

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

Nigeria: Requirements and procedures for a child to leave the country with one parent (2018–November 2020)

## 1. Legislation

In correspondence with the Research Directorate, a partner at a Lagos-based Nigerian law firm with regional offices in the Akwa Ibom state and the US, whose practice areas include family law, indicated that "[l]egally speaking, there is no specific law or regulation that establishes what procedure ... must be followed by a parent leaving Nigeria with his/her child without the other parent" (Nigerian law firm 28 Sept. 2020). The same source further stated that there are "legal instances which give rise to the need of such travel consent," stemming from the *Child's Rights Act, 2003* and the *Matrimonial Causes Act* (Nigerian law firm 28 Sept. 2020). Section 277 of the *Child's Rights Act, 2003* defines a child as a person under 18 (Nigeria 2003). Section 27 of the same law provides the following:

27. –

1. No person shall remove or take a child out of the custody or protection of his father or mother, guardian or such other person having lawful care or charge of the child against the will of the father, mother, guardian or other person.
2. A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction—
  1. where the child is unlawfully removed or taken out of Federal Republic of Nigeria—
    1. with intention to return the child to Nigeria, to imprisonment for a term of fifteen years, or
    2. with no intention to return the child to Nigeria, to imprisonment for a term of twenty years.
  2. where the child is unlawfully removed or taken out of the State in which the father, mother, guardian or such other person who has lawful care of the child is ordinarily resident, to imprisonment for a term of ten years, or
  3. in any case, to imprisonment for a term of seven years. (Nigeria 2003)

Sources note that various states in Nigeria have adopted the *Child's Rights Act, 2003* (Nigerian law firm 28 Sept. 2020; Etomi and Asia 1 May 2019, 2), including Lagos, Enugu, Plateau and Rivers states, while "[m]ost" states in the north have not adopted it (Etomi and Asia 1 May 2019, 2).

## 2. Requirements and Procedures

In correspondence with the Research Directorate, a partner of a Lagos-based law firm, whose practice areas include immigration law, indicated that the parent would need a "letter of consent and authority from the absent parent giving consent to travel with the child" (Partner 30 Sept. 2020). Since there is no "legally-stipulated

procedure," the Partner of the Nigerian law firm practicing family law stated that their law firm "can only make" the following recommendations:

1. It is generally recommended that a parent intending to travel out of the country with a child in absence of the other parent should have a document evidencing consent from the other parent. This would forestall any consequent delay that might arise from the departure from Nigeria or entry into the arrival country.
2. The document should be signed by the non-accompanying parent and should include:
  1. Statement of consent of the non-accompanying parent to the travelling parent;
  2. Relevant details of the travelling parent and bio details of the child;
  3. Full contact details of the parent not travelling, and copy of government issued ID;
  4. Travel details, i.e., travel dates, airline and country of destination.
3. May be notarised for authentication purposes, especially for presentation in the arrival country. (Nigerian law firm 28 Sept. 2020)

## 2.1 Divorced Parents

The Partner who practices immigration law stated that the divorce document would explain which parent has custody and the terms of such a custody arrangement, and in cases where the divorce is pending or a claim for custody has been filed, neither party can travel with a child from that relationship except by mutual agreement (Partner 30 Sept. 2020). In correspondence with the Research Directorate, a doctor who lectures at the Faculty of Law at Nnamdi Azikiwe University in Awka, Nigeria and who has conducted research on children's rights in divorce and custody matters, indicated that

in a divorce case where joint custody or custody to one parent with access or visiting rights to the other parent is ordered by the court, consent of the other parent is required for the request of issuance of [a] visa; in a case where sole custody is awarded, consent will not be required since custody is awarded in the best interest and welfare of the child, but the other parent will be notified. Documents to establish divorce and custody, which are Order of Decree Nisi [1] and for custody of the child, will be required. Where divorce is pending, or custody has been filed, consent of the other parent is required, because both parents still have equal custody and parental rights of the child. (Doctor of Law 29 Sept. 2020)

An overview of family law in Nigeria, prepared by members of a Nigerian law firm [2] and published by Thomas Reuters Practical Law [3], states that if a parent with a child custody agreement wishes to take a child "out of the jurisdiction,"

the permission of the other parent is required because custody is based on certain established facts. Relocation will always change the dynamics of the facts, including:

- Accommodation and education for the child.
- Earning capacity of the custodial parent
- Visitation Rights for the other parent.

