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ANALYSIS OF MEDIATION UNDER THE CHILD'S RIGHTS ACT:NIGERIAN RECENT DECISIONS AND COMPARATIVE PERSPECTIVES

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Abstract

The Best Interests of the Child is the governing principle in custody determination under the Child's Rights Act of Nigeria. Increasingly, Nigerian courts and policy-makers recognise mediation as a child-centred, flexible and less adversarial method to resolve family disputes including custody and access while preserving judicial oversight and enforceability. This paper adopted doctrinal research method, examined the statutory and judicial framework for mediation in child custody matters under Nigerian law (with emphasis on the Child's Rights Act and the Arbitration & Mediation Act 2023), analysed recent Nigerian court decisions that illustrate how courts treat custody claims and alternative dispute resolution, and compares select international developments. It was found that family disputes involving divorce and child custody represent some of the most emotionally charged litigations in Nigerian courts. While mediation offers significant benefits for resolving these sensitive matters, the role and duties of opposing counsels during the mediation process remain largely undefined, often undermining effectiveness. Recommended a comprehensive framework establishing specific duties for legal practitioners representing parties in family mediation, including obligations to encourage good faith participation, facilitate disclosure, and priorities child welfare and concluded operationalising mediation in custody cases (procedure, safeguards, and judicial practice directions) to ensure that mediation advances rather than undermines the child's welfare.

1.1 Introduction

Child custody disputes present judges with one of the most sensitive responsibilities of the judiciary. The Child's Rights Act 2003 (CRA)[1] places the welfare and best interests of the child at the centre of all decisions affecting children and empowers specialized family courts and assessors to make custody and access orders. At the same time courts across Nigeria face heavy family dockets, and adversarial litigation often produces outcomes that are costly, delayed, and damaging to family relationships. Mediation — as a voluntary, party-driven process guided by an impartial mediator — offers an alternative that can preserve parental engagement, prioritise the child's welfare, and produce more durable parenting arrangements that the parties are willing to implement. The recent federal Arbitration & Mediation Act (2023)[2] and increasing judicial practice directions encourage the integration of mediation into family justice processes and clarify enforceability and confidentiality rules for mediated settlements.

1.2. The statutory framework: Child's Rights Act and mediation-friendly laws

1.2.1 Child's Rights Act (CRA) 2003 — custody principles

The CRA codifies the best interests of the child as paramount and grants courts powers to make orders concerning custody, access, guardianship, maintenance and other welfare measures. Section 1 and the enabling provisions require courts to consider the child's physical, emotional, educational and social needs, and to exercise family-law powers with assessors who have child-care expertise. The statutory architecture therefore naturally focuses decision-making on welfare rather than parental rights alone.

1.2.2 Arbitration and Mediation Act 2023 — settlement agreements and admissibility

The Arbitration & Mediation Act 2023 (AMA 2023) modernised the legal framework for mediation in Nigeria. Among other provisions, the Act recognises mediated settlement agreements as enforceable (as contracts, consent awards or consent judgments where applicable), and it protects confidentiality – making certain mediation communications inadmissible in court or arbitration. The AMA 2023 therefore addresses two recurring judicial

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[1] *Child's Rights Act 2003 (Act No. 26 of 2003).*

[2] *Arbitration & Mediation Act 2023 (Federal Republic of Nigeria).*

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concerns about mediation in family disputes: (a) are mediated parental agreements enforceable, and (b) will mediation discussions be used tactically in subsequent litigation? The new Act provides clearer answers and permits courts to refer suitable family disputes to mediation.

2.1. Mediation and the Best Interests Standard — compatibility and tensions

Mediation aligns with the best-interests standard in several ways:

1. Child-centred planning: Mediation enables parents (and where appropriate child-specialists) to design arrangements tailored to the child's developmental needs (schooling, health, routines).
2. Promotes co-parenting and compliance: Agreements reached voluntarily are more likely to be observed and to preserve cooperative relationships.
3. Speed & privacy: Mediation reduces delay and keeps sensitive family matters private, reducing potential harm to children.

However, tensions must be managed:

1. Unequal bargaining power: Where one parent is dominant or where domestic abuse exists, mediation may disadvantage the vulnerable party; safeguards and screening are required.
2. Enforceability vs. judicial supervision: Courts must retain a supervisory role to ensure agreements conform with the child's welfare and public policy; not every issue is suitable for final private settlement (e.g., relocation involving child's welfare, complex guardianship). The AMA 2023 and CRA together allow mediated agreements to be enforced while preserving the court's power to make or vary orders where necessary.

3.1 How Nigerian courts currently treat mediation and custody — selected recent decisions

Nigeria has seen an uptick in reported custody decisions and growing judicial recognition of ADR. While formal family mediation programmes are developing gradually across states and Multi-Door Courthouse initiatives, recent High Court and Federal Court decisions (both at state and FCT levels) demonstrate how courts adjudicate custody claims under the CRA and how mediation and consensual agreements are approached in practice.

