

# Responses to Information Requests - Immigration and Refugee Board of Canada

Nigeria: Family laws in Nigeria, including whether a spouse or former spouse can use family laws to track the location of their minor child if the other spouse relocates with the child to a different area of Nigeria (2017-March 2020)

## 1. Legislation

An overview of family law in Nigeria prepared by members of a Nigerian law firm [1] states the following regarding legislation related to the welfare of children:

The Matrimonial Causes Act enacted in 1970 (now Cap. M7 Laws of the Federation 2004) mainly governs marriages, marital breakdown and the welfare of children in Nigeria. In 1983, the Matrimonial Causes Rules were made pursuant to the Matrimonial Causes Act. These Rules set out the procedure for instituting actions for the dissolution of marriage and custody and maintenance matters following the dissolution of marriage.

In 2003, Nigeria enacted the Child's Rights Act pursuant to the United Nations Convention on the Rights of the Child. This law has been adopted by 24 states including Lagos, Enugu, Plateau, and Rivers states. Most of the states in the northern part of the country are yet to adopt it. The law sets out provisions on the welfare and adoption of children. In 2012, Lagos State enacted the Family Law Rules pursuant to the Child's Rights Law. (Etomi and Asia 1 May 2019)

According to the same source,

[c]ustody for married couples may be sought under the Matrimonial Causes Act or the Child's Right Act. For unmarried couples, only the Child's Rights Act applies. In states where the law has not been adopted, customary or Islamic laws will apply. The considerations for grant of custody for unmarried couples are largely the same because the interest of the child is the most important factor. (Etomi and Asia 1 May 2019)

## 2. Custody of Children

The overview of family law, citing case law, states that following the breakdown of a relationship,

[t]he court may order joint custody or award custody to one of the parties with visitation rights for the other party. The primary consideration in awarding custody under the Matrimonial Causes Act and Child's Rights Act is the welfare and interest of the child. The factors considered by the courts are not exhaustive. The following factors among others are key in determining who should have custody:

Emotional attachment to a particular parent.

Degree of familiarity and wishes of the child.

Adequacy of facilities (educational, social, emotional, and so on).

Respective incomes of the parties.

If one of the parties lives with a third party.

The age of the child.

The sex of the child. (Custody of a female child is usually given to the mother and male children to their father. However, this is subject to the overriding interest of the child).

Opportunities for a proper upbringing.

Conduct of the parties. (Etomi and Asia 1 May 2019)

The same source also indicates, citing case law, that "where a mother does not suffer from moral misconduct, infectious diseases, insanity, lack of reasonable means, or is not cruel to the children, custody of children of tender age and female children should be given to the mother" (Etomi and Asia 1 May 2019).

According to an article regarding the custody of children in Nigeria by Bright E. Oniha of the Edo State Judiciary,

[g]enerally, in most systems of customary law the father has absolute right to custody of the children of the marriage. Upon his death, the male head of the father's family is vested with the right. Although the day to day care of the children may be the responsibility of the mother.

Where[,] however, the children are still of tender age in need of motherly care and affection, the children are kept in the custody of their mother until they can be properly and safely separated from their mother and returned to their father. (Oniha 21 Sept. 2017)

The same source noted, referencing a decision by the Nigerian Supreme Court, that "whilst it recognizes the superior rights of the father, this right will not be enforced where it will be detrimental to the welfare of the children" (Oniha 21 Sept. 2017).

Etomi and Asia's overview of family law also states that

[t]he court has discretion under the Matrimonial Causes Act and Child's Rights Act to include in a custody order visitation or access rights of the other party or parties to the marriage, where custody is given to the other party or a third party in the interest of the child. The paramount consideration is the interest and welfare of the child. The court can order supervised access rights, depending on the facts and circumstances. (Etomi and Asia 1 May 2019)

In correspondence with the Research Directorate, a professor at the University of Nigeria, Nsukka whose research interests include political sociology in Nigeria, stated that

custody agreements are not essential components of marriage agreements or decisions in Nigeria. Family laws in Nigeria are poorly developed and a lot of people follow either traditional conventions and norms or the stipulations of religion. Therefore, if the parties were ... wedded traditionally or in the church, the relevant

authorities in these institutions may play the role of mediators and try to establish custody rules. In the tradition of most of Nigerian groups, the man/husband gets custody if the kids are ... ten years and above.

