Nigeria: Adoption

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I. Constitutional Overview

The following constitutional overview is necessary to understand the nature and evolution of Nigerian adoption laws with respect to which entity of the Nigerian government enjoys jurisdiction to regulate adoption between the federal government and the states.

Under the Constitution of the Federation of Nigeria 1999, as amended, there are 37 states of Nigeria excluding the Federal Capital Territory of Abuja. Article 4 of the Constitution vests legislative power in the National Assembly of the Federation which consists of a Senate and House of Representatives. The legislative powers of state legislatures that are similarly established and constituted are also provided for in this article of the Constitution. Federal and state legislative powers are exercised pursuant to the Exclusive Legislative List and the Concurrent Legislative List as scheduled in the Constitution. The Exclusive Legislative List contains 68 items which are the exclusive domain of the federal legislature.

The Concurrent Legislative List sets forth 30 areas in which the Federal Government shares powers of legislation with the states. Domestic relations or family law concerning statutory marriages and matrimonial causes arising under these types of marriages are within the purview of the federal legislative mandate as outlined in item 61 of the Exclusive Legislative List. But this item also specifically excludes the federal government from exercising legislative powers that deal with marriages under customary and Islamic laws or any other matrimonial causes arising under these two systems of law.

It is therefore by constitutional mandate that any matter of domestic relations arising under customary and/or Islamic law is within the domain of the states. For example, the Marriage Act of Nigeria 1914, as amended, controls all statutory marriages in Nigeria as a federal statute. Its matrimonial causes under the Matrimonial Causes Act 1970, as amended, are matters within the legislative competence of the federal government applicable to all of Nigeria without exception.


However, the various customary law and Islamic law marriages and divorces, including the attendant matrimonial causes, are subject to state enacted laws such as the Lagos State Customary Courts Law 1972, as amended, the Cross River State of Nigeria Customary Courts Law 1969, as amended, and the Anambra State of Nigeria Customary Courts Law 1977, as amended. For example, under section 20 of the Lagos State Customary Courts Law 1972, as amended, these courts are vested with jurisdiction to administer customary law. They also administer specified statutory law limited either by subject areas or by penalties imposed in case of the criminal laws of the country.

In addition to these express powers of the federal and state legislatures to legislate on matters of domestic relations and their matrimonial causes emanating under them as applicable to the federal government and the states, the states also enjoy “inherent powers” to legislate on any subject incidental or not specified by the two Legislative Lists. But even with this recognition, the federal legislature is still predominant over state houses of assembly in its exercise of inherent powers of legislation. The Constitution ensures that the federal legislature can legislate on any other matter not so prescribed by the Lists if it so chooses, as long as such legislative powers are exercised under or pursuant to a law enacted by this same federal legislature according to items 67 and 68 on the Exclusive Legislative List of the Constitution.

II. Adoption Laws of Nigeria

A. Statutory Adoption

Under Nigerian law “[a]doption is the process by which the legal relationship between a child and his natural parents is severed and re-established between the child and a third party or third parties.” E.I. Nwogugu states that:

In Nigeria, adoption may be effected under statutory law or under the rules of custom... Under the common law, the legal relationship between a child and his parents is inalienable. The result was that common law neither provided for nor recognized adoption. Hence the institution of adoption is wholly a statutory creation.  

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Prior to 1965, there was no statutory enactment that governed adoption in Nigeria. The initial attempt to statutorily regulate adoption in Nigeria can be traced to a private member’s bill submitted before the Eastern Region House of Assembly in April of 1958, known as the Eastern Region Welfare of Illegitimate Children (Adoption Bill of 1958). The bill would have permitted a father of an illegitimate child to apply to the High Court in the state for an adoption order with respect to the illegitimate child.

However, under this bill, for an adoption order to be decreed by the High Court, consent of the mother was required, unless exceptional circumstances warranted a waiver of the mother’s consent. But even under this bill, the legislature recognized that in all cases the primary consideration in adoption cases must always be the interests of the child. The bill did not become law and was withdrawn from the Eastern Region House of Assembly. However, following consultations with the federal government and other regions, the Eastern Region Government did enact the Adoption Act of 1965, as amended.

Since 1958, the Federal Government of Nigeria has considered an adoption law for the then Federal Capital Territory of Lagos and not for the entire country “as it could not legislate for the entire country, adoption being a regional [state] subject” in the context of exclusive and concurrent legislative prerogatives between the federal government and the states discussed earlier.