The other parent can therefore challenge removal without permission. (Etomi and Asia 1 May 2019, 18)

In contrast, the partner of the Nigerian law firm practicing family law indicated that

[r]equirements are basically circumstantial, since the immigration officials at the point of exit will not know the relationship status of the intending traveller. They would not normally enquire into whether the travelling party is divorced or legally separated except where they become privy to an existing situation. However, for matters of judicial hearing, it would be expedient for the party to provide certified evidence of the divorce decree and order for custody. (Nigerian law firm 28 Sept. 2020)

### **3. Parental Consent to Obtain a Nigerian Passport for a Minor**

For information on procedures and requirements to obtain a passport for minors in Nigeria and abroad, see Response to Information Request NGA200337 of November 2020.

Article 40(4) and 40(5) of the *Immigration Regulation, 2017* provides the following:

(4) All requests for issuance of passports in respect of a minor shall be supported with a consent letter from either parent.

(5) In the case of minors who are orphans, a letter of consent under sub-regulation (4) of this regulation shall be required from a lawful guardian, a person having lawful custody of the minor, an Orphanage Home or the appropriate Government Institution. (Nigeria 2017)

The website of the Nigeria Immigration Service (NIS) indicates that a letter of consent "from either parent" is required (Nigeria n.d.).

In contrast, a handbook on the rules and requirements of the Immigration Act 2015 and Immigration Regulations 2017 published by the NIS in June 2017 provides the following requirements for a minor aged 17 and under to apply for a standard passport:

1. Completed passport application form attached with 1 passport sized photograph of minor to be endorsed on the reverse side by the consenting parent/s;
2. Evidence of Nigerian citizenship of parent/s;
3. Birth certificate (certificate must be issued by the National Population Commission for minors born within Nigeria);
4. Letter of consent from both parents ([for a c]ourt [o]rder to support a parent's unavailability);
5. Acknowledgement slip and evidence of payment;
6. In the case of [a]dopted [c]hildren, [c]ourt [o]rder and [l]etter of approval from appropriate State Ministry are required in addition to the above stated requirements. It shall be processed within 20 working days. (Nigeria June 2017, 23)

The Partner whose practice areas include immigration law similarly indicated that the consent of both parents, regardless of marital status, is required to apply for a passport for a minor (Partner 30 Sept. 2020). The US Department of State's reciprocity schedule for Nigeria notes that, for passport applications, "parents' letter of consent for minors under 16 years" is required (US n.d.). Australia's Department

of Foreign Affairs and Trade (DFAT) reports that a "father's letter of consent for minors under 16 years signed by both parents" is required (Australia 9 Mar. 2018, para. 5.36). The Doctor who lectures in law indicated that consent of both parents is required for married parents when applying for a Nigerian passport for a child (Doctor of Law 29 Sept. 2020). Where there is no marriage, such as in cases where the father is unknown, consent of the other parent is not required; "however, a court order or affidavit to establish single parenthood" is required (Doctor of Law 29 Sept. 2020). The same source further stated that for cases

where there is no marriage, but paternity is acknowledged or established, notification of the other parent will be required, [and] if legal steps for custody were taken, and the court has granted joint parental responsibility to the parents upon application to the court, consent of the other parent will be required. (Doctor of Law 29 Sept. 2020)

#### 4. Child Custody and Parental Abduction

Section 69 of the *Child's Rights Act, 2003* provides the following:

69. –

1. The Court may–

1. on the application of the father or mother of a child make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent, having regard to–
  1. the welfare of the child and the conduct of the parent; and
  2. the wishes of the mother and father of the child;
2. alter, vary or discharge an order made under paragraph (a) of this subsection on the application of–
  1. the father or mother of the child, or
  2. the guardian of the child, after the death of the father or mother of the child; and
3. in every case, make such order with respect to costs as it may think just. (Nigeria 2003)

Section 71 of the *Matrimonial Causes Act of 1970* provides the following:

(1) In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the court shall regard the interests of those children as the paramount consideration; and subject thereto, the court may make such order in respect of those matters as it thinks proper.