... in situations where the children are still too young, especially below 10 years, an agreement may be worked out for the woman to take temporary custody with the man providing economic support until they become older. (Professor 12 Mar. 2020)

### **3. Whether a Parent Can Legally Relocate with a Child in Another Jurisdiction**

In correspondence with the Research Directorate, the Executive Director of the Widows and Orphans Empowerment Organisation (WEWE) [2] indicated that a "parent has the right to be able to access his/her minor children" (WEWE 16 Mar. 2020). According to Etomi and Asia's overview of family law, "[i]f a parent wishes to take a child out of the jurisdiction, the permission of the other parent is required" and the "other parent can ... challenge removal without permission" (Etomi and Asia 1 May 2019). The source also indicates that

[t]here is no express provision on applications to remove a child from the jurisdiction. However, a custodial parent can apply to remove a child from the jurisdiction if it is in the interest of the child under the Child's Rights Act. The court will take into consideration similar factors for the grant of custody and the visitation rights of the other party (if any). (Etomi and Asia 1 May 2019)

In correspondence with the Research Directorate, a doctoral candidate at Murdoch University in Australia, whose research interests include women's studies in Africa and Nigeria, indicated that a parent who wants to relocate "must give notice of intent to relocate to the other parent" and the notice is "expected" to include: "a description of the intended new location (residence), new mobile number, the intended date of relocation, [and] specific reasons for the relocation, among [other details]" (Doctoral candidate 12 Mar. 2020).

### **4. Ability to Track After Relocation**

The Professor stated that tracking a minor child that has relocated with their other parent "would be very challenging and affected by how far and distant the relocation is from their original location, as well as the financial resources and social/political clout of the searcher or spouse concerned" (Professor 12 Mar. 2020). The same source added that the "involvement of the police ... would be helpful" to help a parent track down a child who relocated with the other parent, and that "having connections in government greatly helps" in getting the police to "put in resources and efforts to achieve results" (Professor 12 Mar. 2020). However, sources indicated that a spouse or former spouse would not need any connections in the government or police to track someone (Doctoral candidate 12 Mar. 2020; WEWE 16 Mar. 2020). The WEWE Executive Director indicated that "even where there is no custody agreement," the "only thing" a parent "may need" when contacting the government or police in order to retrieve their child is

resources to support logistics and administrative support for the government or police to search for the file or incur any logistical expenses as the government and police offices are sometimes poorly funded. Therefore, generally once the person can show proof of their relationship with the person they are tracking and [that]

[their] reason for tracking the person is strong, then usually the government and police will provide the necessary support with assist[ing] the person to track an individual. (WEWE 16 Mar. 2020)

The doctoral candidate indicated that it is "possible" to track a spouse or former spouse through family connections (Doctoral candidate 12 Mar. 2020). The same source elaborated that "whether the spouse or former spouse will take the matter to court for relocation disputes or whether the spouse will use violent means to take the minor children by force" will depend on whether the spouse or former spouse is influential, educated, violent, or abusive (Doctoral candidate 12 Mar. 2020).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

## Notes

[1] The overview of family law in Nigeria was prepared by Efe Etomi, a partner at Chief Rotimi Williams' Chambers Nigerian law firm whose areas of practice include family law (Chief Rotimi Williams' Chambers n.d.a), and Elvis Asia, senior counsel at the same firm, whose areas of practice also include family law (Chief Rotimi Williams' Chambers n.d.b). The overview is available through the Thomson Reuters Practical Law service, an online legal service that provides peer-reviewed resources (Thomson Reuters n.d.).

[2] The Widows and Orphans Empowerment Organisation (WEWE) is a Nigerian non-profit national NGO working to help widows, vulnerable women and orphans "to become productive entities in the society through advocacy, capacity building, economic empowerment and human rights program[s]" (WEWE n.d.).

## References

Chief Rotimi Williams' Chambers. N.d.a. "[Efe Etomi \(Mrs.\), Partner.](#)" [Accessed 19 Mar. 2020]

Chief Rotimi Williams' Chambers. N.d.b. "[Elvis Evbaruovbokhanre Asia Esq., Senior Counsel.](#)" [Accessed 19 Mar. 2020]

Doctoral candidate, Murdoch University. 12 March 2020. Correspondence with the Research Directorate.

Etomi, Efe and Elvis Asia. 1 May 2019. "[Family Law in Nigeria: Overview.](#)" Thomson Reuters Practical Law. [Accessed 19 Mar. 2020]

Oniha, Bright E. 21 September 2017. "[Dissolution of Marriage and Custody of Children Under Customary Law in Nigeria \(II\).](#)" *DNL Legal and Style*. [Accessed 19 Mar. 2020]

Professor, University of Nigeria, Nsukka. 12 March 2020. Correspondence with the Research Directorate.

Thomson Reuters. N.d. Thomson Reuters Practical Law. "[About Us: About Practical](#)

[Law.](#)" [Accessed 24 Mar. 2020]

Widows and Orphans Empowerment Organisation (WEWE). 16 March 2020.  
Correspondence from the Executive Director to the Research Directorate.

[Widows and Orphans Empowerment Organisation \(WEWE\). N.d. "Who We Are."](#)  
[Accessed 19 Mar. 2020]

## Additional Sources Consulted

**Oral sources:** Four NGOs in Nigeria.

**Internet sites, including:** CLEEN Foundation; eoi.net; EU – European Asylum Support Office; International Federation of Women Lawyers (FIDA) Nigeria; Musawah; Organisation for Economic Co-operation and Development; UK – Home Office; UN – Refworld; US – Department of State; Women's Information Network (WINET); Women's Rights and Health Project.