

THE LEGAL STATUS OF CHILDREN BORN OUT OF WEDLOCK IN NIGERIA: PROGRESS AND GAPS*

Abstract

The legal status of children born out of wedlock in Nigeria has been associated with social cultural biases, deeply rooted in customary and religious backgrounds. Children born out of wedlock often face numerous challenges in enforcement of their legal rights especially in issues pertaining to inheritance rights and social status under customary law. The paper analyses progress made so far in according children born out of wedlock their legal status, with a comparative analysis of practices in some selected African countries. In so doing will rely on the doctrinal research methodology. However, it is worthy to note that current legal developments in Nigeria, reveal significant shift towards equality and non-discrimination as provided under the Nigerian Constitution, Child's Rights Act and some landmark judicial pronouncements on equality and non-discrimination and the medical proof through paternity test. Despite these advancements made, several gaps remain in enforcement of legal status of a child born out of wedlock as a result of the country's inability to effectuate these statutory enactments especially under customary law practices coupled with the bottlenecks in proving paternity. The paper therefore calls for strengthened judicial enforcement political will, intentionality, public sensitisation plus proactive steps towards ensuring substantive equality for all children in Nigeria.

Keywords: Legal Status, Children Born Out of Wedlock, Progresses and Persistent Gaps, Nigeria

1. Introduction

The legal status accorded to children born out of wedlock is deeply rooted in historical, socio-cultural and religious practices. The Nigerian legal system has diverse ethnic groups with different cultures which made the legal system pluralistic in nature. Under Nigerian law, a child is presumed to be legitimate if born within a lawful marriage which is either customary, Islamic or statutory marriage. At common law, the child has no right whatsoever with regard to his parent and is described as *filius nullius*. The Legitimacy Ordinance of 1929 modified this common law position which allowed an illegitimate child to inherit the mother's estate.¹ The Legitimacy Act of 1929 allows for a child born outside of marriage to be legitimised if the parents marry after the child's birth.² Under customary law, children born out of wedlock experience challenges, they may not inherit father's estate except legitimised by acknowledgements by his putative father. Under Islamic law, there are divergent views from Islamic jurists on whether a child born out of wedlock may inherit the father's property but only from the mother.³

The practice of denying children born out of wedlock their legal status especially under customary and Islamic laws is averse to global human rights standards on equality and non-discrimination. Global human rights standards encapsulate principles of non-discrimination and equality, to ensure that no person is subjected to any form of discrimination, no matter the circumstances of birth.⁴ The hallmark of global standards on children's rights is enunciated in the landmark Convention on the Rights of the Child (CRC), which provides for the principle of equality and non-discrimination.⁵ However, Nigeria, over the past decades has witnessed major improvements in addressing challenges facing children born

*By **Helen Favour KALU, PhD (Nig)**, Department of Public Law, University of Nigeria, Nsukka, Email: favouritefav3@gmail.com, helenkalu77@gmail.com; and

Ijeoma Chinaka EZEUDE, PhD (Nig), Department of Public Law, University of Nigeria, Nsukka, Email: ijeomaezeude4@gmail.com Tel: +2348038685819

¹ Legitimacy Ordinance, s 10.

² Legitimacy Act 1929, s 3.

³ Jamiu Ridwanullah Kayode 'Succession Right of the Child Born out of Wedlock: An Appraisal of the Nigerian Law on Legitimization and the Islamic Law' (2021) 1(1) *International Journal of Research in Education and Sustainable Development* 41-57.

⁴ See the United Nations Convention of the Rights of the Child 1989, the African Charter, 1981, African Charter on the Rights and Welfare of a Child 1990 and, Child's Rights Act 2003 among other plethora of human rights instruments.