...

(4) Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be. (Nigeria 1970)

According to the overview of family law in Nigeria,

[t]here is no express provision on applications to remove a child from the jurisdiction [against the wishes of the other parent]. 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, 18)

For additional information on child custody, including whether a parent can legally relocate with a child to another jurisdiction and the ability to track the child after relocation, see Response to Information Request NGA200143 of April 2020.

Sources report that Nigeria is not a signatory to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction [4] (Nigerian law firm 28 Sept. 2020; HCCH 19 July 2019; Etomi and Asia 1 May 2019, 17). The overview of family law in Nigeria states that international abduction is dealt with "mainly by pressing criminal charges. The other option is the use of diplomatic channels between Nigeria and the other country involved" (Etomi and Asia 1 May 2019, 17). A guide to parental child abduction to Nigeria by reunite International Child Abduction Centre (reunite), a UK-based charity specializing in international parental child abduction (reunite n.d.), indicates that international parental child abduction cases in Nigeria are heard by the High Court where the abducted child is believed to be located (reunite 2020, 8).

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] Section 56 of the *Matrimonial Causes Act* provides that a "decree of dissolution of marriage or nullity of a voidable marriage under this Act shall, in the first instance, be a decree *nisi*" (Nigeria 1970, emphasis in original).

[2] The overview of family law in Nigeria was prepared by Efe Etomi, a partner at Chief Rotimi Williams' Chambers (FRA Law) whose areas of practice include civil litigation relating to family law disputes, and Elvis Asia, an associate at FRA Law, whose areas of practice also include civil litigation relating to family law disputes (Etomi and Asia 1 May 2019, 22-23).

[3] Thomson Reuters Practical Law is an online legal service that provides peer-reviewed resources (Thomson Reuters n.d.).

[4] The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction is "a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return" (HCCH n.d.).

## References

Australia. 9 March 2018. Department of Foreign Affairs and Trade (DFAT). [DFAT Country Information Report: Nigeria](#). [Accessed 16 Sept. 2020]

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reunite International Child Abduction Centre (reunite). 2020. [A Guide to International Parental Child Abduction to Nigeria](#). [Accessed 28 Sept. 2020]

[reunite International Child Abduction Centre \(reunite\)](#). N.d. "[About Us](#)." [Accessed 28 Sept. 2020]

Thomson Reuters. N.d. Practical Law. "[About Us: About Practical Law](#)." [Accessed 28 Sept. 2020]

United States (US). N.d. Department of State. "[Nigeria Reciprocity Schedule](#)." [Accessed 16 Sept. 2020]

## Additional Sources Consulted

**Oral sources:** Associate professor of law who has conducted research on family law; four Nigeria-based law firms whose practice areas include family law; lecturer of law who has provided pro-bono legal assistance for women in civil litigation cases; Nigeria – Embassy of the Federal Republic of Nigeria in Washington, DC, High Commission in Ottawa, Nigeria Immigration Service; professor of law who has conducted research on family law; senior lecturer who has taught Nigerian family law; UK-based lawyer who has worked on international child abduction cases in Nigeria; Women's Consortium of Nigeria.

**Internet sites, including:** Churchfields Solicitors; [ecoi.net](#); Factiva; *The Guardian* [Nigeria]; The Lawyers Chronicle; Mondaq; Nigeria – High Commission in London; The Nigeria Lawyers; *This Day*; UN – Refworld.