

Married Here, Single There: Limping Marriages and Consequence-Specific Protection of Marital Rights in Nigeria, England and Wales, and South Africa

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Abstract

Limping marriages, a phenomenon whereby a marriage is recognised as valid in one jurisdiction but denied recognition in another, presents a significant challenge to marital stability and the protection of acquired rights under private international law. This paper examines the problem within the legal frameworks of the , Nigeria, England and Wales and South Africa, focusing on the conflict of laws rules governing the validity and recognition of marriages celebrated across the three jurisdictions. The paper explores how differences in the application of *lex loci celebrationis*, *lex domicilii*, personal law and public policy may result in spouses being regarded as married in one jurisdiction and single in another. Where recognition of a marriage's status is contested or refused, the consequences extend beyond the couple's civil status to concrete legal interests such as succession rights on the death of a spouse, property and maintenance claims arising from the relationship, and the legitimacy of children born of the union. Using a doctrinal and comparative methodology, the study analyses legislation, judicial decisions and relevant scholarly literature in the three jurisdictions. It critically evaluates whether existing conflict of laws principles sufficiently protect the legitimate expectations and acquired rights of spouses affected by non-recognition. The paper argues that a more coherent and rights sensitive approach to recognition is necessary to mitigate the injustice and uncertainty created by limping marriages, while maintaining an appropriate balance between territorial sovereignty, public policy and the protection of established family relationships.

1. INTRODUCTION

Marriage creates a legal status from which rights and obligations flow including rights relating to inheritance, maintenance, succession, legitimacy, and property but its validity and recognition vary across legal systems owing to differences in

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law, culture, religion, and public policy.³ Increasing cross border mobility for education, employment, and commerce has significantly increased marriages with connections to more than one jurisdiction, and courts are correspondingly more often required to decide whether a marriage validly celebrated abroad should be recognised at home.⁴ Where a marriage is treated as valid under the law of one state and denied recognition under the law of another, the result is a "limping marriage" meaning that the parties are married in one country and unmarried in another. Although recognition generally follows the principle of *lex loci celebrationis*, this is not absolute as a foreign marriage may be refused recognition where it conflicts with the *lex domicili* of a party, or with the domestic public policy or constitutional values of the recognising state. No universally accepted framework governs this circumstance, and unions of a kind not recognised in the forum state such as same-sex, polygamous, customary, religious, and proxy marriages are the ones most exposed to non-recognition.⁵

The concept of acquired rights is a doctrine in private international law which holds that a legal right including the status arising from a marriage once validly created under the law competent to create it, is to be recognised and given effect to by other legal systems, without those systems re-examining the underlying status, even where their own domestic rules would not themselves have permitted the right to arise.⁶ The concept thus provides the doctrinal bridge between the phenomenon of limping marriages and the practical question of what a non-recognising forum should do about them. As a matter of fact, the refusal to recognise a foreign marriage need not extinguish every right that would otherwise have attached to the marriage. Acquired rights doctrine allows the two questions to be separated, first, that the forum may still refuse to recognise the marriage as a status for all purposes, while nonetheless giving effect to a particular right arising from the marriage, this could either be a child's legitimacy, a survivor's succession claim, or even a maintenance entitlement that had already crystallised under the

³ E.I. Nwogugu, *Family Law in Nigeria* (revised edn, HEBN Publishers) 1.

⁴ T R Ibitoye and F Ajagunna, 'Sexual Autonomy and Violence Against Women in Nigeria: Assessing the Impact of COVID-19 Pandemic' (2021) 54(1) *De Jure Law Journal*. <<https://doi.org/10.17159/2225-7160/2021/v54a9>> accessed 1 September, 2024

⁵ Lawrence Collins (ed), *Dicey, Morris and Collins on the Conflict of Laws* (15th edn, Sweet & Maxwell 2012) 3

⁶ P Stone, *EU Private International Law* (3rd edn, Edward Elgar 2014) 421

law competent to create it, on the footing that the right is now an established fact rather than a question to be re-litigated.

Where a jurisdiction lacks a clearly articulated method for making this distinction, the limping marriage produces an all or nothing outcome as non-recognition of marital status may collapse into non-recognition of every consequence.⁷ In particular, when a Nigerian court decides a foreign marriage doesn't count as a marriage, it has no clear way to still protect the individual rights that hinge on that marriage such as a child's legitimacy or a widow's inheritance separately from the marriage's status.⁸ This situation can cause challenges for the offsprings of the marital relationship or even the spouse in the marriage.

As it is, existing scholarship and case law on the recognition of foreign marriages in Nigeria treat recognition as a unitary, binary determination of status meaning that a marriage is either recognised for all purposes or refused recognition for all purposes. This approach fails to distinguish between two analytically separate questions to wit whether a marriage should be recognised as a status, and whether specific consequences attaching to that status should nonetheless be protected on an incidental or consequence specific basis, independent of the status question. While English and South African law have moved toward this second approach, developing doctrinal tools that allows a right to be honoured even where the underlying marriage is not recognised generally, Nigerian law possesses no equivalent, clearly articulated method for making this separation. The result is that Nigerian courts, when faced with a marriage that offends public policy or falls outside recognised categories (eg same-sex unions, for instance), have only two available outcomes, a full recognition or total non-recognition with no principled basis for protecting discrete acquired rights in between. This gap matters practically because it leaves children, surviving spouses, and other dependants of non-recognised marriages without a predictable route to rights that a more differentiated approach would protect, and it matters doctrinally because Nigerian law has not yet absorbed a distinction that comparative practice shows to be workable.

⁷ P M North, J J Fawcett and J M Carruthers, *Cheshire, North and Fawcett: Private International Law* (15th edn, Oxford University Press 2017), 892.

⁸ P Pearl and W Menski, *Muslim Family Law* (Sweet & Maxwell, 3rd edn, 2004)

Against this background, this study comparatively examines the recognition of foreign marriages in Nigeria, England and South Africa. The study seeks to identify areas of commonality and distinction in the three jurisdictions and, on that basis, propose reforms capable of promoting greater certainty, consistency and fairness in the recognition of marriages with cross-border connections especially for Nigeria.

Specifically, the paper seeks to answer the following research questions

1. Under what rules do Nigeria, England and Wales, and South Africa determine the formal and essential validity of a marriage celebrated abroad?
2. When full marital status is refused, to what extent do the three systems protect consequence-specific interests in succession, property and child status?
3. How should public policy be framed so that it protects fundamental forum values without unnecessarily destroying established family and economic relationships?