⁵ CRC, s 2.

out of wedlock. Starting from the Constitutional provisions which guarantees equality and non-discrimination.⁶ Section 42(2) of the 1999 Constitution can be said to be a watershed in eliminating the concept of illegitimacy for children born out of wedlock in inheritance rights. Additionally, the Child's Rights Act,⁷ is the foundational document which guarantees and explicitly affirms the inherent dignity and equality of every child in Nigeria irrespective of circumstances of birth. Also, several notable judicial decisions have successfully advanced the cause of children born out of wedlock. The modern technology of ascertaining paternity through a Deoxyribonucleic Acid test (DNA) is also a positive development for the status of children born out of wedlock, if the alleged father has acknowledged paternity.

Despite these developmental advancements in Nigeria, children born out of wedlock continue to experience challenges as a result of the nature of the Nigerian legal system. The non-uniform adoption of the Child's Rights Act across all states enabled the dominance of customary and Islamic law practices. Many children born out of wedlock still suffer discrimination as a result of the influence of social cultural practices in the Nigerian legal system coupled with the expensive nature of proving paternity through the DNA. The aim of this paper therefore is to underscore the importance of judicial activism in interpreting extant laws on children's rights, especially the child's rights laws of various states, so as to give true meaning to the rights of children born out of wedlock in Nigeria. The paper recommends that efforts should be targeted at strengthening the judicial system for a more robust activism and implementation of statutory enactments protecting the rights of children born out of wedlock in Nigeria.

2. Who is a Child?

The United Nations Convention on the Rights of the Child (CRC)⁸ recognises a child to mean 'every human being below the age of eighteen years unless the law applies to the child, the majority is attained earlier'. This definition of the child under CRC therefore gives room for states parties to set lower age limits concerning the exercise of certain rights in recognition of the evolving capacities of the child. The definition is also to accommodate existing cultural and religious diversities reflected in national age limits. The Convention sets international standards on age limit thereby being prescriptive and not inflexible in defining childhood. Kabo commenting on the above definition of the rights of the child stated that 'a careful analysis of the above definition of a child gives allowance to state parties to the Convention to adopt or peg different age limits to the definition of a child thereby making it possible for unwilling state parties to adopt age below 18 years'.⁹ The African Charter on the Rights and Welfare of the Child (ACRWC)¹⁰ defines a child for the purposes of the Charter as 'every human being below the age of 18 years'.¹¹ At the National level, The Children and Young Persons Act¹² defines a child as a 'person under the age of fourteen years and a young person to mean 'a person who has attained the age of fourteen year and under the age of seventeen years. The Child Rights Act provides that a 'child' means, 'a person under the age of eighteen years'.¹³ State laws on Child's Rights in Nigeria also define 'a child' for instance the Lagos State Child's Rights Law¹⁴ defines a child as 'a person under the age of eighteen years'.¹⁵ Akwa Ibom State Child's Rights Law¹⁶ defines 'a child as a person under the age of 16 years'. The paper adopts the definition of a child as a person under the age of eighteen years of age.

⁶ The 1999 Constitution of the Federal Republic of Nigeria (As amended 2023), s 42.

⁷ The Child's Rights Act, Chapter C50 Laws of the Federation of Nigeria, 2003.

⁸ Adopted and opened for signature, ratification, and accession by General Assembly Resolution 44/25 of 20 November 1989 entry into force 2 September 1990 CRC art 1.

⁹ S E Kabo, *Child Rights Law and Practice in Nigeria* (Ibadan: Ababa Press Ltd, 2021) 93.

¹⁰ OAU Doc. CAB/LEG/249/49 (1990) entered into force 29 November, 1999.

¹¹ ACRWC, art 2.

¹² Section 2 Cap 22 Laws of the Federation of Nigeria 2004.s

¹³ CRA s 274.

¹⁴ Lagos State of Nigeria Child's Rights Law 2007.

¹⁵ Lagos State Child's Rights Law, s 262.

¹⁶ Akwa Ibom State Child's Rights Law was passed and assented to on December 5, 2008.