3.2 Federal Capital Territory High Court decisions — custody under CRA

A number of FCT High Court judgments of 2024–2025 show courts applying section 69 and related CRA provisions in custody determinations and noting party agreements or parental arrangements. Examples include judicial decisions where courts register custody claims brought under the CRA and set out factors emphasising welfare, parental conduct and the child's best interests. These judgments also confirm the statutory powers of the High Court in custody matters and demonstrate judicial willingness to consider non-litigious solutions where appropriate.

(Representative illustrations: the FCT High Court judgments in ***Yunusa Lawal Gwamna v Radiya Iliyasu Mustaph***[3] and ***Vivian Udoka Njoku v Jude Chukwunonye Njoku***[4] record the court's approach to custody under CRA provisions and the primacy of the child's welfare in decision-making. The FCT court orders exemplify the statutory framework in action.)

3.3 Case law trends – mediation and court encouragement

While many Nigerian decisions still arise from contested litigation, courts have been receptive to referrals to ADR units (including Multi-Door Courthouses) and have recognised the value of mediated settlements especially in family law. The growing literature, practice directions from some courts, and the statutory innovations of AMA 2023 support this trend. Judicial practice shows that courts will: (a) encourage mediation in suitable cases; (b) incorporate mediated agreements into court orders where they protect the child's welfare; and (c) retain power to modify or set aside private agreements that are contrary to a child's best interests.

3.4 Notable domestic judicial points to note

1. **Welfare first:** Nigerian courts consistently emphasise the child's welfare and the statutory direction that the child's interests are paramount — this limits the degree to which parties can privately bargain away important protective measures.
2. **Judicial oversight:** Courts will validate or incorporate mediated agreements only so far as they meet the best-interests standard and are not procured by misrepresentation or coercion.
3. **Enforcement pathways:** Post-AMA 2023, mediated parenting plans or consent agreements can be enforced as contracts or consent orders, giving courts practical tools to make mediated resolutions effective.
4. **Comparative authorities:** selected English and international decisions

International family courts provide instructive practice about mediation in child cases and judicial recognition of foreign family orders.

4.1 English family jurisprudence — recognition and child-centred practice

English family courts have a long practice of encouraging mediation and other early resolution mechanisms. Judges commonly refer private children matters to mediation

[3] *Yunusa Lawal Gwamna v Radiya Iliyasu Mustapha (FCT High Court, 2025).*

[4] *High Court judgments (selected custody decisions applying CRA): Vivian Udoka Njoku v Jude Chukwunonye Njoku (FCT High Court, 2025); FCT Yunusa Lawal Gwamna v Radiya Iliyasu Mustapha (FCT High Court, 2025).*

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information and assessment meetings, and family procedure rules provide mechanisms for court-led resolution where appropriate. English decisions also demonstrate careful scrutiny when recognising foreign orders relating to children (e.g., cases dealing with recognition of foreign adoptions or contested returns), emphasising welfare and jurisdictional appropriateness. Recent English decisions involving recognition of Nigerian adoption or custody arrangements illustrate how foreign family orders are approached – recognition is granted where the original order was made with due process and is in the child's best interests[5].

4.2 Comparative Analysis

The proposed framework draws inspiration from successful international models whilst adapting to Nigerian legal and cultural contexts.

The United Kingdom's Family Mediation Council has established comprehensive standards for legal representatives in family mediation, emphasizing collaborative advocacy and child welfare considerations. Their model requires solicitors to complete specific mediation training and follow detailed protocols during mediation proceedings. Similarly, Australia's National Mediation Accreditation System includes specific provisions for legal representation in family disputes, with emphasis on good faith participation and transparent information sharing.

South Africa's approach to family mediation offers particularly relevant lessons for Nigeria, given shared legal heritage and similar socio-economic challenges. The South Africa model incorporates sliding scale fees and state subsidies for mediation in appropriate cases, ensuring that financial barriers do not prevent families from accessing mediation services.

These international experience suggest that clear professional standards for lawyers in mediation, combined with appropriate access mechanisms, can significantly improve family dispute resolution outcome. However, successful implementation requires adaption to local legal culture and economic circumstances.

4.3 Cross-jurisdictional lessons

The comparative law lesson is that formal mediation regimes – backed by statutory enforceability, professional standards for mediators, and court referral mechanisms – work best where courts maintain a welfare safety-net, and where confidentiality protections are balanced with the need to inform judicial review in exceptional circumstances (abuse, trafficking, fraud). The English position on judicial recognition and the recent English decisions concerning Nigerian adoption orders are helpful precedents for Nigerian courts when dealing with cross-border custody or adoption matters.