2. METHODOLOGY

Research design

This research adopts a doctrinal and comparative research design to examine the recognition of foreign marriages in Nigeria, England and Wales and South Africa. Thus, Nigerian, England and Wales and South African statutes and case law constitute the principal sources of primary legal materials. Primary legal sources reviewed include the Marriage Act, Cap M6, LFN 2004 (Nigeria), the Matrimonial Causes Act, Cap M7, LFN 2004, the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Matrimonial Causes Act 1973, Family Law Act 1986 (recognition of foreign decrees) of England and Wales, Marriage (Same Sex Couples) Act 2013, and Family Law Act 1996 of England and Wales as well as the Recognition of Customary Marriages Act 120 of 1998, Marriage Act 25 of 1961, Civil Union Act 17 of 2006, Divorce Act 70 of 1979, Maintenance and Intestate Succession statutes, and the Constitution (ss. 9, 10, 15, 28, 39). all of South Africa. Secondary legal sources such as journal articles, textbooks and scholarly commentaries were also reviewed.

Selection of materials

Materials were selected using the following criteria. The primary sources which comprise legislation, constitutional provisions and reported decisions of superior

courts (High Court and above) dealing with the recognition of foreign marriages or with their incidental consequences for succession, property, maintenance and child status were identified. Cases which were reviewed were identified through keyword searches on websites of Nigeria Legal Information Institute, Vlex, Nigerian Weekly Law Reports Online, HeinOnline, South African Legal Information Institute, using terms such as "foreign marriage", "*lex loci celebrationis*", "capacity to marry", "public policy", and legitimacy". Leading and frequently cited decisions were included alongside recent decisions to capture both foundational rules and current trends. Secondary sources consulted in this research were limited to peer-reviewed articles and law reform reports. Searches covered decisions and legislation from 1970 to 31 August 2026, reflecting the modern statutory framework in each jurisdiction. Foundational authorities predating 1970 were included where later courts continue to treat them as leading authority, and were identified by citation-tracing. Decisions that merely repeated established rules without adding to the analysis were therefore excluded.

Review of cases

In particular, the research reviewed the following cases across Nigeria, England and Wales as well as South Africa, England and Wales. The foundational English authorities reviewed were *Brook v Brook*⁹, *Sottomayor v De Barros*¹⁰ and *Berthiaume v Dastous*¹¹, which together establish the framework for capacity, polygamy and the law governing formalities. The review similarly covered *Cheni v Cheni*¹² and *Mohamed v Knott*¹³ on the limits of public policy in essential validity, *Radwan v Radwan* (No 2)¹⁴ on the choice of law for capacity,

Nigeria: Reported Nigerian authority directly addressing the recognition of foreign marriages is limited, so the review examined *Bamgbose v Daniel*¹⁵

South Africa. The foundational authority reviewed in South Africa caselaw was *Seedat's Executors v The Master (Natal)*¹⁶ on the recognition of potentially polygamous marriages. The review also covered *Ismail v Ismail*¹⁷ which applied

⁹ (1861) 11 E.R 746

¹⁰ (1877) 3 PD 81

¹¹ [1930] AC 79

¹² [1965] P 85

¹³ [1969] 1 QB 1

¹⁴ [1973] Fam 35

¹⁵ [1955] AC 107

¹⁶ [1917] AD 302

¹⁷ [1983] (1) SA 1006 (A),

public policy to a potentially polygamous Muslim marriage. Constitutional-era decisions were then examined for their protection of interests where full marital status was lacking or contested. These were *Daniels v Campbell*¹⁸, *Hassam v Jacobs*¹⁹, *AC v CS*²⁰ and *Women's Legal Centre Trust v President*.²¹

The comparison was conducted by analysing the selected authorities under six pre-defined legal questions, applied uniformly to each jurisdiction so that the findings could be set side by side. The first question, on form, asks which law governs the formalities of a marriage celebrated abroad and how far non-compliance with the local form, or with forum requirements, affects recognition. The second, capacity, asks which law determines whether the parties were free to marry, including questions of age, consent, prior marriage and prohibited relationships, and how that law is identified. The third, public policy, asks when the forum may refuse to give effect to a foreign marriage otherwise valid under the applicable law, on what grounds, and whether the exception operates narrowly and proportionately or as a broad discretion. The fourth, status recognition, asks whether, and in what circumstances, the forum treats the parties as married for the purposes of the full status of marriage. Where the answer is a no, the fifth question, incident-specific consequences, asks whether the forum nonetheless gives effect to particular interests, namely succession, property, maintenance and the status of children, independently of full marital status. The sixth, remedies, asks what relief is available to a spouse or child affected by non-recognition, and whether that relief derives from statute, judicial construction or general equitable principles. Each authority was coded against these questions, and the answers were then compared across Nigeria, England and Wales, and South Africa.

The study also examined relevant rules of private international law concerning the recognition of polygamous, same-sex, proxy and customary marriages, particularly where their recognition may be affected by public policy considerations. The comparative legal approach is adopted to identify similarities and differences in the approaches of Nigeria, England and Wales as well as South Africa.

¹⁸ [2004] (5) SA 331 (CC)

¹⁹ [2009] (5) SA 572 (CC)

²⁰ (2011) (2) SA 360 (WCC)

²¹ [2022] ZACC 23

Justification for selection of jurisdictions

The comparison focuses on the connecting factors used by each jurisdiction, the treatment of formal and essential validity, the circumstances in which foreign marriages are recognised or refused recognition, and the consequent effects on legitimacy, succession rights of surviving spouses and the role of public policy in limiting recognition. The three jurisdictions were selected because they provide useful points of comparison, particularly given their historical and continuing legal connections and their differing approaches to marriage recognition and public policy. Nigeria is a pluralist legal system, with concurrent statutory, customary, and Islamic laws, conservative toward same-sex unions yet recognising potentially polygamous customary/Islamic marriages, yet lacking a comprehensive recognition statute. England and Wales is considered in this article because Nigerian conflict of laws rules derive largely from English common law¹¹ and remain extensively developed there, showing how such rules adapt to modern rights standards. South Africa on the other hand combines pluralism with a strong constitutional commitment to equality and dignity¹², using the Recognition of Customary Marriages Act 1998 and Civil Union Act 2006 to reconcile culture with rights¹³. Together the three countries span conservatism, gradual adaptation, and constitutional transformation. Drawing from the comparative findings, the study proposes law reform options for Nigeria aimed at improving clarity and predictability in the recognition of foreign marriages while balancing the protection of acquired marital rights with legitimate public policy considerations.