A child born outside wedlock is a child whose parents were not legally married as at the time the child was born.¹⁷

3. Literature Review

Ajanwachukwu argues that recent development in case laws and the use of DNA test are good developments for children born out of wedlock. Children born out of wedlock may now inherit from their biological fathers if they can provide evidence of paternity including the use of DNA.¹⁸ Achi and Akaaunde emphasise that the Nigerian legal system rotates on a tripod of pluralistic legal system and conflict of laws making section 42(2) of the 1999 Constitution fluid regarding the status of children born out of wedlock. According to them, the legal status of children born out of wedlock especially in the issue of inheritance has not been solely resolved by section 42(2) of the Constitution. Rather they recommend the common law of legitimation as section 42(2) merely seeks to protect affected children against any form of disability or deprivation.¹⁹ Moronkeji added that acknowledgement of paternity by putative father of children born out of wedlock changes the status of such children entitling them to share in the intestate of the deceased. However, in spite of the Constitution, children born out of wedlock still suffer discrimination requiring laws that would give more protection to such children.²⁰ The paper acknowledges positive improvements in the law but emphasises that constant duplicity of laws may not enhance the status of children born out of wedlock, rather judicial activism, proof of paternity and adequate implementation of statutory provisions and case laws are more imperative.

4. Global, Regional versus National Responses and Progress in Protecting Rights of Children Born out of Wedlock

Globally, the Universal Declaration of Human Rights (UDHR) affirms that all human beings are born free and equal in dignity and rights without any form of discrimination.²¹ The United Nations Convention on the Rights of the Child (CRC) is the landmark instrument providing for equality and non-discrimination.²² At the regional level also, the African Charter on Human and Peoples Rights,²³ prohibits discriminatory practices, the African Charter on the Rights and Welfare of the Child (ACRWC),²⁴ also provides expansively on the principle of equality and non-discrimination. The ACRWC recognises the right of every child to be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the Charter regardless of any condition including birth or status.²⁵ Article 21 of the ACRWC further provides that state parties to the Charter shall ensure that appropriate measures are taken to ensure the elimination of harmful social and cultural practices affecting the welfare, dignity, normal growth and development of a child and in particular customs and practices discriminatory to the child on the grounds of sex or other status.

Nigeria has witnessed meaningful legal reforms aimed at addressing these legal disparities to ensure fairness. Specifically, the 1999 Constitution of the Federal Republic of Nigeria (As Amended) guarantees the right to dignity of the human person,²⁶ and freedom from discrimination.²⁷ The Constitution in section 42 provides among others that ‘no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth’. This provision in sum,

¹⁷ Available at <https://dictionary-findlaw.com/definition/-html> accessed 9 March 2026.

¹⁸ M Ajanwachukwu, ‘A Critical Appraisal of the Right of Inheritance of Children Born out of Wedlock’ (2016) 1(1) *Hasanuddin Law Review*. 1-9.

¹⁹ DT Achi and JO Akaaunde, ‘The Legal Status of Children Born out of Wedlock in Nigeria: Is the Concept of Illegitimacy in Decline’ *University of Cape Coast Law Journal* (2025) 5(1).

²⁰ F Moronkeji, ‘Legitimation and Inheritance Rights of a Child Born Outside Wedlock in Nigeria (2023) 4 (1) ’ *Obafemi Awolowo University Journal of Public Law* 1-22.

²¹ UDHR, arts 1 & 2.

²² CRC, s 2

²³ Banjul Charter adopted on June 1 1981. Arts 2 &3.

²⁴ Adopted by OAU at Addis Ababa Ethiopia in 1990, OAU Doc.CAB/LEG/24.9 1990, and came into force November 1999.

²⁵ ACRWC, s 3.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34.

