

The “Best Interest of the Child” Principle and the Pluralistic Realities of Post Separation Custody in Nigeria

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Abstract: *The statutory codification of the “best interest of the child” principle under Section 1 of the Nigerian Child’s Right Act (CRA) 2003 was intended to establish a supreme, uniform standard for child justice. However, within Nigeria’s plural legal system, child custody determinations following parental separation remains deeply fractured. This article examines the ideological clash that occurs when the statutory welfare principle meets the deeply entrenched, competing norms of Southern Customary law and Islamic law (sharia) utilizing a doctrinal and socio-legal analysis of chapter 4 empirical data, the paper demonstrates that lower customary and religious courts routinely bypass individualized welfare evaluations. Instead, they default to rigid, systemic presuppositions: patrilineal property-based custody structures in the South and rigid, age –and –gender-asymmetrical rules (Hadanah) in sharia jurisdictions. While superior appellate courts have made strides in emphasizing child welfare, this paper exposes the structural and cultural gaps that prevents these reforms from trickling down to grass roots courts. Ultimately, it proposes an integrated, pluralistic judicial framework that operationalizes “the best interest” standard without entirely discarding customary and religious identity.*

Keywords: best interest of the child; parental separation; child custody; shared parenting; child rights; family law; Nigeria; pluralism; Post separation parenting.

INTRODUCTION

When a marriage collapses in Nigeria, the resulting custody disputes is rarely a straightforward application of statutory family law. Instead, the child becomes the subject of a profound ideological and jurisdictional struggle within Nigeria’s tripartite legal system. In this pluralistic matrix, statutory law, customary legal traditions and Islamic law (sharia) co-exist, often advancing deeply conflicting philosophies regarding family structure, parental roles and child welfare.

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At the apex of statutory child law sits the Child's Right Act³ and its various sub-national state equivalents which explicitly mandates that in all matters concerning a child, the "best interest of the child" shall be the primary and overriding consideration. This welfare principle demands an individualized, flexible and child-centric evaluation of who is best suited to provide emotional, physical and educational stability. In *Madu v Madu* ⁴, the Court of Appeal established that parental rights under customary law must yield completely to the child's welfare as paramount.

However, at the grassroots level of Southern Customary Courts and Sharia Courts, the determination of custody routinely collides with rigid, pre-determined legal dogmas. In many southern customary systems, custody is heavily tied to patrilineal lineages and the financial transaction of bride price, creating an assumption that the father has an absolute right to his "property" Conversely, Sharia jurisprudence applies the doctrine of *Hadannah*, a highly structured, age and gender –asymmetrical framework that automatically transfers custody from mother to father based on fixed biological milestones.

This article explores the legal impact of parental separation on children by investigating this "best interest" clash. It analyzes how the flexible statutory welfare principle is diluted, circumvented or entirely ignored in customary and religious courtrooms. By examining this friction, the paper argues for a harmonized judicial approach that forces plural legal systems to operationalize the best interest standard, ensuring that a child's developmental stability is never sacrificed on the altar of unyielding cultural or religious dogmas.

Conceptualising the Best-Interest Principle

The concept of the best interest of a child has varying definitions as a result cannot be sufficiently defined. It can only be determined on a case by case evaluation this is because its content remain vague and its potential functions are multiple, the concept is more appropriately suited to precise issues or systematic elaboration in jurisprudence.⁵ This principle mandates that a child overall wellbeing and development takes absolute precedence over the desires, right or convenience of contesting adults. In matrimonial proceedings relating to custody, education, maintenance and upkeep of a child, the court treats such matters as very sensitive and serious and do not allow technicalities, culture and conventional usages to obstruct what will be the best/paramount consideration of the child⁶

Per Agube JCA in *Alabi v Alabi*⁷ held thus:-

"Award of custody of the children of the marriage that has broken down irretrievably as in this case is governed by Section 71(1) MCA 1990 which enjoins the court in proceedings relating to custody, guardianship, welfare, advancement or education of children of the marriage to take the interest of the child as paramount consideration and the court in this regard are given wide discretionary powers which they can exercise according to the peculiar circumstances of each case".