3. LITERATURE REVIEW***Conceptual Clarifications: Lex Loci Celebrationis***

Lex loci celebrationis, literally means *the law of the place of celebration*, is one of the oldest and most firmly established principles in the conflict of laws relating to marriage. The rule provides that the formal validity of a marriage is generally determined by the law of the country in which the marriage is celebrated. Thus, where the parties have complied with the formal requirements prescribed or recognised as sufficient by the law of the place of celebration, the marriage will ordinarily be regarded as formally valid, notwithstanding that the formalities may

differ from those prescribed by the law of the parties' domicile. The rule is founded on the broader conflict of laws principle *locus regit actum*, under which the form of an act is governed by the law of the place where the act occurs.²²

Lex Domicili

Lex domicili refers to the law of a person's domicile and, traditionally, constitutes an important connecting factor for determining questions relating to the essential validity of marriage. Unlike *lex loci celebrationis*, which is principally concerned with the formal validity of the marriage, *lex domicili* addresses matters going to the parties' capacity to marry, including age, mental capacity, consent, prohibited degrees of relationship and, in some circumstances, the existence of a prior subsisting marriage. The rationale for applying the law of domicile is that questions concerning a person's personal status and capacity are considered to have a sufficiently close connection with the legal system with which that person has a permanent or substantial legal attachment. Consequently, the fact that a marriage has been formally validly celebrated in a particular jurisdiction does not necessarily mean that it will be regarded as essentially valid if one or both parties lacked the requisite capacity under the applicable personal law.²³

Relationship Between *Lex loci celebrationis* and *lex domicili*

Formal validity is governed by the law of the country where the marriage is celebrated (*lex loci celebrationis*), while essential validity (or capacity) is governed by the domiciliary laws of the parties at the time of the marriage, so a marriage valid where celebrated may still fail for lack of capacity.²⁴ There are various defects which may make a marriage invalid. These and the rules that precisely define them differ between various legal systems. For example, the question may be whether the proper formalities for the celebration of the marriage were complied with, or whether one of the spouses was below the minimum permitted age, or whether the spouses are too closely related. On such matters, different countries have different rules²⁵.

²² A Dicey, J Morris and L Collins, *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell 2022) 17-003–17-004, Jonathan Hill and Máire Ní Shúilleabháin, *Clarkson & Hill's Conflict of Laws* (5th edn, Oxford University Press 2016) 363

²³ P O Ogunsemoyin and M F Leke, 'Lex Domicilii and Its Consequences in Family Law: A Comparative Analysis of Positions in United Kingdom, South Africa, Trinidad and Tobago and Nigeria' (2019) 7(1) *International Journal of Comparative Law and Legal Philosophy* 1.

²⁴ *Brook v Brook* (1861) 9 HL Cas 193

²⁵ Jonathan Hill and Máire Ní Shúilleabháin, *Clarkson & Hill's Conflict of Laws* (5th edn, Oxford University Press 2016) 363

For choice of law purposes, rules about the validity of marriage are divided into two classes: those concerned with formal validity, on the one hand, and those concerned with essential validity, or capacity to marry, on the other. Rules of formal validity lay down the way in which a marriage must be celebrated (for example, to ensure publicity and proof of marriage). Rules of essential validity or capacity are concerned with the permissibility of the marriage relationship itself, whether the parties ought to be allowed to marry each other (or at all). Applying both together can conflict, prompting alternatives like the intended matrimonial domicile theory, though both remain central across the three jurisdictions.²⁶

Recognition of foreign marriages in Nigeria

In Nigeria, the Marriage Act makes provision for the validity of foreign marriages.²⁷ The provisions in the Marriages Act on foreign marriages is restrictive and provides that a marriage between parties contracted in a country outside Nigeria before a marriage officer in his office shall be valid in law so far as one of the citizens is of Nigerian origin and such marriage would be deemed to have been contracted in Nigeria before a registrar in the registrar's office.²⁸ While the provisions above confirm the validity of Nigerian consular marriages abroad, they do not set a rule for recognising foreign marriages celebrated under local law. In cases relating to the recognition of foreign marriages, Nigerian courts often fall back to the general rules of Private International Law (conflict of laws) in dealing with such issues.²⁹ Thus, Nigerian courts will recognise a foreign monogamous marriage (that is celebrated abroad) if it complies with the *lex loci celebrationis* as to form and capacity of the parties under their ante-nuptial domicile. However, the general rule in Private International law governing capacity of parties to marriage is the *Lex Domicili*.³⁰ Where such a foreign marriage would have been void if celebrated in Nigeria, the proper test to be applied for its recognition was laid down by Simon, P. in the case of *Cheni v Cheni*³¹ thus:

²⁶ Ibid

²⁷ Section 49, Marriage Act, Cap M6, Laws of the Federation of Nigeria, 2004

²⁸ Sections 50-53, Marriage Act, Laws of the Federation, 2004

²⁹ Nwogugu, E.I. 2014. *Family Law in Nigeria*. Nigeria: HEBN Publishers PLC. page 56

³⁰ I Kundu. Validity of Marriage: A study in Private International Law. [https://ir.nbu-ac-in/server/api..](https://ir.nbu-ac.in/server/api..)

³¹ (1965) P85, 99

“What I believe to be the true test (s) is whether it is so effective to the conscience of the English Court that it should refuse to recognize and give effect to the proper foreign law. In deciding that question, the court will seek to exercise common sense, good manners and a reasonable tolerance”³²

Therefore, a monogamous marriage celebrated abroad will be treated as a monogamous marriage in Nigeria if it is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the course of the marriage but this is not the case as Nigeria does not recognise same-sex marriages.³² Same-sex marriages are prohibited and are criminalised by the law as offending the public policy of Nigeria.³³

Recognition of foreign marriages in England and Wales

Since the eighteenth century, it has been well established that the formal validity of a marriage is governed by the law of the place of celebration, *the lex loci celebrationis*. This rule was clearly stated by Viscount Dunedin in *Berthiaume v. Dastous*³⁴, that:

If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicile of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicile would be considered a good marriage.

Based on this, different theories have been propounded concerning the recognition of foreign marriages. The first is the Dual Domicile Theory which considers the domicile of each of the parties to the marriage. Capacity to marry is governed by the law of the parties' ante-nuptial domiciles as each party must have capacity, according to the law of his or her domicile at the time of the ceremony, to marry

³² O Olomola and F Ajagunna, 'Knowledge and Access to Reproductive Health Rights among Adolescents in Ibadan, Nigeria' (2020) 28(3) *African Journal of International and Comparative Law* <https://doi.org/10.3366/ajicl.2020.0320>.

³³ The Same Sex Marriage Prohibition Act of 2013 is a Federal Law that stipulates a 14 year imprisonment term for homosexual couples.

³⁴ (1930)

the other³⁵. In *Re Paine*³⁵, a wife (who was a British subject), and domiciled in England visited Germany where she married her deceased sister's husband, a German subject. The marriage was void in England but valid in Germany. The couple lived in England until their respective deaths. The court in deciding the validity of the marriage held that the marriage was void, since the ante-nuptial domicile of the wife attached incapacity on her to contract such a marriage.

The second theory is the Intended Matrimonial Home Theory which states that the parties' capacity to marry is determined by the law of their intended matrimonial home (sometimes called the matrimonial domicile)³⁶. The main advantage of applying this doctrine is that it allows the validity of a marriage to be tested by the law of the country most affected by and interested in the marriage. Therefore, on the issue of validity of the marriage between cousins, it is the country where the married cousins will live that has the most interest in the marriage. That country forms the true test of the marriage and its law, the proper law of the marriage.