²⁷ *Ibid* s 42,

protects the legal right of a child born out of wedlock from any form of discrimination. In addition, the Constitution under section 46(1) of the 1999 Constitution guarantees every person the right to enforce his/her fundamental rights where it provides that ‘any person who alleges that any of the provisions of this chapter has been or likely to be contravened may apply to a High Court in that state for redress.’ In the same vein, the Constitution²⁸ further empowers the Chief Justice of the Federation to make rules with respect to the practice and procedure of a High Court for the purpose of the enforcement of fundamental rights. In pursuance to this provision of the Constitution, the Fundamental Rights (Enforcement Procedure) (FREP) Rules were made by the CJN deriving powers under section 46(3) so as to further advance the course of justice in cases of human rights violations.²⁹ The FREP Rules: Paragraph 3(a) (6) of the overriding objectives of the Rules provide as follows:

a) The Constitution, especially Chapter IV, as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing the rights and freedoms contained in them and affording the protection intended by them.

b) For the purpose of advancing but never for the purpose of restricting the applicant rights and freedoms, the court shall respect municipal, regional and international bills of rights acted to it or brought to its attention or what the court is aware, whether those bills constitute *instruments in themselves or form parts of larger documents like constitution, such bills include: The African Charter on Human and Peoples’ Rights and other instruments including Protocol in the African regional human rights system (italics mine for emphasis)* This provision enables our court to take cognisance of the Child’s Rights instruments which have been ratified by Nigeria.

c) The African Charter on Human and People’s Rights and other instruments (including Protocols) in the African Region and Human Rights system

The Universal Declaration of Human Rights and other instruments (including Protocols) in the United Nations Human Rights System. *The Court shall proactively pursue enhanced access to justice for all classes of litigants especially...the vulnerable.* (italics mine for emphasis). The importance of the FREP Rules, which emerged as an additional advantage to the African Charter is that it makes the Charter applicable in its procedural framework. By virtue of Article 1 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.³⁰ The provisions of the Charter are binding on all authorities and persons in Nigeria. The said Section 1 stipulates thus:

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples Rights which are set out in the Schedule to this Act shall, subject as hereunder provided, have a force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive, and judicial powers in Nigeria.

The above provision had been reinforced by the Supreme Court when it affirmed the domestic applicability of African Charter on Human and Peoples Rights in the case of *Nemi v. State*³¹ In various cases,³² the Courts have held that victims of fundamental rights violations can seek relief under the Fundamental Rights Enforcement Procedure Rules and the African Charter on Human and Peoples Rights.

²⁸ Ibid s 46(2).

²⁹ The CJN Late Chief Justice Legbo Kuitigi made the ground breaking Fundamental Rights (Enforcement Procedure) Rules 2009.

³⁰ CAP A9 Laws of the Federation of Nigeria 2004.

³¹ (1994) 1 SCNJ 106.

³² *Ray Ekpu v. Attorney-General of the Federation* (2002) 2 WRN 105; *Eleguchi v. Attorney-General of the Federation* (1997) 2 FHCLR 774; *Chief Abaribe v the Speaker, Abia State House of Assembly and Anor* (2000) 9 WRN. 1.

The FREP Rules which has strengthened the enforceability of the African Charter provides ample route of access to justice in its preamble and under Order II Rule 1. Apparently, enforcement of the African Charter can be made through the FREP Rules and is not limited to the Rules. It can be by originating summons and under the inherent jurisdiction of the court. The Supreme Court of Nigeria per Bello CJN (as he then was) reinforced this position in the case of *Ogugua v. the State*,³³ held as follows:

However, I am unable to agree with Mr. Agbakoba that because neither the African Charter nor its Ratification and Enforcement Act has made a special provision like Section 42 of the Constitution for the enforcement of its human and peoples' rights within a domestic jurisdiction, there is a lacuna in our laws for the enforcement of these rights. Since the Charter has become part of our domestic laws, the enforcement of its provisions like all our other laws fall within the judicial powers of the Courts as provided by the Constitution and all other laws relating thereto.