5.0 Operationalising mediation for custody under CRA – proposals and safeguards

Drawing on the statutory environment (CRA + AMA 2023), recent judicial practice, Multi-Door Courthouse developments and international best practice, We propose the following operational measures for judges, family court administrators and policy makers in Nigeria (and particularly relevant for State-level implementation such as in Niger State).

5.1 Intake, screening and suitability assessment

1. **Mandatory screening:** Any custody file lodged should undergo an immediate ADR suitability assessment by trained court staff or an MDC (Multi-Door Courthouse) officer to determine whether mediation is appropriate (consider safety, allegations of violence, power asymmetry). Model: intake checklist used by MDCs.
2. **Domestic abuse/vulnerable-party safeguard:** If the screening reveals domestic violence, child abuse, or coercion risk, the case should be excluded from mediation or proceed only with special safeguards (separate sessions, legal aid, presence of support persons, or referral to protective services).

5.2 Mediator qualifications & procedural rules

1. **Mediator accreditation:** Use mediators accredited under recognised national or state registers (train mediators in child-sensitive practice). The AMA 2023 provides a national framework for mediation standards; adopt those minimum standards.
2. **Child participation & specialist input:** Where appropriate, involve child-welfare specialists or child psychologists as neutral advisers (not decision-makers), and where feasible use child-inclusive mediation techniques (age-appropriate consultation) that respect the child's voice consistent with their age and maturity.
3. **Confidentiality & admissibility:** Rely on AMA 2023 protections to maintain confidentiality of mediation communications while crafting a limited exception channel for disclosure to courts in cases involving child safety (this mirrors international practice balancing confidentiality with child protection).

5.3 Template mediated parenting agreement and court incorporation

1. **Standardised parenting plan template:** Develop a court-approved template covering residence, contact schedules, decision-making for education/medical matters, dispute-resolution steps for future conflicts, and modification triggers.
2. **Court incorporation:** Parties should be able to apply for court endorsement of the mediated parenting plan as a consent order (or register the agreement as a consent judgment). Under AMA 2023 this gives enforceability while still permitting the court to vary if the child's welfare requires.

[5] *English family jurisprudence and recognition of foreign adoption/custody issues (e.g., DE & JE v TE & TT [2025] EWHC (Fam)).*

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5.4 Enforcement and review mechanisms

1. **Fast-track variation:** Provide expedited processes for variation or enforcement applications where the welfare concerns arise or where parties fail to comply. Courts should retain power to set aside or vary agreements if contrary to the child's best interests.

Where appropriate, courts or MDCs should schedule review dates (6–12 months) to assess the plan's implementation and allow early, low-cost adjustments.

6.1 Practical challenges and proposed judicial responses

6.2 Resource constraints & training

Challenge: Limited trained mediators, funding and court capacity hamper rollout.

Response: Start with a pilot in major jurisdictions (FCT, Lagos, Rivers, and one or two states such as Niger State), using the existing Multi-Door Courthouse apparatus and donor or government funding. Train magistrates and registrars on ADR referral practice[6].

6.3 Cultural acceptability and legal culture

Challenge: Public conservatism, lawyer resistance and fears about private resolution of family matters.

Response: Public education campaigns emphasising mediation's child – centred benefits; judicial leadership and practice directions encouraging referral where suitable; clear safeguards and retention of court authority for final welfare decisions.

6.4 Ensuring equality and safety

Challenge: Power imbalances or abuse can make mediation harmful.

Response: Mandatory screening, legal aid and exclusion of mediation where safety risks exist; use shuttle/separate mediation and legal representation for vulnerable parties; court review before full incorporation.

7. Finding

Family disputes involving divorce and child custody represent some of the most emotionally charged litigations in Nigerian courts. While mediation offers significant benefits for resolving these sensitive matters, the role and duties of opposing counsels during the mediation process remain largely undefined, often undermining effectiveness.

8. Recommendation

A comprehensive framework establishing specific duties for legal practitioners representing parties in family mediation, including obligations to encourage good faith participation, facilitates disclosure, and priorities child welfare.

9. Conclusion

Mediation complements the Child's Rights Act's child-centred objectives by enabling parents to reach workable, durable child-focused arrangements in a less adversarial way. The Arbitration & Mediation Act 2023 strengthens the legal architecture by recognising enforceability and confidentiality, clearing legal obstacles to integrating mediation into family justice. Nigerian courts are already applying the CRA's welfare standard and are, in practice, open to ADR where appropriate. To make mediation an effective tool in custody disputes, courts should adopt robust intake screening, mediator accreditation, child-sensitive practice, standardized parenting plans and judicial oversight mechanisms that balance confidentiality with child protection. Piloting these reforms (via Multi-Door Courthouses and state Practice Directions) will allow courts to monitor outcomes and scale up successful models – thereby enhancing access to justice and protecting the best interests of children.

[6]Lagos Multi-Door Courthouse Practice and reports on mediation pilot programmes.

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