

INTERNATIONAL ABDUCTION OF CHILDREN BY PARENTS: A CALL FOR LEGISLATIVE ACTION IN NIGERIA

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Abstract

Marriages could break down irretrievably. The eventual residence of the children of broken marriages is usually contested. A major concern in divorce proceedings is the custody of children. Custody is usually awarded to either party on agreed terms, with the court giving attention to the best interest of the children. Parties are not denied access to the children except the court believes such access would not be in the best interest of the children. Thus, the situation presented by the abduction of children by one party is one of utter disregard for law and order and an infringement on the inherent rights of the other party. This paper examined the Hague Convention on Civil Aspects of International Child Abduction 1980, which is the international legal framework put in place to protect and ensure that children abducted by a parent and taken to another country are returned to their habitual residence. The paper also considered the United States of America and Australia, which have enacted local legislation that deals with the international abduction of children by parents. The paper identified that Nigeria has not acceded to the Hague Convention. It was also discovered that, unlike the United States of America and Australia, Nigeria has no specific legislation that deals with the international abduction of children by parents. Suggestions that Nigeria should take legislative action by enacting local legislation to address international abduction of children by parents and ratifying and domesticating the Hague Convention.

Keywords: Children, Custody, Hague Convention, International Abduction, Legislation, Parents

1. INTRODUCTION

Abduction is the unlawful taking or detention, by force, fraud, or persuasion, of a person, a wife, a child, or a ward, from the possession, custody, or control of the person legally entitled thereto.² However, the context of the term in this paper refers to the unlawful, forceful taking of a child by a parent from the possession of the other parent. Child abduction may be committed both domestically and internationally. In 2014, there was a case of international parental kidnapping when a father of a 9-year-old boy named Billy Hanson did not return him to Pennsylvania after spending the summer with his father in Seattle. Billy's mother allowed him to visit his father, Jeff

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² DS Garland and LS McGehee, 'The American and English Encyclopedia of Law' (Northport, Thompson, 1896)

Hanson, for vacation. Later, the father started to send messages to the mother that Billy would not be returning to her, thereby violating an order of court. The mother mobilised the police, who went in search of the father, Jeff Hanson. He was arrested in New Zealand and detained on immigration charges.³ One major fact that was reported to have aided his arrest is international cooperation.⁴ When the abduction involves taking the child to a foreign country, it is referred to as international abduction which is the focus of this paper.

It is important to state that the issue of parental abduction is usually predicated on the award of custody following the dissolution of marriage.⁵ The bitterness that often accompanies the award of custody has led many parents to abduct the child or children of the marriage against court order. In the case of *Ojeniran v Ojeniran*⁶, the court stated that in determining which of the parties is worthy of custody, the court will resort to determining which of the parties can substantially cater for and sustain the child in terms of financial capacity, education, feeding, physical, social, and mental well-being and other matters that the court considers fit in the circumstance.

There is no gainsaying that Nigeria does not have adequate legislation on the subject of international abduction of children by parents. There is currently no specific legislation on parental abduction in Nigeria. However, the Child's Right Act 2003 (CRA 2003) provides that no child shall be forcefully and illegally removed from his parents or guardian without their prior consent or will.⁷ Whoever contravenes this provision shall be convicted and jailed depending on the gravity of the situation.⁸ Where the child is taken out of Nigeria, the offender shall be convicted to fifteen years of imprisonment.⁹ Where the offender does so with the intention not return the child back to Nigeria, he shall be convicted to twenty years' imprisonment.¹⁰ If the abduction is within Nigeria,

³ Federal Bureau of Investigation, 'International Parental Kidnapping Case, Partnerships, Publicity Key to 9-YearOld Rescue,' ,News, July 27 2015, < <https://www.fbi.gov/news/stories/international-parental-kidnapping-case> >(Accessed 06 January, 2025).

⁴ Ibid.

⁵ Sec 71(1) Matrimonial Causes Act 2004 which urges the court to consider the guardianship, welfare, advancement, education of children other marriage in granting custody to any of the parties to the marriage.

⁶ (2018) LPELR-45697(CA) Per Chidi Nwaoma Uwa JCA (Pp 23-28, Paras F-D).

⁷ Sec 27(1) Child's Right Act (CRA). 2003.

⁸ Sec 27(2) CRA 2003.

⁹ Sec 27(2)(a) (i) CRA 2003.