Recognition of Foreign marriage in South Africa

South African law recognises legal marriages concluded in foreign countries provided that the marriage is valid according to the laws of the country where it took place. Marriage is classified as Monogamous and Polygamous under the Recognition of Customary Marriage Act 120 of 1998 . It should be noted that while the Recognition of Customary Marriages Act 120 of 1998 and the Civil Union Act 17 of 2006 regulate domestic marriage forms; they are not, by themselves, a complete statutory code for foreign-marriage recognition. Recognition of a marriage or civil union concluded abroad is instead worked out through ordinary South African private international law principles, as illustrated by the recognition of a United Kingdom civil partnership as a valid civil union for the purposes of South African law, the domestic statute providing the legal consequences of the relationship once its foreign validity had been established in the case of *AC v CS*³⁷ where Gamble J recognised a UK civil partnership (registered under the UK's Civil Partnership Act, 2004) as a valid civil union for purposes of South African private international law, and addressed obiter the proprietary consequences flowing from that recognition.

³⁵ [1940] Ch. 46. See generally *Sottomayor v. De Barros* (1877) 3 P.D. 1

³⁶ See the case of *Frankel's Estate v The Master* 1950 (1) SA 220

³⁷ (2011) (2) SA 360 (WCC)

South African court will not apply the *lex loci celebrationis* if the result would be "repugnant to the country's moral principles" or "entirely opposed to the policy and institutions of South Africa". Consequently, a marriage concluded in a foreign country will only be recognised by the South African courts if the marriage was conducted in accordance with the laws of that country, if the parties did not marry in that country in order to evade the formalities required by South African law, and if the marriage is not in conflict with South Africa public policy.³⁵ Under South African law, the court which has jurisdiction to entertain an action for divorce is the court in whose area the parties were domiciled at the time of the institution of proceedings.³⁸ Table 1 below compares how Nigeria, England and Wales, and South Africa recognise foreign marriages and protect succession, property, and child-status interests where full status recognition is refused.

Table 1: Functional comparison table showing recognition rules across jurisdictions

Function	Nigeria	England and Wales	South Africa
Formal validity	Law of the place of celebration, applied through common law and the Matrimonial Causes Act grounds of nullity	Law of the place of celebration, with limited exceptions (for example, consular and forces marriages)	<i>Lex loci celebrationis</i> under common law
Essential validity (capacity)	Common law approach inherited from England, with little direct Nigerian authority	Dual domicile (<i>Brook v Brook, Radwan</i> (No 2)), with an intended-matrimonial-home alternative debated	Antenuptial domicile of the parties, applied with constitutional values
Role of public policy	Broad and largely undeveloped; strongest as legislated choice	Narrow and exceptional (<i>Cheni, Mohamed v Knott, Vervaeke</i>)	Formerly rigid (Ismail), now filtered through the Constitution (s 39(2))
Polygamous or potentially polygamous foreign marriage	Uncertain for foreign marriages; customary polygamy accepted domestically	Recognised for many purposes, with statutory limits where a party is domiciled in England	Recognition expanded through statute (customary marriages) and case law
Same-sex foreign marriage	Expressly denied recognition alongside its benefits under the 2013 Prohibition Act	Recognised as marriage, subject to statutory exceptions	Constitutionally protected domestically (Fourie); foreign marriages need checking
Religious or customary ceremony abroad	Depends on validity under the foreign law	Valid if the foreign law accepts it; ceremonies in England may be "non-marriages" (<i>Akhter v Khan</i>)	Contested for Muslim marriages, with reform pending

³⁸ Van Deventers. 2020. The Legal Status of Foreign marriages in South Africa. <https://www.vandeventers.law>

Function	Nigeria	England and Wales	South Africa
Constitutional overlay	Supremacy of the Constitution, fundamental rights (ss 42, 43), and federal/state competence limits	Human Rights Act 1998, ECHR (Art 8, 12, 14)	Bill of Rights (ss 9, 10, 15, 28), direct constitutional review

Table 2: Consequence-specific protection when full status is refused

Incidence	Nigeria	England and Wales	South Africa
Succession	No general statutory protection for a spouse in a non-recognised marriage; children protected through non-discrimination (s 42) and the Child's Rights Act	Family provision under the 1975 Act, with statutory routes for certain relationships; child status equalised	Extended "spouse" reading of the Intestate Succession Act (<i>Daniels, Bhe, Hassam</i>); putative marriage doctrine
Property	Reliance on trusts and general equity; the Matrimonial Causes Act applies to recognised marriages	Financial relief available on nullity under the 1973 Act; trust principles otherwise	Redistribution powers on divorce, extended to some non-civil marriages; putative marriage doctrine
Maintenance	Matrimonial Causes Act maintenance for recognised marriages; limited for others	Nullity decrees carry financial relief; child maintenance independent of marital status	Maintenance Act and Surviving Spouses Act, applied to broader categories of survivors
Child status (legitimacy)	Non-discrimination on grounds of birth (s 42) and Child's Rights Act, but inheritance customs vary	Marital status largely irrelevant to child status since the Family Law Reform Act 1987	Constitutional best-interests principle (s 28) and the Children's Act
Protection mechanism	Fragmented, no general "protective" statute	Statutory patchwork plus case law	Judicial extension of statutory terms plus statute

Theoretical framework

The theoretical framework provides the conceptual foundation for examining the recognition of foreign marriages under Nigerian private international law. It identifies the theories and principles that explain why a marriage validly celebrated under a foreign legal system may, or may not, be recognised in Nigeria. This study is particularly informed by cultural relativism theory and the human rights theory. While the cultural relativism theory recognises that marriage is shaped by the cultural, social, religious and legal values of different societies, the human rights theory posits that recognition of foreign marriages can directly affect fundamental rights relating to marriage, family life, equality and personal autonomy³⁹. Marriage is recognised as a fundamental human right under international human rights

³⁹ Folakemi O. Ajagunna Informed consent and ethical considerations in assisted reproductive technology in Nigeria: Issues and challenges. Olanike S. Adedokun & Erebi Ndoni (Eds) Singapore: Springer Nature Singapore; 2023. p. 235–56. <https://doi.org/10.1007/978-981-99-2411-0>

instruments, including the right to marry and found a family. This perspective is relevant to this study because foreign marriages may embody concepts and practices that differ from those recognised under Nigerian law. The framework therefore provides a basis for examining the extent to which Nigerian law accommodates diverse conceptions of marriage while maintaining its own fundamental legal and public policy standards.