³ Child Rights Act 2003, (Federal Acts of Nigeria), Cap. C50, S 1(Establishing the statutory core: "in every action concerning a childthe best interest of the child shall be the primary and overriding consideration").

⁴ (2008) 6 NWLR (Pt. 1083) 296

⁵ Yinka Olomojobi- Human Rights Legal Protection of children in Nigeria page 45

⁶ Sarinus Ettar Kabor, phd; Child Rights Law and Practice in Nigeria page 170

⁷ (2007) 9 NWLR (PT. 1039) 297 Pp. 346, Paras G-A

Per Algoa, JSC in *Tabansi v Tabansi*⁸ stated further;

“The education, maintenance and upkeep of a child are serious and sensitive matters which should not be hamstrung by technicalities. What is best for the child should be the paramount consideration of the court”. It has been held in *Okoro v Okoro*⁹ that determination of welfare of the child is a composite of many factors which may affect the determination of who should have custody. What the court deals with is the lives of human beings and ought not to be regulated by rigid formulae.

In making decisions as regards the custody of a child, the courts prioritize the child’s best interests, considering factors like stability, parental involvement, and financial support in arriving at its decision. It also makes decision for the welfare and financial support of a child or children of the marriage, and any decision it arrives at is binding on the parties.

These factors include:

The wishes of the child

Sometimes the presiding judge in proceedings for custody, interviews the affected child privately particularly where the child has attained an age when he is capable of expressing his wishes.¹⁰ However, certain implications could arise as the child’s wish may be a result of deliberate or subconscious influence on the part of one of the parents. The smaller the child, the less well founded its choice as it may also prove difficult to find out what the child really wants.

Where the child’s wish is quite unambiguous, but goes contrary to what otherwise must be regarded as the best solution, the question arises of how much weight should be attached to its preference. Furthermore, it is a question at which age one should ask the child what it wants and also in which manner the child should be asked. In other cases, the child’s view may emerge from welfare reports and will be taken into account. The court does not necessarily follow the expressed wishes of the child.¹¹

Education and religion

The court usually gives consideration to the advantages and disadvantages of any arrangement for the education and religion of the child, matters of religion affect the welfare of the child and courts are anxious to ensure that whatever decision is reached in this respect reflects the child’s best interest.

The conduct of the parties

The conduct of the parents to the child also forms an important consideration in determining what the best interest of the child is.

Hence, in *Okafor v. Okafor*,¹² the court refused to grant the custody of a child of the marriage to a mother who had not seen the child physically for almost six years other than through photographs. Besides the conduct of the parties to each other constitutes one of the factors taken into consideration by the court. Such conduct may adversely affect the child. Also, there is the question of the effect of misconduct by

⁸ (2009) 12 NWLR (PT. 1155) Page 430, paras E

⁹ (2011) ALL FWLR 572, 1759

¹⁰ *H v.H* (1974) 1 WLR 595.

¹¹ *Re S (an infant)* (1962) 1 All E.R. 202, 210

¹² (1976) 6 CCHCJ 1927

one party or his or her responsibility for the breakdown of the marriage. Previously it was considered that the party who committed the misconduct or was responsible for the breakdown of the marriage is not entitled to the award of custody.¹³

But this view has changed. In *Williams v. Williams*,¹⁴ the Supreme Court held that the commission of adultery by a spouse does not necessarily deprive that party of custody unless the circumstances of the adultery make it desirable. The position of the law stipulating that before a court makes an order for a child's custody, it must take into consideration the fact that both parents have an equal right to the custody of their children as was decided by the court in the case of *Nwosu v Nwosu*.¹⁵ Subject to the overriding principle stated under Section 71(1) of the Matrimonial Causes Act, the court may place the child in the custody of either of its parents as the court deems fit.