The federal government also decided to consult with the various regions on the nature of legislative measures concerning adoption. The goal was the enactment of uniform statutes that would be applicable in the regions with a view to a nationwide legislation on the subject.

Consequently, the Eastern Region Adoption Act of 1965 became the model for other regional/state statutes on adoption, e.g., in Anambra State of Nigeria, Cross River State of Nigeria, Imo State of Nigeria, and Rivers State of Nigeria.

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10 The Bill was dated Feb. 18, 1958. See also id. 312.
11 Id. Nwogugu at 313.
12 No. 12 of 1965, Supp. to Eastern Nigeria Gazette (1965) at A73-A80. But Nwogugu does not indicate whether it is the same failed Bill which was re-introduced and passed the second time around.
13 Supra note 8, Nwogugu at 313. This is the reason for the constitutional overview to indicate which entity between the federal and state legislatures has power to enact laws concerning adoption.
14 Supra note 12.
Following the creation of the 12 states of Nigeria in 1967, the Government of the Lagos State of Nigeria revived its efforts to enact adoption legislation, culminating in the Lagos State of Nigeria Adoption Law of 1968, as amended. As a result, some of the other Federation states followed suit and enacted legislation on adoption, e.g., Bendel state in 1979, Cross River State in 1981, Ogun State in 1983, and Oyo State in 1984. There are substantial similarities in these legislation though some significant differences exist.

It should be noted that, these pieces of legislation only apply to states in the southern part of Nigeria. In the states created from the former Northern Region of Nigeria, which are predominantly Muslim, there appears to be no legislation on adoption, as this concept is not known or exercised under Islamic law.

B. Adoption Under Customary Law as Recognized by Nigerian National Law

1. Introduction

Some systems of customary law in Nigeria recognize customary law adoptions. Under these systems of recognized customary law, adoption must be clearly distinguished from guardianship to which it is clearly connected. This is because guardianship also involves the exercise of certain parental rights, in particular in matters of custody, control, and maintenance of children according to the case of Martin v. Johnson. Nwogugu indicates that cases of alleged adoption sometimes turn out, on closer examination to be in fact guardianship arrangements. While cases of guardianship under customary law are common, adoption is rare. Traditionally, children are regarded as the greatest gift that God can bestow on a couple or family. Consequently, parents are most reluctant to part with their child or to lose all parental rights and obligations. Even when the parents of the child are too poor to undertake its maintenance, it is usual for members of the extended family to come to their assistance in order to ensure the

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3. See, The Quran [Koran], XXXII, 4-5. See also, K.P. Sackseng, Muslim Law as Administered in India and Pakistan 40 (1963); The Marriage Laws of Nigeria 170 (T. A. Aguda ed., 1981), supra note 8. For example, The Laws of Katsina State, vol. 1, from the former Northern Region, where an adoption statute would ordinarily be found or in any other volume does not contain any law on adoption.

4. Supra note 8, Nwogugu at 326

5. See, The Quran [Koran], XXXII, 4-5. See also, K.P. Sackseng, Muslim Law as Administered in India and Pakistan 40 (1963); The Marriage Laws of Nigeria 170 (T. A. Aguda ed., 1981); supra note 8. For example, The Laws of Katsina State, vol. 1, from the former Northern Region, where an adoption statute would ordinarily be found or in any other volume does not contain any law on adoption.
continued family membership of the infant. For the latter reason, most cases of adoption under customary law are between blood relations. It is usual to adopt the orphan child of the relative.\textsuperscript{21}

2. Procedures for Adoption

Customary law adoption may be formal or informal.

(a) Formal Customary Law Adoption

The formal customary law of adoption also reveals variations in the recognized ceremonies. Certain systems of Nigerian customary law require a meeting of the families of the potential adopter and the child to be adopted. It is at this meeting where a formal transfer of parental rights and obligations is effected with the approval of both families. In other customary law systems of Nigeria, a meeting of the elders of the adopter’s family is held at which time the adopter declares his/her intention to adopt a child and thereby makes the child to be adopted the heir to his/her estate. In this ceremony, formal consent of the parent or parents is obtained and other ritual requirements are performed to initiate the child to be adopted into the family of the adopter. This practice is found in particular among the Ishan group of Bendel State of Nigeria.\textsuperscript{22}

In the case of \textit{Re Martin: Martin v. Johnson & Henshaw},\textsuperscript{23} the West African Court of Appeal described the formal procedure of a customary law adoption as follows:

\begin{quote}
...the adoption of a son under native law and custom is a ceremony to be performed to which the family are bidden. The adopter nominates his or her adopter to the family and the ceremony is over.\textsuperscript{24}
\end{quote}