Cultural Relativism Theory

Cultural relativism holds that legal rules should be understood within their originating culture, rather than by reference to external or universal standards. It therefore rejects the existence of a single universal model⁴⁰, drawing on challenges to ethnocentric assumptions that measures all cultures against western norms and beliefs³⁸. Cultural relativism as a theory asserts that there is no absolute truth, be it ethical, moral, or cultural, and that there is no meaningful way to judge different cultures because all judgments are ethnocentric. As a result, legal institutions cannot be divorced from their cultural environment⁴¹. Cultural relativism applies to the recognition of foreign marriages by arguing that a marriage's validity should be judged by the standards of the culture and laws where it was celebrated, rather than forcing a single nation's moral framework upon it ⁴² It favours deference to the place of celebration, aligning with *lex loci celebrationis*⁴³, cautioning against rejecting marriages like Nigeria's potentially polygamous customary/Islamic unions merely for diverging from foreign morals² It similarly explains divergent same-sex marriage treatment, as Western states link recognition to equality while many African states including Nigeria tie marriage to religion and community.⁴⁴ Among other things, cultural relativism upholds that different societies have different moral codes, as there is no objective standard that can be used to judge one societal code better than another. It also posits that the moral code of society has no special status as it is merely one among many. For proponents of cultural

⁴⁰ Folakemi O Ajagunna and Victoria Aduroja, 'Cultural Relativism and Child Marriage in Nigeria' in [Editor] (ed), *Gender Equality for a Sustainable Future: Perspectives from India and Nigeria* (Bloomsbury Publishing 2023) 145.

⁴¹ Roger Cotterrell, *Law, Culture and Society* (Ashgate 2006) 71

⁴² John Eekelaar, *Family Law and Personal Life* (Oxford University Press 2006) 15

⁴³ Lawrence Collins (ed), *Dicey, Morris and Collins on the Conflict of Laws* (15th edn, Sweet & Maxwell 2012) 1267

⁴⁴ Kabiru Salami, 'Housing Facilities and Realities of Health of the Elderly' (2016) 58(1) *Nigerian Journal of Economic and Social Studies* 53 Retrieved September 8, 2024 from <http://researchgate.edu>, See also EN Ezeani, *Nigerian Family Law* (Princeton Publishing 2015) 101

relativism, the moral code of a society determines what is right within that society; that is, if the moral code of a society says that a certain action is right, then that action is right, at least within that society. It is mere arrogance for one to try to judge the conduct of other people. . Critics have warned that cultural relativism may weaken protection against gender inequality and child marriage⁴⁵, or undermine certainty and public policy⁴⁵, so modern systems ought to balance it against constitutional and human-rights values.

Human Rights Theory

Human rights theory holds that rights are inherent, universal, and inalienable, This theory is rooted in natural law and John Locke's view that rights exist independently of the state⁴⁶. In family law, human rights theory stresses dignity, equality, and autonomy, including the right to marry and this increasingly shapes private international law by weighing non-recognition's impact on rights. Human dignity is central to the human rights discourse on marriage, alongside the principles of equality and non-discrimination, which have significantly shaped debates concerning the recognition of same-sex marriage and the right to family life, under instruments such as the European Convention on Human Rights ⁴⁷. These principles are particularly evident in South Africa, where constitutional guarantees of equality and human dignity have influenced the legal recognition of both customary and same-sex marriages and similarly, in England and Wales, where the Human Rights Act 1998 has provided an important framework for interpreting and protecting marriage and family-related rights. Although critics have argued that this human rights approach reflects Western liberal values that may not always align with communal and culturally specific conceptions of marriage, it remains an important framework for evaluating the recognition of foreign marriages.

Cultural Relativism and Human Rights in Marriage Recognition

Courts are often required to reach a balance between respect for cultural diversity and the protection of fundamental human rights. While cultural relativism views marriage as an institution shaped by the values, traditions, and norms of particular societies, human rights theory emphasises the universal principles of human

⁴⁵ Patrick Glenn, *Legal Traditions of the World* (5th edn, Oxford University Press 2014) 305

⁴⁶ John Locke, *Two Treatises of Government* (Cambridge University Press 1988) 271

⁴⁷ Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19(4) *European Journal of International Law* 655

dignity, equality, and non-discrimination. This tension becomes particularly pronounced in cases involving polygamous, same-sex, and customary marriages, where culturally accepted marital practices may conflict with prevailing human rights standards.

England and Wales as well as South Africa recognise same-sex marriage on equality grounds while Nigeria rejects it culturally and religiously. Cultural relativism may justify the recognition of polygamous marriages where such unions are accepted within the cultural and legal framework of the jurisdiction in which they were celebrated. However, human rights considerations may raise concerns regarding gender equality and the equal treatment of spouses⁴⁸. These competing considerations may be addressed through the public policy exception, under which a forum court may refuse to recognise a foreign marriage where such recognition would be incompatible with fundamental constitutional or societal values. The public policy exception therefore serves as an important mechanism for balancing respect for cultural diversity with the protection of fundamental rights.. South Africa provides an example of this middle-ground approach by recognising cultural and customary diversity while subjecting marital institutions to constitutional requirements of equality and human dignity. Accordingly, the recognition of foreign marriages requires a balanced approach that respects legitimate cultural differences while ensuring that recognition does not undermine fundamental human rights⁴⁹. Recognition of foreign marriages therefore needs a balanced approach respecting culture while protecting rights.

Cultural relativism is invoked in this article, not as a justification for withholding recognition from a foreign marriage, but as an interpretive lens for understanding why particular forum rules exist and for informing how manifest repugnance to public policy should be assessed in a given case. This formulation deliberately avoids treating Nigerian or African culture as a fixed, internally consistent body of values that a foreign acquired status might offend. Nigerian customary and religious family law is itself heterogeneous and contested practices and attitudes differ across ethnic groups, have shifted over time, and are subject to ongoing

⁴⁸ Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism* (Sage Publications 1990)

internal debate, including debate driven by Nigerian constitutional and human rights litigation.

Similarly, equality is accordingly not treated in this article as an externally imposed, Western value standing in opposition to an authentically local culture; it is treated as a value with independent roots in the Nigerian Constitution and in strands of Nigerian legal and social discourse, which happens also to be reflected in international human rights instruments. Cultural relativism therefore functions here as a caution against uncritical universalism in applying public policy, not as a standing defence of non-recognition.

Comparative statutory frameworks

The United Kingdom provides the historical foundation of the received common law principles. English law distinguishes formal validity, generally governed by the *lex loci celebrationis*, from essential validity, which has traditionally been connected to the parties' antenuptial domiciles. The English approach has, however, developed through case law and legislation in ways that give greater attention to the factual circumstances and consequences of recognition.

South Africa's legal system is similar to Nigeria's legal system; it however adopts a more pluralistic statutory framework. The Recognition of Customary Marriages Act 120 of 1998 gives legal effect to customary marriages, largely giving room for the legal recognition of customary marriages on the same plane as statutory marriages. The Civil Union Act 17 of 2006 provides a statutory framework for civil unions, including same-sex unions. This broadens South African's inclusion of foreign marriages which now includes same sex marriage and other variations of civil unions. South Africa places much emphasis on their constitutional values of human equality and dignity and this has greatly influenced the country's reception of foreign marriages.