The age and sex of the children

The courts have been influenced by the general belief that motherly care is necessary for the proper psychological development of children. Thus, all things being equal, a mother is more likely to be granted the custody of young children. The relevance of the sex of children in custody cases came up in *Oyelowo v. Oyelowo*.¹⁶ In the instant case, both parents applied for the custody of the two male children of the marriage aged ten and nine years respectively. The children had lived with their mother for two years since the separation of their parents. The trial judge held that, *"As male children, their rightful and natural place is their father's home. It does not matter how long they stay away from it they will one day long for it."* In *Okwueze v Okwueze*,¹⁷ the court per Agbaje JSC stated *"in practice, a young child who is yet to be weaned is generally awarded to the mother but when the child has attained the age of maturity, the child is generally awarded to the father as (the father) under customary law has absolute right to the custody of the children but this absolute right will not be enforced where it will be detrimental to the child's welfare as the principle of paramountcy of children's interest and welfare supersedes any local custom and has overriding consideration, the supreme court turned down the decision of the lower court on the ground that it fails to take cognizance of the welfare and interest of the child nor did it take into consideration the salient factors which were revealed in evidence before awarding custody of the children to the Defendant. The lower court fails to consider the fact that the Defendant had no wife living with him and he was being transferred from place to place"*.

Adequacy of arrangement for the child:

In custody cases, the courts consider the arrangements made by the parties for the accommodation, welfare and upbringing of the child to be a vital consideration. The mere fact that a spouse has material wealth cannot *per se* be regarded as being in the best interest of a child of the marriage. But the fact that one party is in a much better financial position to bring up the child and to provide him better accommodation may be decisive.

¹³ *Clout v. Clout* (1861)

¹⁴ (1987) 2 NWLR 54, 66.

¹⁵ (2012) 8 NWLR 1301.

¹⁶ (1987) 2 NWLR 239

¹⁷ (1989) 3 NWLR 109, 341

In *Eziashi v Eziashi*,¹⁸ the learned trial judge stated the position thus:

“The financial position of the parties is considered. Other things being equal, the fact that one spouse is in a much better financial position to bring up the child may be decisive. Moreover, the party who is in a position to offer the child good accommodation may be preferred.”

Medical and Psychological factors:

The courts have recognized the danger of psychological harm which may arise from the change of the custody of the child. Where the child has been in the custody of a parent for a considerable period of time, caution must be exercised in considering a change of custody.¹⁹

There is also the issue of psychological damage arising from separating the child from one of the parents. The court if satisfied that the custody of a child is best in the interest of a child may grant custody to a third party in line with the Matrimonial Causes Act.²⁰ In *Okobi v Okobi*,²¹ the Court of Appeal while interpreting the decision of the orders made by the trial court held *“in the absence of any specific order that the child must be in physical custody of the mother (the appellant), a child in the custody of the grand parents of the appellant is constructively in the custody of the appellant. I do not agree that such a situation amounts to custody by proxy and that it is a violation of the order of the court”*. The court in this scenario considered the best interest of the child to be with the grandmother while the child’s mother/Appellant schooled abroad.

Putting brothers and sisters together:

The view has sometimes been expressed that brothers and sister should be brought up together. Hence, where separation of the children of the marriage becomes inevitable, the court may solve the resulting problem through granting access to the other parent so as to enable the children meet regularly.

The Statutory Benchmark vs Cultural Realities

The articulation of the “best interest of the child” principle within statutory frameworks represents a progressive evolution in family law, prioritizing the individual welfare of the child over proprietary parental claims. However, the universal application of this benchmark in a legally pluralistic society like Nigeria presents a profound jurisprudential challenge. While codified laws established uniform, child-centric standard for post-separation custody, the lived realities of litigants are frequently mediated by deeply entrenched customary norms, religious personal laws, and informal community mechanism. This section examines the friction between idealized statutory benchmarks and pluralistic cultural practices, exploring how statutory mandates navigate traditional presumption of custody, extended family involvement, and customary tenure systems upon the dissolution of a union.

To understand the depth of the clash, a contrast must be made to determine the flexible nature of the statutory standard with the rigid nature of traditional legal systems.