The FREP indeed has expanded the frontiers for the enforcement of fundamental human rights which includes socio economic rights in a larger scope including that of children. Thus, everybody is given equal opportunity before the law without discrimination.³⁴ The Child's Rights Act³⁵ which has also been adopted in almost all states in Nigeria, explicitly affirms the equal rights of all children, irrespective of the circumstances of their birth. These developments reflect a significant shift towards the recognition of every child's inherent dignity and rights; which is consistent with international instruments to which Nigeria is a party to, including the Convention on the Rights of the Child³⁶. It is worthy to note that the Child's Rights Act,³⁷ further strengthens the rights of children born out of wedlock by prohibiting discrimination on the basis of birth. The Act emphasises the principle of the best interests of the child³⁸ and recognises every child's right to survival,³⁹ development, and protection⁴⁰. The combined effect of the Child's Rights Act and constitutional guarantees, supports the position that circumstances of birth should not be a bar to succession rights.⁴¹

The Administration of Estate Law of Lagos State recognises that children born outside of marriage are entitled to benefit from their deceased father's estate.⁴² The Evidence Act, (EA) 2011 (As amended in 2023) allows for the admissibility of opinions of experts in science, art or specialised fields.⁴³ DNA evidence is classified under this section as a point of science where the opinion of an expert is admissible. The test is also recognised under the Child's Rights Act; the Act empowers court in civil proceeding to order for scientific tests such as DNA or blood tests to determine a person's paternity or maternity.⁴⁴

Subsequently, judicial pronouncements, especially by appellate courts, have constantly rejected contentions anchored on the circumstances of a child's birth to reinforce legal disadvantage. Nigerian courts gradually began to align with this constitutional mandate, recognising that discrimination against children born out of wedlock is inconsistent with principles of justice, fairness and equity. Judicial intervention has played a pivotal role in redefining the legal status of children born out of wedlock. In *Salubi v Nwariaku*,⁴⁵ the Supreme Court of Nigeria held that the children of the deceased who were born within wedlock and the children of the deceased born outside wedlock are entitled to equal shares

³³(1994) 9 NWLR (Pt. 366) 1 at 26.

³⁴ See s 42(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

³⁵ 2003, a federal law domesticating the UN Convention on the Right of the Child.

³⁶ United Nations Convention on the Right of the Child was adopted by the General Assembly Resolution 44/25 1989.

³⁷ 2003.

³⁸ Child Rights Act, s 1.

³⁹ Ibid, s 4.

⁴⁰ Ibid, s 2.

⁴¹ Ibid, s 10.

⁴² Section 26 (1).

⁴³ EA, s 68.

⁴⁴ CRA, s 63 (1) (a).

⁴⁵ (2003) 7 NWLR (pt.819) 426.

to the properties of the deceased. Also, in *Okonkwo v Okonkwo*⁴⁶, the court held that once the paternity of a child has been acknowledged by the intestate father, such a child has equal share with the children of the marriage in terms of succession. Thus, in *Okoli v. Okoli*⁴⁷, the Court of Appeal adopted a more liberal approach in its interpretation and therefore emphasised that acknowledgment of paternity by the father and nothing more could confer inheritance rights on a child born out of wedlock. This decision heralds a diversion away from inflexible customary doctrines toward a more child-centered (the best interest of the child) interpretation of the law and subsequently other cases on legitimacy and inheritance followed suit. In *Motoh v. Motoh*⁴⁸, the Court of Appeal held that once paternity is acknowledged, a child born outside wedlock should not be denied rights solely on the basis of birth status. In *Mgbodu v Mgbodu* the court ruled that the quality of shares in the estate of the deceased by nullifying the grant of letter of administration for excluding a non-marital child.⁴⁹

The most significant judicial breakthrough and milestone came with the Supreme Court's resounding decision in *Ukeje v Ukeje*,⁵⁰ where the Court unequivocally held that any customary law which disentitles a female child or indeed any child from inheriting on the basis of birth circumstances is unconstitutional and void for being inconsistent with section 42 of the 1999 Constitution. Although the case was brought before the court on basis of gender discrimination however, the Court's reasoning extended more broadly to illegitimacy-based discrimination which affirms that all children are entitled to equal protection under the law regardless of the circumstances of their birth. This decision is a turning point in the history of Nigerian family and succession law, firmly positioning constitutional supremacy over discriminatory customary practices.