(i) Legal Barriers to Recognition of foreign marriages: The Public Policy

Exception

Although courts generally respect rights and statuses validly acquired abroad, recognition may be withheld where the result would offend fundamental domestic values. Every State has the right to refuse to recognise a foreign marriage in the defense of its public policy. The forum court may invoke public policy, where recognition would produce consequences fundamentally inconsistent with the

forum's legal order. This exception of public policy operates as a qualification to international comity. As regards the validity of marriage, public policy may be invoked if the foreign rule is thought by the court to be grossly offensive or repugnant to English standards of justice, decency, or morality or where the foreign law upholds a relationship which is subject to criminal sanction in England.⁴⁹

An expansive approach to the public policy exception can be counterproductive to the efforts of Private International Law in creating certainty as to people's statuses across borders. This in turn produces the 'limping marriages' phenomenon where marriages recognised in one jurisdiction are denied recognition in another. The frequency of this makes for a gross uncertainty as to the status of individuals internationally. This could bring about a denial of individual rights which are supposed to be universal and inalienable. Such non-recognition can have consequences for inheritance, immigration, spousal status, maintenance and access to matrimonial relief.

(ii) Polygamous and Potentially Polygamous Marriages

English law historically approached marriage through the monogamous model expressed in *Hyde v Hyde and Woodmansee*.⁵⁰ Polygamous marriages demonstrate the initially popular view, which gave rise to the refusal of recognition of foreign marriages. The England and Wales only recognises monogamous marriages. Nigeria presents a more complex position because statutory marriages are monogamous while customary marriages can be polygamous. The coexistence of these legal systems creates difficulty when a foreign polygamous marriage is presented for recognition in Nigeria. This is because polygamous marriages are statutorily invalid but customarily accepted in Nigeria. In South Africa, the Appellate Division refused to recognise a polygamous Muslim marriage for even the narrow purpose of succession, treating its potentially polygamous character as offending South African public policy and extending that refusal to every consequence flowing from the relationship. No distinction was drawn between the question of status and the question of incident as non-recognition of the marriage in this case collapsed into non-recognition of the widow's claim. The same

⁴⁹ Jonathan Hill and Máire Ní Shúilleabháin, *Clarkson & Hill's Conflict of Laws* (5th edn, Oxford University Press 2016) 386

⁵⁰ (1866) LR 1 P & D 130.

reasoning was reaffirmed decades later in *Ismail v Ismail* entrenching the position for most of the twentieth century, precisely the all or nothing outcome which has been identified as the central hazard of unmitigated non-recognition. However, there was a post-constitutional shift, permitting contractual consequences of a Muslim marriage to be enforced without resolving the marriage's validity in the case of *Ryland v Edros*⁵¹. This marked the commencement of an assertion of severability.

(iii) Same-Sex Marriages and Civil Unions

Same-sex marriage presents a sharper conflict between domestic policy and foreign marital status. Nigeria's Same-Sex Marriage (Prohibition) Act 2013 establishes a statutory prohibition against same-sex marriage and civil unions. Consequently, the recognition of a same-sex marriage validly celebrated in a foreign jurisdiction raises a direct conflict between the foreign status and Nigerian statutory policy. In other words, same-sex marriages are outrightly prohibited by statute in Nigeria and are not given recognition.

The comparative position is materially different in England and Wales and South Africa. The Marriage (Same Sex Couples) Act provides for same-sex marriage in England and Wales. The South African court in *Minister of Home Affairs v Fourie*⁵² held that the exclusion of same-sex couples from marriage violated constitutional rights to equality and dignity, this led to legislative intervention through the Civil Union Act 17 of 2006, authorising same sex marriage in South Africa.⁶⁸ The Constitutional Court reasoned that the common law definition of marriage and section 30(1) of the Marriage Act were inconsistent with the South African Constitution, and therefore invalid, to the extent that they did not allow same-sex couples the status and benefits of marriage allowed to opposite-sex couples. The case dealt with same-sex couples excluded from marriage by both the common law and section 30(1) of the Marriage Act 25 of 1961, and the harm was expressed squarely in dignity and equality terms because the exclusion was found to deny gays and lesbians that which is fundamental to the South African Constitution and the concepts of equality and dignity.

This comparison reveals two different conceptions of public policy, while Nigeria is strongly anchored in legislative and domestic moral policy, South Africa's

⁵¹ 1997 (2) SA 690 (C)

⁵² 2006 (1) SA 524 (CC)

constitutional framework places equality and dignity at the center of the inquiry, the rights of individuals supersedes the perception of public policy. A couple may possess valid spousal status in the jurisdiction of celebration but lose that status upon entering a jurisdiction whose public policy rejects the relationship. This illustrates the human consequences of public policy and strengthens the case for a more carefully calibrated approach to the consequences of non-recognition, particularly in relation to children, property and inheritance.

(iv) Proxy Marriages

Proxy marriages illustrate a different conflict. The principal issue is usually the form of celebration rather than the substantive nature of the relationship. In *Apt v Apt*,⁵³ the English Court of Appeal treated proxy marriage as a matter of form governed by the *lex loci celebrationis* and found no public-policy basis for refusing recognition merely because one party was absent from the ceremony. The Nigerian position requires greater caution because reported Nigerian authority on foreign proxy marriages is limited. As an inference from research findings so far, foreign marriages are first tested by the law of the place of celebration and the law of domicile, as the case may be, then subjected to the test of the forum's public policy. The South African approach however, leans towards leniency in the strict application of the public policy exception rule, so as to protect the rights of individuals involved, especially children⁵⁴.

Analysis of the Nigerian courts approach

The Nigerian courts approach to foreign marriage has been criticised as very strict, rigid, statutory bound, and highly conservative. Nigerian courts accept, through section 3(1)(c) of the Matrimonial Causes Act, that the formal validity of a marriage is governed by the law of the place of celebration, and section 6(2) further preserves the primacy of private international law rules over the Act's own provisions. However, Nigerian case law has not developed this statutory foundation into a settled, predictable method for handling recognition disputes particularly for separating the question of a marriage's status from the question of

⁵³ [1948] P 83 (CA).

⁵⁴ Jan L Neels, 'The Positive Role of Public Policy in Private International Law and the Recognition of Foreign Muslim Marriages' (2012) 28(2) South African Journal on Human Rights 219.

its specific legal consequences. This leaves courts without a reliable doctrinal route when full recognition is contested..

The Same Sex Marriage (Prohibition) Act 2013, which took effect in 2014, is the principal statutory obstacle to recognition in this category. Section 1(2) declares void in Nigeria a same-sex marriage or civil union entered into under a foreign certificate and directs that benefits arising from it shall not be enforced by any court, while section 3 confines valid marriage to the union of a man and a woman. The legislative logic that may flow from this prohibition is that a state which prohibits and penalises the relationship would be inconsistent if its courts then enforced rights flowing from it. A major consequence of this strict approach is the fact that such pronouncements of the courts may lead to the infringement of the constitutional rights of the parties involved.

When a state deploys public policy to completely invalidate a foreign marriage based on local moral codes such as the Nigerian courts do, it often directly conflicts with international human rights standards, specifically the right to protection of the family unit, freedom from discrimination, and the preservation of vested economic rights.