¹⁸ Suit No. 3/255/80 of 12 November 1982 (unreported) High Court Benin

¹⁹ *S(BD) v. S (D.J)* (1977) Fam.179

²⁰ Section 71(3) MCA

²¹ (2020) 1 NWLR (Pt. 1705) 342

Under Section 1 of the Child's Right Act, 2003, the “best interest” standard acts as an equitable umbrella. It breaks away from treating children as parental property. It looks at the child as an independent right-bearing individual. This requires a judge to act as a social investigator, looking into the father's moral conduct, the mother's financial standing, the child's psychological attachment, and the child explicit preferences. This align with the Supreme Court decision in *Okwueze v Okwueze*²², where the court held that traditional native customs cannot be applied mechanically when they harm a minor's upkeep.

In a sharp contrast, customary and religious family laws are built on structural predictability. They rely on centuries-old communal and theological frameworks designed to preserve lineage, property continuity, and religious upbringing. When an ordinary Nigerian couple separates, their dispute is most frequently heard not in a high-tech statutory family court, but before a customary or sharia judges who are deeply embedded in these traditional frameworks. The clash is therefore not just a conflict of laws, but an institutional conflict between modern human right philosophies and deeply respected traditional norms²³.

Deconstructing the pluralistic Battleground:

The resolution of child custody disputes upon the dissolution of a marriage or domestic union does not occur within a monolithic legal vacuum in Nigeria. Instead, it takes place within a complex, overlapping web of legal regimes- a classic manifestation of legal pluralism.²⁴ while statutory frameworks like the Matrimonial Causes Act and state –domesticated Child Rights Laws formally enshrine the “best interest of the child” as the paramount consideration, the everyday lived realities of many citizens are heavily influenced by plural normative orders.²⁵

This chapter deconstructs the pluralist battle ground where statutory ideas collide with deeply entrenched customary frameworks. Legal pluralism in Nigeria inherently creates a contest of jurisdictions, values and evidentiary standards when determining the post-separation custody of children. On one hand, modern jurisprudence pushes towards a child-centric, right-based determinations; on the other hand, indigenous legal systems often operate on communal, patrilineal or lineage-based entitlements that predate the modern Nigerian state.²⁶

To fully understand the tensions inherent in post-separation custody, it is necessary to examine how these competing legal paradigms manifest across different regions. Accordingly, this chapter explores the distinct normative foundations governing child custody under customary law, analyzing the divergent perspectives, customary presumptions and socio-cultural imperatives operating within the Southern and Northern Nigerian landscapes, respectively.

²² (1989) 3 NWLR (Pt.109)

²³ Alston, P.&Gilmour-walsh, B., *The Best interest of the Child: Towards a synthesis of Human Rights and Cultural Values* (UNICEF) 1996

²⁴ E.I Nwogugu, *Family Law in Nigeria* (2nd edn. Heinemann 1990); E.T Aniche, “ Legal Pluralism and the challenges of Harmonizing Family Law in Nigeria (2018) 12(1) *Journal of African Law and Juriprudence* 89-104

²⁵ U.O. Ewelukwa, “Post –Colonialism, Gender, Customary Law: Constitutional and legal perspective on the status of women and children in Nigeria’ (2002) 16(2) *Temple international and Comparative Law Journal* 241, 245-250

²⁶ S.N.C. Obi; *Modern Family Law in Southern Nigeria* (Sweet and Maxwell 1966) 210-215

The Southern Customary Matrix: Custody as a property Right and the patrilineal imperative

In many traditional societies across southern Nigeria (including Igbo, Yoruba, Urhobo and Edo customs), the legal reality of custody is inextricably linked to the concepts of patrilineal continuity²⁷ and the repayment of bride price. This property based approach is illustrated in the case of *Eze v Omeke*²⁸, where custody was awarded automatically to the father strictly upon confirmation that the traditional bride price had not been refunded by the maternal family.

Under strict native law and custom, a father who has paid the traditional bride price owns an absolute, non-negotiable right to the custody of all children born of that union once they outgrow infancy. Should a mother seek separation, she is frequently forced to choose between leaving her children behind or remaining in a dysfunctional marriage.

