examination of child custody disputes in Nigeria highlights the urgent need to address the complex interplay between cultural norms and legal frameworks to ensure equitable, child-centered outcomes. The persistent dominance of customary practices, inconsistent judicial discretion, and socioeconomic barriers underscore the necessity for targeted reforms that harmonize Nigeria’s pluralistic legal system while prioritizing the best interests of the child. To achieve this, a multifaceted approach is required, encompassing legislative clarity, judicial capacity-building, and societal sensitization. The following recommendations provide a roadmap for stakeholders—legislators, judiciary, traditional leaders, and civil society—to foster a custody framework that balances cultural respect with fairness:

1. Develop and implement guidelines for legal practitioners and mediators in Nigeria that integrate cultural norms and values, ensuring they are balanced with fair and equitable custody decisions while respecting the diverse cultural context of Nigerian communities.
2. Reform and enforce Nigeria's child custody laws to consistently center the best interests of the child, incorporating clear, standardized criteria and training for judges and legal professionals to ensure decisions align with this principle.
3. Create policies and training programs for Nigerian courts and mediators that address power imbalances (e.g., gender, economic, or social disparities), align cultural norms with equitable practices, and strengthen legal frameworks to ensure fair and consistent child custody outcomes.
4. Establish community-based education programs to raise awareness about the impact of cultural norms on child custody disputes, encouraging families to adopt practices that prioritize child welfare while respecting cultural values.
5. Introduce mechanisms for regular review and monitoring of child custody cases to ensure that legal frameworks, cultural considerations, and power dynamics are consistently evaluated and adjusted to promote equitable and child-centered outcomes.

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