Although the Same Sex Marriage Prohibition Act 2013 provides that no direct benefits of such marriage will be enforced by the Nigerian Courts, it is not certain whether the children/offsprings of such illegitimate union will be recognised. The authors of this article are of the opinion that a child's protection does not depend wholly on the recognition of the parents' marriage. Section 42(2) of the 1999 Constitution (as amended) provides that no citizen shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. This position was affirmed in *Ukeje v Ukeje*⁵⁵, where the Supreme Court held that no matter the circumstances of the birth of a female child, she is entitled to inherit from her late father's estate, and that the Igbo custom disentitling her conflicted with section 42(1) and (2) and was void. The court also treated proof of the child's parentage as a matter of evidence, accepting the findings of the lower courts that the respondent was the deceased's daughter. In *Salubi v Nwariaku*⁵⁶, the Supreme Court held that the estate of a man who married under the Marriage Ordinance and died intestate, leaving both children of that marriage and children born outside it

⁵⁵ (2014) 11 NWLR (Pt 1418) 384

⁵⁶ (2003) 7 NWLR (Pt 819) 426

whose paternity he had acknowledged, fell to be distributed under the Administration of Estates Law, not English law or customary law. Neither case concerned a foreign marriage that was refused recognition. They show, however, that Nigerian law can attach inheritance rights to a child's parentage and the constitutional guarantee against birth based disadvantage without first requiring a valid marriage between the parents. It follows that this article does not assume that non-recognition of the parents' marriage removes a child's status. Instead it asks whether, and how far, these independent protections already reach children of unrecognised foreign marriages, and where legislation would be needed to close the gap.

Nigeria's Same Sex Marriage (Prohibition) Act 2013 presents the hardest case for the severability doctrine, because section 1(2) forecloses not only recognition of status but also enforcement of any benefit arising from the foreign certificate, leaving no textual space for incident specific relief. Three narrower avenues nonetheless remain. In the first instance, courts retain room to recharacterise a claim away from marriage law altogether, resolving it under general private law doctrines that do not depend on marital status at all, property disputes as claims in contract, resulting or constructive trust, or unjust enrichment; a child's status and maintenance as questions under the Child Rights Act and the general law of legitimacy, which in most systems (including Nigeria's) already treats a child's status as independent of the validity of the parents' marriage precisely so that the child is not penalised for a defect in the parents' union.

These actions do not portray recognition of the foreign marriage by the back door, rather, it is characterisation of the claim as arising under a body of law the SSMPA does not purport to touch, and its availability turns on how precisely the claim can be pleaded without invoking marital status as an element.

Second, incidental recognition of a foreign court order or judgment as distinct from recognition of the underlying status may survive where the foreign order (a maintenance order, a property division, a custody determination) can be enforced under Nigeria's ordinary rules on the recognition and enforcement of foreign judgments, which turn on the foreign court's jurisdiction and procedural regularity rather than on the validity of the relationship it adjudicated.

Third, the more direct avenue which is a constitutional challenge to section 1(2) itself, on dignity, property, or equality grounds sits outside the ordinary PIL framework and belongs to constitutional rather than conflict of laws analysis; this can be the residual route by which the legislature's foreclosure could itself be displaced, while being candid that Nigerian courts have so far shown little flavour for such a challenge. It appears that the SSMPA narrows, rather than eliminates, judicial room for consequence protection.

The England and Wales courts approach and the Anti-Limping Policy

Unlike Nigerian courts approach, the English courts offer more flexible and often navigate to uphold the validity of foreign marriages whenever reasonably possible. This is because the English courts aim to prevent "limping marriages" where a person is recognised as legally married in one jurisdiction but single in another. Although polygamy is against public policy in the jurisdiction, the English courts, backed by their progressive legislation such as Matrimonial Causes Act 1973 (section 47), recognise valid foreign polygamous and potentially polygamous marriages for various legal purposes. If a polygamous marriage is validly celebrated abroad under the *lex loci celebrationis* and neither party was domiciled in England at the time, the courts will recognise it for matrimonial relief, financial division, social security, and child inheritance rights.

In *Radwan v Radwan (No. 2)*, an Englishwoman domiciled in England entered into a potentially polygamous marriage with an Egyptian man at the Egyptian Consulate in Paris. Strictly applying the Dual Domicile Theory, the marriage should have been void *ab initio* because she lacked capacity under her pre-marital English domicile. However, the court refused to invalidate the union and strip the wife of her rights. Instead, Cumming-Bruce J. bypassed the Dual Domicile Theory, applying the Intended Matrimonial Home theory instead. By holding that Egyptian law (where they intended to and did reside) governed her capacity, the court upheld the marriage.

The South African Courts Approach

Following the enactment of the Republic of South Africa 1996 Constitution, the South African common law and its choice-of-law rules regarding foreign marriages underwent mandatory constitutionalisation. Section 39(2) of the Constitution mandates courts to promote the spirit, purport, and objects of the Bill

of Rights when developing the common law. When international marriage conflicts arise, South African courts evaluate whether non-recognition would violate fundamental constitutional guarantees of human dignity, equality, and non-discrimination.

In *Minister of Home Affairs v Fourie*⁵⁷ the Constitutional Court declared the common law definition of marriage unconstitutional for excluding same-sex couples, leading to the Civil Union Act 17 of 2006. An important example of this progressive approach is *Govender v Ragavayah NO*⁵⁸ where the court was faced with a Hindu marriage that was unregistered and thus formally invalid under South African law. While a rigid approach would dictate that an invalid marriage produces no legal consequences, the court ruled that the surviving spouse was still a "spouse" under the Intestate Succession Act 81 of 1987. The reasoning was constitutional because denying those rights would constitute unfair discrimination under Section 9 of the Constitution. In *Daniels v Campbell NO*⁵⁹, a Muslim marriage, though not solemnised under the Marriage Act, was held to fall within the meaning of "spouse" in the Intestate Succession Act and the Maintenance of Surviving Spouses Act, entitling the surviving widow to inherit and claim maintenance. The Court read the statutes purposively to avoid the cruelty of leaving a de facto spouse destitute. Similarly, in *Hassam v Jacobs NO*⁶⁰ the court extended the same reasoning to a polygynous Muslim marriage, holding that all wives in the union qualified as "spouses" for intestate succession purposes, so that no wife was left without an inheritance right merely because her marriage diverged further from the civil-marriage model. More recently in the case of *Women's Legal Centre Trust v President*⁶¹ the Courts went further still, rather than continuing to patch individual statutes, declared the Marriage Act and Divorce Act unconstitutional for failing to recognise Muslim marriages at all, and ordered an interim regime to protect spouses and children pending legislation and thus preventing the harshest consequences of total non-recognition in the meantime.