When these disputes reach Southern Customary Courts, a dangerous judicial short cut occurs. Instead of conducting an independent inquiry into which parent can best care for the child, customary panels often ask two basic questions: Was bride price paid? And has the child finished breast feeding? If the answer to the first is yes, and the child is past infancy, the court routinely defaults to awarding custody to the father²⁹. This property-based approach completely ignores cases where the father may be abusive, financially reckless, or emotionally distant, directly violating the statutory core of the ‘best interest’ principle, thus creating a direct tension with the child –centric statutory approach³⁰. The core element of this clash is the traditional institution of bride price (Ime Ego) in Igbo customs, or Owo Ori in Yoruba traditions). Under strict native law and custom, the payment of bride price is not a mere symbolic gift. It is a formal legal contract that transfers the reproductive capacity of the woman and the absolute lineage rights of any resulting children to the husband’s family³¹. Consequently, when a marriage breaks down and parents’ separate, customary jurisprudence operates on a rigid, pre-determined formula: the father possesses an absolute, non-negotiable right to the custody of all children born during the union once they are past the age of infancy, provided the bride price has not been refunded by the maternal family. The biological mother is viewed merely as a temporary custodian rather than a permanent legal guardian; her right to care for the children is strictly conditional, typically lasting only during the child’s tender years or until the child is fully weaned.

As explained earlier the panel in those lower Customary Courts often default to these traditional assumptions instead of examining which parent provides a safer emotional or educational environment, the court’s focus shifts to property mechanics. The judicial inquiry narrows down to verifying whether the bride price transaction was perfected and whether the maternal family has attempted a traditional refund. This mechanical approach creates a dangerous legal deficit for the child. If a mother flees an abusive or

²⁷ E.I Nwogugu , Family Law in Nigeria (3rd ed, Heinemann Educational Books, 2014) , P. 260

²⁸ (1982) 3 NCLR 431

²⁹ Cheluchi Onyemelukwe- Onuobia, A legal Pluralist Analysis of State Protection of Women’s Child Custody Rights in Southern Nigeria, 57(1) De jure Law Journal 45-62 (2024)

³⁰ Article 16, Universal Declaration of Human Rights (UDHR) , 1948

³¹ Co Akpangbo “The best interest principle and the repugnancy doctrine in Igbo Customary family law (2021) 14(2) Nigerian Judicial Review 88

unstable home, the customary Court's default position routinely forces her to leave her children behind with a father who may be emotionally distant or abusive, simply because his traditional property right remains intact. This direct subordination of the minor's psychological stability to ancestral transactional perfection stands in open violation of the statutory mandate under the Child Rights Act.

This conflict is not new to Nigerian Jurisprudence, but its persistence in grassroots courtrooms highlights a major structural failure. For decades, a superior Court of record have tried to use the Repugnancy Doctrine to curb these harsh customary practices, holding that any custom may only be enforced, if it is not "repugnant to natural justice, equity and good conscience". As decided in *Edet v Essien*, which established that a father cannot claim custody of a child based strictly on transactional property or marriage payments if it harms the child³².

However, empirical data highlights a major disconnect: these landmarks appellate rulings rarely reach grassroots courtrooms. Lower Customary judges are often non-lawyers or traditional leaders who are deeply embedded in their local communities³³, they frequently lack formal copies of reported law volumes, have no training in international human treaties, and face intense social pressure to uphold ancestral family structures. Furthermore, because these grassroots court operate with no links to state social welfare departments, they lack the administrative tools to break away from traditional formulas. Without independent social welfare officers to conduct home visits or write child-centric assessments, these lower courts simply fall back on customary defaults. The child's voice is completely silenced, and they are handed over based on ancestral traditions, showing that despite progressive laws on the books, grassroots enforcement remains frozen in pre-statutory era.

The Sharia Paradigm: The presumption of Hadanah

In Northern Nigeria and among Muslim communities in the South; post separation custody is governed by a completely different but equally rigid legal structure: Islamic family law (sharia).³⁴ When a Muslim marriage dissolves, custody issues are determined under the doctrine of Hadanah (the care, nurturing and upbringing of young children). Unlike the patrilineal focus of Southern customary law, Sharia law deeply values maternal care during a child's early developmental stages.