The above cases followed through and reinforced progressive trend and development entrenched in extant legislative reforms such as the Child's Rights Act 2003 which constitutes a major statutory intervention, explicitly providing that no child shall be subjected to discrimination on the grounds of birth or circumstances of birth⁵¹. The Act reflects Nigeria's commitment to international human rights obligations, particularly the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, both of which emphasise the principle of the best interests of the child and equality before the law.

5. Status of Children Born out of Wedlock in Selected Jurisdictions

Lessons can be learned from some selected jurisdictions in Africa. Ghana has made profound statutory interventions to tackle challenges facing children born out of wedlock, the Children's Act 1998⁵² guarantees equal rights for all children irrespective of circumstances of birth, also the Intestate Succession Law 1985⁵³ notably amended inheritance laws by acknowledging children born out of wedlock as beneficiaries of a deceased father's estate, one's paternity is established. Ghanaian courts have constantly upheld these statutory provisions and innovation which is rooted in her constitutional principle of equality. Unlike Nigeria, Ghana has achieved tremendous legislative uniformity which aids in eradicating possible conflict between customary norms, traditional practices and constitutional law. This statutory uniformity has enabled more predictable and beneficial pronouncements from the courts for children born out of wedlock in inheritance disputes. South Africa has one of the most advanced legal frameworks on legitimacy and inheritance rights. The Constitution of the Republic of South Africa, 1996⁵⁴ expressly guarantees equality before the law and prohibits discrimination on any grounds including birth. This constitutional provision was applied undiluted in *Fraser v Children's*

⁴⁶ (2014) 17 NWLR (Pt.1435) 18.

⁴⁷(2003) 8 NWLR (Pt. 823) 559.

⁴⁸(2011) 16 NWLR (Pt. 1274) 474.

⁴⁹ (2015) 8 NWLR (pt.1461) 241.

⁵⁰(2014) 11 NWLR (Pt. 1418) 384.

⁵¹ CRA, s 10.

⁵² Formally known and referred to as Act 560.

⁵³ The Intestate Succession Law 1985 (PNDCL 111).

⁵⁴ South Africa Constitution, s 9.

Court Pretoria North and others,⁵⁵ and later in *Bhe and others v Khayelitsha Magistrate and others*⁵⁶, where the Constitutional Court discountenanced customary succession rules that discriminated against certain categories of children and the Court held that any inheritance system that excludes children based on circumstances of birth is a violation of the Constitution and therefore unconstitutional. South Africa's approach is outstanding and worthy of emulation because of its strong constitutional enforcement and judicial willingness to directly invalidate discriminatory and obnoxious customary laws. Nigerian courts though on this same track but there is problem of inconsistency in application and enforcement. The comparative analysis reveals an urgent and intentional need for Nigeria to advance beyond gradual judicial reform towards aggressive, drastic and comprehensive legislative action that will aid liberal interpretation by the courts. Thus, the lessons from Ghana, and South Africa suggest that express statutory abolition of illegitimacy-based discrimination, uniform application of child rights laws, consistent and strong constitutional enforcement are necessary to achieving equal inheritance rights for all children. Until these recommended reforms are implemented, Nigeria's legal framework will continue to reflect tension between progressive constitutional ideals and entrenched customary practices.