Even though the West African Court of Appeals described the presence of the adopter’s family and that of the child to be adopted to the ceremony of adoption, the court did not, however, state whether the consent of the family of the child to be adopted was necessary or required to effect a valid customary law adoption.\textsuperscript{25}

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\textsuperscript{21}Supra note 8, Nwogugu at 326.
\textsuperscript{22}See generally, C.G. Okojie, \textit{ISHAN NATIVE LAW AND CUSTOM} 90 (1960).
\textsuperscript{23}(136) WACA, 91.
\textsuperscript{24}Id. at 92.
\end{flushleft}
(b) Informal Customary Adoption

Informal arrangements of adoption are carried out where an adopter takes into his/her family a child of a relative or an orphan. The child is then treated as other children of the adopter. If this arrangement continues over a long period of the time, the arrangement then matures into an adoption. This is also the case when the child lives with the adopter all of his/her life, becomes completely disconnected from his/her natural family, and then acquires the status of the child of the family of the adopter. The child will then formally become vested with the rights of succession of his/her new adopted family. The process is one by which foster-parentage results into adoption.

Among the Yako tribal group in the Plateau State of Nigeria, for example, adoption is not effected by any formal adoption ceremony, where a child is transferred from one family to another. For instance, where the mother of the child is deceased or divorced, the child may live with the family of his/her maternal uncle. If the child lives in this family for a long time, the child is assimilated into the family of the maternal uncle. Much depends on whether the child has actually severed the nexus from his/her original family.

However, the key appears to be financial security when the adopted child decides to get married. If the maternal uncle provides funding for his/her marriage ceremonies, the youth will be expected to become a permanent member of the maternal uncle’s family. On the other hand, if these funds and other incidental costs of marriage are provided by the original family, the youth under this custom is obligated to return to his/her original family.

According to Yako custom, adopted children often remain permanently in the families of their adopters. They will then be given farmlands and dwelling sites. Yako customary law encourages the adoption of a sister’s son according to the prevailing system of matrilineal inheritance of property. A similar system and practice are also found among the Okrika group of Rivers State of Nigeria.

At other times, informal adoptions are effected where a widow or divorced woman may on remarriage bring, with the consent of her husband, her child from the former union into his household. This child is then brought up by his/her stepfather, and

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26 Supra note 8, Nwogugu at 327.
27 Id.
28 Id.
29 Id.
the child results into an adoption to which no formal adoption ceremony is performed or required. This is especially acceptable among the Ibo and Yako tribal groups of Nigeria.\(^32\)

The case of *Akinwande v. Dogbo*\(^33\) indicates that informal adoptions are also found among the Yoruba tribal group of Nigeria. Where a husband for example takes into his household a child belonging to his deceased sister, the wife must also be consulted even though it is the husband who will have the final word in adopting the child.

### 3. Effects of Customary Law Adoption

A child adopted under customary law normally takes the name of the adopter and will be considered and recognized as the legitimate child of the adopter. Under Yako customary law for example, the adopted person and the children of his/her adopted family are prohibited from inter-marriages or love affairs as such relationships are considered incestuous.\(^34\)

In terms of rights of succession, the adopted child will succeed along with the legitimate children of the adopter to the latter’s property, However, Nwogugu notes:

> ...one major defect of customary law adoption is that, unlike its statutory counterpart, it does not seem to effect a clear and permanent severance of the parental rights and obligations between the infant and natural parents. Moreover, there are no clear rules which deprive the adopted child of succession rights in his natural family. He may succeed to property both in the family of the adopter and also in respect of his natural parents.\(^35\)

### III. Conclusion

It is evident from the foregoing that Nigerian national law recognizes tribal or customary law adoptions in similar manner as adoption under the various adoption statutes, some of them noted in this study. It is important to remember, however, that the whole corpus of adoption law whether customary or statutory as examined above is a unique feature of states in the Southern part of Nigeria and not in the Northern portion of the country which is predominantly Muslim.

\(^32\)Supra note 8, at 327.


\(^34\)Supra note 30, at 73.

\(^35\)Supra note 8, at 327.
By and large in the Northern part of Nigeria, the concept of the adoption as practiced in Western cultures manifested in English law, received in Nigeria and other common law countries as well as the practices of adoption under Nigeria customary laws is unknown as observed above.

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