The Maliki School of jurisprudence, which is predominantly followed in Nigerian Sharia Courts establishes a strict chronological timeline that presumes the mother is best suited for custody during a child's tender years³⁵.

- Maternal custody: favored for a male child until he reaches puberty, and for a female child until her marriage is consummated.

³² 11 NLR 47

³³ Ibid n 15

³⁴ AA Oba "Islamic law as Customary Law: The status of Islamic Law in Nigerian Courts" (2002) 46(1) Journal of African Law 81.

³⁵ U. Abdulhameed, DO Abdusalam, A.M Ishaq and S.A Badmus, A comparative study of Child Custody under Islamic and Nigerian Laws" (2025) 3(1) AL-Mahkamah: Islamic Law Journal 44.

- Automatic disqualifications: A mother instantly loses her right to Hadanah if she remarries outside the child's prohibited degrees of consanguinity (intermarriage) , moves a significant distance away , or is deemed morally un-islamic.

While Hadanah appears to align superficially with the “tender years doctrine” used in statutory law, its judicial application in lower Sharia Courts creates a severe clash with the “best interest of the child” standard mandated by the Childs Right Act, 2003. The fundamental flaw lies in the mechanical , unyielding nature of Maliki disqualification rules. Under strict Sharia jurisprudence, a mother's right to Hadanah is instantly and automatically stripped if she triggers certain behavioral or situational thresholds, regardless of her actual competence as a parent³⁶ .

The most controversial and damaging of these triggers is maternal marriage. If a divorced mother chooses to marry outside the child's prohibited degrees of consanguinity (intermarriage with a stranger to the child), she automatically forfeits her custodial rights.³⁷ The child is immediately uprooted and custody is transferred to the father or paternal relatives. In the traditional courtroom setting, this rule is applied like a mathematical formula. As shown in the landmark case of *Aisha v Aliyu*, lower sharia benches routinely apply these automatic disqualification rules without executing an individualized inquiry into the new stepfather's character, the child's emotional preferences, or the disruption , the move will cause to the child's education.

This mechanical approach directly violates Section 1 of the Child Rights Act, which requires the court to treat the child's welfare as an overriding veto rather than an afterthought. By treating maternal marriage as an automatic bar, the legal system punishes the mother for seeking socioeconomic and emotional stability post-divorce, while actively traumatizing the child through sudden relocation.

Superior appellate bodies, such as the Sharia Court of Appeal and the conventional Court of Appeal, have repeatedly tried to inject flexibility into this system. Higher benches have ruled in cases like *Umar v Umar*³⁸ that even within Islamic law jurisdiction, the ultimate welfare of the minor must override strict textbook rules of Hadanah. yet, just as seen in the customary law tracks, a profound implementation gap persists between appellate theory and grassroots reality³⁹early nurture in mind, its rigid application creates a severe “best interest” clash. For instance, a highly capable , loving mother chooses to remarry for her own economic and emotional stability post-divorce , sharia courts are traditionally bound to strip her of custody automatically. The Court does not ask if the new step father is a kind man or If moving the child will ruin their education ; the rule of disqualification is applied mechanically. The child is uprooted and handed over to the father or paternal relatives, treating the child's living situation as a mathematical equation rather than an emotional reality. The mechanical enforcement of Hadanah rules creates an

³⁶ AA Suleiman, An examination of Hadanah (child custody) in islamic law: The case of lower sharia court: (2024) 6 Kwara State. University Law Journal (KWASULJ) 12

³⁷ A. Wali, The Maliki School of Jurisprudence and the Dilemma of Family Law Reform in Northern Nigeria (Tamaza Publishing 2019) 142-155

³⁸ (2022) LPELR-57114 (CA)

³⁹ Ibid n 20

emotional vacuum. As shown in the case of *Habiba v Abdullahi*⁴⁰ where the court held that if a mother remarries, the father can validly seek custody of the child, particularly if the new stepfather is deemed unsuitable or if the new household threatens the minor's emotional and material development.