In other words, a marriage may fail technical domestic requirements yet still generate enforceable rights to prevent inhumane outcomes. The comparative

⁵⁷ [2005] ZACC 19

⁵⁸ [2008] ZAKZHC 86

⁵⁹ [2004] ZACC 14

⁶⁰ [2009] ZACC 19

⁶¹ [2022] ZACC 23

conclusion, then, is that consequence specific protection correlates with whether a system has developed an explicit technique for severing status from incident. England and Wales has one embedded in general doctrine; South Africa has developed one through purposive interpretation and has made the needed constitutional intervention to make it systemic; Nigeria has neither, and in the SSMPA context has affirmatively closed off the route South Africa and England and Wales rely on. Thus, Nigerian jurisprudence has not embraced the flexible, progressive constitutional rights-based approach as found in the compared jurisdictions. What this means is that outside the express statutory foreclosure imposed by the SSMPA, invalidity under the dominant choice of law rule is not treated as an affirmative bar to all legal effects, but the absence of a settled severability technique in Nigerian case law means that, in practice, consequence specific protection is rarely and unreliably achieved..

Conclusion

Limping marriages are a largely unavoidable feature of a world of plural, non-harmonised private international law systems, each applying its own choice of law and public policy rules to relationships formed elsewhere. What the comparative analysis shows is narrower fragmented recognition rules which create predictable pockets of vulnerability for spouses and children whose status is contested but whose interests in property, maintenance, succession, and legitimacy. South Africa, England and Wales have, unevenly, through severability of status built responses from particular incidents, purposive interpretation, and a narrow public-policy exception. Nigeria presently has not: the SSMPA's express foreclosure of both status and benefits is the clearest instance of this gap. and against this this paper proposes the following recommendations.

(i) Protection of children's rights and incidental Rights: Nigerian courts should not automatically strip away rights (especially of children) arising from marriages that are not recognised. Where a foreign marriage is declared void on the grounds of public policy. The Courts should regardless protect inheritance and succession rights, legal status, legitimacy, maintenance, custody, and pensions. Similar protections should extend to economically vulnerable spouses regarding maintenance and property.

- (ii) Comprehensive legislative reform in Nigeria: There is need of the National Assembly to amend the Matrimonial Causes Act 1970 to incorporate modern, codified Private International Law rules. The amended statute should contain clear choice-of-law clauses and establish a judicial mechanism that allows courts to recognise and put into consideration the civil, financial and economic consequences of foreign marriages such as child legitimacy and maintenance even if the marriage conflicts with local moral standards and contravene public policy.
- (iii) Judicial capacity building in Nigeria: The National Judicial Institute (NJI) should establish mandatory, specialised training for judges focusing on complex Private International Law and conflict-of-laws in family law, the training will equip them to look beyond the internal legal pluralism of the *lex fori*.
- (iv) Bilateral and Regional Treaties (UK and South Africa): Considering the high volume of migration between certain countries and Nigeria (the UK, South Africa, and Commonwealth nations), these jurisdictions could negotiate targeted bilateral or regional treaties. These treaties would focus on the mutual enforcement of cross-border financial relief orders, asset protection and repatriation.
- (v) Balancing human rights and cultural relativism: Pluralistic societies like Nigeria must adopt a flexible approach to recognition of foreign marriages. Judges can respect cultural relativism by declining to domestically legitimise foreign marital structures that violate local public policy, but this deference must stop where universal human rights and innocent parties such as children are compromised.

REFERENCES

- Collins, L. (Ed.). (2012). *Dicey, Morris and Collins on the conflict of laws* (15th ed.). Sweet & Maxwell.
- Ibitoye, T. R., & Ajagunna, F. (2021). Sexual autonomy and violence against women in Nigeria: Assessing the impact of COVID-19 pandemic. *De Jure Law Journal*, 54(1). <https://doi.org/10.17159/2225-7160/2021/v54a9>
- Nwogugu, E. I. (n.d.). *Family law in Nigeria* (Rev. ed.). HEBN Publishers.
- Stone, P. (2014). *EU private international law* (3rd ed.). Edward Elgar.
- Carruthers, J. M., Fawcett, J. J., & North, P. M. (2017). *Cheshire, North and Fawcett: Private international law* (15th ed.). Oxford University Press.
- Pearl, D., & Menski, W. (2004). *Muslim family law* (3rd ed.). Sweet & Maxwell.

- Dicey, A., Morris, J., & Collins, L. (2022). *Dicey, Morris & Collins on the conflict of laws* (16th ed.). Sweet & Maxwell.
- Hill, J., & Ní Shúilleabháin, M. (2016). *Clarkson & Hill's conflict of laws* (5th ed.). Oxford University Press.
- Olomola, O., & Ajagunna, F. (2020). Knowledge and access to reproductive health rights among adolescents in Ibadan, Nigeria. *African Journal of International and Comparative Law*, 28(3). <https://doi.org/10.3366/ajicl.2020.0320>
- Ajagunna, F. O., & Aduroja, V. (2023). Cultural relativism and child marriage in Nigeria. In *Gender equality for a sustainable future: Perspectives from India and Nigeria* (pp. 145–157). Bloomsbury Publishing.
- Ajagunna, F. O. (2023). Informed consent and ethical considerations in assisted reproductive technology in Nigeria: Options and challenges. In O. S. Adelokun & E. Ndoni (Eds.), *Reproductive health and assisted reproductive technologies in Sub-Saharan Africa* (pp. 235–256). Palgrave Macmillan. https://doi.org/10.1007/978-981-99-2411-0_10
- Cotterrell, R. (2006). *Law, culture and society*. Ashgate.
- Eekelaar, J. (2006). *Family law and personal life*. Oxford University Press.
- Salami, K. (2016). Housing facilities and realities of health of the elderly. *Nigerian Journal of Economic and Social Studies*, 58(1), 53. <https://www.researchgate.net/>
- Ezeani, E. N. (2015). *Nigerian family law*. Princeton Publishing.
- Locke, J. (1988). *Two treatises of government* (P. Laslett, Ed.). Cambridge University Press.
- McCrudden, C. (2008). Human dignity and judicial interpretation of human rights. *European Journal of International Law*, 19(4), 655–724.
- Glenn, H. P. (2014). *Legal traditions of the world* (5th ed.). Oxford University Press.
- Olomola, O., & Ajagunna, F. (2020). Knowledge and access to reproductive health rights among adolescents in Ibadan, Nigeria. *African Journal of International and Comparative Law*, 28(3). <https://doi.org/10.3366/ajicl.2020.0320>
- Van Deventers. 2020. The Legal Status of Foreign marriages in South Africa. <https://www.vandeventers.law>
- Ogunsemoyin, P. O., & Leke, M. F. (2019). Lex domicilii and its consequences in family law: A comparative analysis of positions in United Kingdom, South Africa, Trinidad and Tobago and Nigeria. *International Journal of Comparative Law and Legal Philosophy*, 7(1)
- Kundu, I. (2017). Validity of marriage: A study in private international law. *Indian Journal of Law and Justice*, 8(1), 182–197. <https://ir.nbu.ac.in/handle/123456789/3047>
- Renteln, A. D. (1990). *International human rights: Universalism versus relativism*. Sage Publications
- Neels, J. L. (2012). The positive role of public policy in private international law and the recognition of foreign Muslim marriages. *South African Journal on Human Rights*, 28(2), 219–230.