6. Challenges Facing Children Born out of Wedlock in Nigeria

Even with these appreciable developments highlighted above, children born out of wedlock in some customs in Nigeria, experience challenges in enforcement of their legal rights. This situation is orchestrated by the non-uniform adoption of the Child's Rights Act across all states because each state adopts in accordance with their peculiarity; the continued dominance of customary and Islamic laws in family and succession matters, and persistent societal norms have limited the practical implementation of these legal reforms, thereby making them academic rhetoric. Severally, children born out of wedlock still encounter bottlenecks in trying to establish paternity, access inheritance rights, and gain full social acceptance without stigma and discrimination. Judicial decisions, while progressive in some instances, have also revealed inconsistencies in interpretation and application owing to personal ideologies, thereby introducing legal ambiguity, creating confusion and impeding enforcement. Though the advancements made so far cannot be denied, it is apt to reiterate that the legal positions of children born out of wedlock in Nigeria are bedeviled with obstacles, for instance customary and Islamic personal laws continue to exert significant influence in matters of marriage, legitimacy, and succession, sometimes undermining constitutional and statutory guarantees. Most Muslim jurists, though not consensual, hold the opinion that a child born out of wedlock can only inherit from his mother.⁵⁷ Most often, the hands of Nigerian judiciary may be tied owing to customary and Islamic practices which are relative to the people and cannot be subjected to tests outside the environment of operation; that is cultural relativism in interpretation of human rights.⁵⁸ This was exemplified in early judicial pronouncements, such as in *Salubi v. Nwariaku*⁵⁹, in this case the Supreme Court stated categorically that the orthodox view which is that under customary law, a child born out of wedlock could not automatically inherit from the father unless legitimated according to customary laid down procedures remains the law. This decision reflects the prevailing legal philosophy which positions the formality of marriage beyond the welfare and rights of children born outside the ambit of marriage.

Customary law often required acts such as the payment of bride price, formal acknowledgment before family elders, or subsequent marriage of the parents to legitimise the child. In the absence of these formalities, children born out of wedlock were denied succession rights, regardless of the nature of the relationship between the child and the father. This rigid approach prioritised cultural form over the welfare of the child and entrenched discrimination based solely on circumstances of birth. Under most Nigerian customary law systems, a child born out of wedlock was regarded as a member of the mother's family rather than the father's, unless the father took steps to formally acknowledge or

⁵⁵ 1997 (2) SSA 261 (CC).

⁵⁶ (CCT 49/03[2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October, 2004).

⁵⁷ Jamiu n 3.

⁵⁸O Adekile 'Succession and Inheritance at Customary Law Addressing the Crossroads of Constitutional Conflicts in Nigeria' (2009) 1 (1) *Olabisi Onabanjo University Law Journal*, 41-42.

⁵⁹(2003) 7 NWLR (Pt. 819) 426.

legitimise the child. Consequently, such a child was traditionally excluded from inheriting the father's estate. Denying children born out of wedlock legal advantages can be conveniently said to punish children for circumstances outside and beyond their control and therefore undermines the fundamental notions of justice, fairness and equality. It is trite to mention that the status of a child and that of the marriage of the parents play crucial role in the determination of succession rights in Igbo communities; thus, a child not given birth to within the ambit of a recognised marriage or laid down procedure for legitimisation is denied a right of inheritance in his putative father's Estate. In cases when the mother died intestate, the child she bore out of wedlock has no legal claim over her landed properties. In sum, conflicting interpretations of customary law by courts contribute to challenges facing children born out of wedlock because of inconsistencies in outcomes of legitimacy and inheritance disputes.

7. Conclusion

This paper critically examines the legal status of children born out of wedlock in Nigeria by analysing constitutional provisions, legislation, judicial decisions and evaluating the extent of progress achieved. It also identifies the persistent gaps in law and practice that continue to hinder the full realisation of equality and justice for these children. Legitimation of children born out of wedlock in Nigeria has been strengthened through constitutional guarantees, progressive judicial decisions and statutory reforms. While constitutional provisions, judicial activism, and statutory reforms have significantly improved the legal position of children born out of wedlock, full equality is yet to be fully achieved in some customs. For full equality to be achieved, there must be greater harmonisation of customary law with constitutional principles and increased judicial consistency so that no child should suffer legal disadvantage because of the circumstances of birth. The paper strongly recommends that the Nigerian State has the obligation to ensure that the fundamental human rights of every citizen especially children born out of wedlock, are protected, promoted and implemented accordingly. The State shall ensure at all times that effective machinery is put in place to enable children born out of wedlock to adequately enforce their legal rights. The principle of equality and non-discrimination requires states to ensure that social protection programmes meet the standards of accessibility, adaptability, acceptability and adequacy for all rights holders.