The Grassroots Trickle –Down Failure

While appellate benches like the Court of Appeal and the Supreme Court of Nigeria have consistently used landmark judgments stating that customary and religious rules must give way to the welfare of the child, a massive gap remains at the grassroots level.

Lower customary and Sharia Court judges often lack formal training in modern child psychology and statutory family law. Furthermore, these courts operate completely isolated from state social welfare departments. They do not have access to welfare officers who can conduct home visits or write independent custody evaluation reports. Left without these institutional tools, lower court judges simply fall back on traditional cultural and religious defaults. The child's voice is entirely left out of the equation, leaving them deeply vulnerable to secondary trauma during parental separation. This institutional deficit is confirmed by the study's findings: out of a 100 number of lower customary and religious court surveyed, 70percent lacked a designated or active social welfare officer, forcing judges to make life-altering custody decisions blindly.

Institutional and Policy Recommendations: Operationalizing welfare

To dissolve the structural friction between modern statutory welfare principles and deeply respected cultural or religious dogmas, the Nigerian judiciary must undergo systemic reform. Protecting a child during the trauma of parental separation requires moving away from the rigid, mechanical application of traditional rules. The following interventions are proposed to bridge the gap:

Harmonization of Legal frameworks: Resolving the Child Rights Act Non- Domestication Deadlock

The foremost institutional impediment to child's welfare in Nigeria is the federalist bottleneck surrounding the domestication of the Child's Right Act 2003. Because child rights and family law matters fall under the residual legislative list, the Child Rights Act is not automatically applicable across all thirty-six state. As observed in legal scholarship, several Northern states have either failed to domesticate the Act or have passed modified versions that dilute child protection standards to accommodate localized cultural or religious sensitiveness, particularly concerning child marriage, guardianship and custody.⁴¹ It is recommended that a family law courts should be domesticated in all thirty six states and adequately funded with every state Chief Judge issuing a practice direction to that effect.

Mandating Welfare Reports and integrating Social Welfare Officers

Lower customary and sharia courts currently operate in an institutional vacuum, entirely detached from administrative support infrastructure. To remedy this, state judiciaries must issue practice directions

⁴⁰(2018)NWLR (Pt 1641) 341

⁴¹ I. Okagbue, 'The Child Rights Act 2003: An overview of the implementation challenges in Nigeria' (2005) 18(2)Nigerian Current Law Review 45-50

making it mandatory for all grassroots courts to involve the state's Ministry of Social Development and Welfare before finalizing any custody or access order, taking into consideration the child's view or preference though not binding but must be considered having regard to the age and maturity.⁴² The National Assembly should amend Section 71 of the Matrimonial Causes Act to include a non-exhaustive welfare checklist similar to Section 1(3) of the English Children Act 1989.

- Independent evidence: Trained social welfare officers must conduct independent home visitations, interview neighbors and teachers, and assess the emotional attachment of the child.
- Overriding Custom: The resulting written "welfare Report" must be tendered in evidence. This forces traditional panels to base their verdicts on empirical, child-centric data rather than automatically defaulting to the status of a bride price or the gender-asymmetrical rules of Hadanah

Specilaized family Law Training for Traditional and Religious Benches

A significant reason for the "clash" is that lower-court judges are thoroughly grounded in native customs or Islamic jurisprudence but lack training in modern child psychology, sociology and international human rights frameworks.

- Judicial Education: the National Judicial Institute (NJI), in collaboration with state judiciaries, must institute mandatory continuous training modules on the Child's Right Laws for all Customary Court presidents and Sharia Court judges.
- A Harmonized Mindset: Benches must be trained to recognize that interpreting traditional rules through the lens of child welfare does not destroy indigenous identity; rather, it purifies custom in line with modern public policy.

Strengthening Alternative Dispute Resolution and support services

Litigation is adversarial and harmful to children. The Ministry of Women Affairs, Legal Aid Council and NGOs should be funded to provide mandatory pre-filing mediation, with legal representation for the child, not just the parents. This promotes the principle in *Odogwu v Odogwu*⁴³ that parental rights must yield to the child's welfare.

Institutionalizing Court Annexed Customary Mediation

Given the fact that a vast majority of Nigerians particularly in rural and semi-urban communities resolve post separation disputes through customary or religious mediation rather than formal litigation, sidelining traditional systems is neither pragmatic nor effective.⁴⁴ To this end policy frameworks should officially integrate recognized community elders, religious leaders (such as Islamic jurists in the North and community patriarchs in the south) and family heads into Court-Annexed ADR frameworks.

⁴² M.C Onokah, Family Law in Nigeria

⁴³ (1992) 2 NWLR (PT. 225) 539

⁴⁴ E.T Aniche, 'Legal pluralism and the Challenges of Harmonizing Family law in Nigeria

These traditional mediators must undergo mandatory sensitization workshops on the "best interest of the child" standard, ensuring that traditional arbitration honors child-centric principles rather than patriarchal property-based notions of child ownership.

Active Judicial Activism by Superior Benches

When customary or religious custody matters are appealed to the High Court, Court of Appeal or Supreme Court, the superior benches must aggressively exercise their revisionary powers.

- **Striking Down Harmful Customs:** Appellate judges must unhesitatingly declare any native law or custom that treats a minor as patrilineal property following parental separation as "repugnant to natural justice, equity, and good conscience"
- **Enforcing the Overriding principle:** the higher judiciary must clearly state that traditional rules are merely guideposts, and the statutory "best interest" principle under Section 1 of the Child's Right Act is an absolute, non-negotiable benchmark that overrules any conflicting rule of custom or faith.

Strengthening Executive Support Systems: The Overhaul of State Welfare Departments

An institutional recommendation is only as strong as the administrative machinery tasked with its enforcement. Currently, State Ministries of Women Affairs and Social Development, the primary agencies responsible for child welfare and post-custody monitoring are chronically underfunded, understaffed and underequipped.

Resource Allocation and Capacity Building

- **Budgetary Enhancement:** State governments must allocate dedicated, ring fenced budgetary lines for child welfare and social service infrastructure. Without financial autonomy, welfare officers cannot conduct field visits, monitor post-separation living conditions, or enforce visitation rights.
- **Training and Professionalization:** Continuous professional development programs must be instituted for customary court assessors, Alkali judges, Magistrates and social workers, focusing on modern child psychology, trauma-informed interviewing, and human-rights based approaches to custody.

CONCLUSION

The codification of the "best interest of the child" standard in Nigeria's statutory framework was a progressive attempt to shift family jurisprudence away from viewing children as parental property. Yet, within Nigeria's complex pluralistic legal environment, the reality for a child caught in the crossfire of parental separation remains deeply fractured. As decided in *Kalu v Kalu*, reiterating that custody orders are never frozen or given as reward or punishment for parental behavior, but are flexible based strictly on the child's evolving needs. The statutory welfare principle routinely collides with the deeply entrenched patrilineal structures of Southern Customary law and the rigid chronological brackets of Islamic Hadanah.. As demonstrated in chapter 4, lower customary and religious courts frequently bypass individualized evaluations of a child's psychological and educational stability. Instead, they default to systemic, predictable shortcuts-such as the re payment of bride price or mechanical age limits-which effectively

silence the voice of the child. This operational disconnect between upper –bench appellate declarations and grassroots courtroom realities exposes vulnerable minors to severe emotional and financial instability. Pluralism is an undeniable and vital part of Nigeria’s national and legal identity, but cultural or religious preservation must never be achieved at the expense of a child’s developmental safety. Tradition must serve as a shield to protect the family unit, not as a sword that slices through a child’s well-being following divorce/judicial separation. Only when the grassroots courts are institutionally linked with social welfare structures, and lower-court judges are trained to view tradition through the Supreme Court lens of child welfare, will the Nigerian Legal system deliver true justice to the children of separated parents.

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