¹⁰ Sec 27(2)(a)(ii) CRA 2003.

the law prescribes seven to ten years imprisonment depending on the circumstances of the abduction as provided under the law.¹¹

Despite the provisions of the CRA 2003 against abduction, the law fails to provide for intricacies and legal impediments created by international abduction by parents. The challenge goes beyond the prescription of punishment for offenders. It is more important that procedures to ensure the safe return of the children internationally abducted are provided for. Some nations, like the United States (US), United Kingdom (UK), Canada, and Australia, among others, have taken legislative actions over the years regarding the issue of parental child abduction. Issues relating to jurisdictional approaches to children abducted overseas were addressed in Australia as far back as 1951. For example, under the common law in Australia, a child abducted into the territory of Australia was deemed subject to the laws of Australia and not the law of the territory the child was abducted from.¹² In *Wade v Firms*¹³, the Australian court affirmed that where there is an application to return an abducted child, the court may do the following: (i) order that the child be returned to his country (ii) investigate if the issue of custody should be left to the child's country (iii) accept the responsibility of determining custody. Subsequently, around 1976, Australia entered into bilateral treaties with Papua New Guinea and New Zealand concerning children abducted from those foreign countries.¹⁴ The said treaty was domesticated under section 68, Family Law Act of Australia. The section provides for conflict of law rules to be followed when dealing with international parental abduction. For example, in the case of *Brandon v Brandon*,¹⁵ a man and his wife, in 1988, agreed to take their child to the UK in violation of a court order that gave the child to child welfare authorities. Sometime in 1989, the wife relocated to the UK to meet her husband. Subsequently, in 1990, the wife took the child to Australia without her husband's consent. There was an order that she should return the child to the father in the UK, considering that the place has now become their place of habitual residence, pointing out there was an initial wrongful abduction of the said child from Australia. Situations like this lead to a number of jurisdictional challenges.

¹¹ Sec 27(2)(b)-(c) CRA 2003.

¹² *Kades v. Kades* (1961-62) 35 A.L.J.R. 251; *McKee v. McKee* (1951) A.C. 352.

¹³ (1981) FLC 91-106,

¹⁴ Joseph V. Kay 'International Abduction of Children' (1994) 32 *Family and Conciliation Courts Review* 168.

¹⁵ (1991) 14 Fam LR 181.

This paper explains international abduction of children by parents, a child's right to family life and the exception when the issue of custody arises, and why the child's best interests is important. It examines how the "Hague Convention on Civil Aspects of International Child Abduction (Hague Convention) 1980" protects and facilitates the return of children abducted by parents to other countries. The paper also highlights the local legislation in the United States and Australia and the limitation of regulation of international abduction of children by parents in Nigeria. Suggestions on the way forward for Nigeria will be proffered.

2. MEANING OF INTERNATIONAL ABDUCTION OF CHILDREN BY PARENTS

International abduction of children by parents occurs where the interests and the stability of children are interrupted by taking them across international frontiers without the consent of the parents or guardians or an order from a court of competent jurisdiction.¹⁶ It is also described as a parent taking a child or children to another country without the knowledge, authority, or consent of the other parent or against a court order.¹⁷ It means a parent has taken children across international borders without obtaining the consent of the other parent who possesses custody.¹⁸ Premised on this, the major parameters for international abduction of children by parents are the illegal possession and forceful relocation of the children to another jurisdiction other than their place of habitual residence. This usually denies the children the right they have to have a relationship with both of their parents. There are fundamental domestic issues that often lead to international abduction of children by parents. It is apposite to consider the right of a child to family life and the exception provided in the CRA 2003 in Nigeria.

3. CHILD'S RIGHT TO PRIVACY AND FAMILY LIFE IN NIGERIA AND EXCEPTION WHEN CUSTODY ISSUE ARISES

¹⁶ J Wall 'International Child Abduction' (1996) 18 *Liverpool Law Review* 169.

¹⁷ Clinton Anwara and Olabisi Ogunyemi, 'Parental Abduction: A Contradistinction of Nigerian Laws and International Practices', <https://www.frawilliams.com/wp-content/uploads/2023/08/Parental-Abduction-A-Contradistinction-of-Nigerian-Laws-and-International-Practices-pd:text=In%20%20Accessed%2015%20March%202025>.

¹⁸ Criminal Justice, 'International Parental Kidnapping and Child Abduction', <https://CriminalJustice-research.net/Criminal-Justice-Process/International/aspects-and-extradition/International-Parental-Kidnapping-and-Child-Abduction> Accessed 15 March 2025. See also Nuna Gonzalez Martin, 'International Parental Child Abduction and Mediation' (2015) 15(1) *Family Law Quarterly*, 353-412. <https://doi.org/10.1016/j.amdi.2014.09.007>, <https://www.sciencedirect.com/science/article/pii/S1870465415000112> Accessed 15 March 2025.

The CRA 2003 recognises a child's right to enjoy privacy and family life.¹⁹ These rights are not to be interfered with by even parents, except in the exercise of necessary supervisory and parental control.²⁰ Every child reserves a right to be adequately maintained by parents²¹ Where parents fail to provide maintenance, the child may enforce this right in the Family Court.²² The law provides that a child may be separated from his parents for the purpose of welfare or education²³ and judicial determination by the court in the best interests of the child.²⁴ According to Section 14(1)(a) of the CRA 2003, a child may be separated from his parents through education. The other possibility presented in Section 14(1)(b) of the CRA 2003 is the judicial involvement in the separation. Hence, the question is, in what circumstance can a child be separated from his parents by the court? The answer to this is when a parent has petitioned for an order of dissolution of marriage and there are children of the marriage, which would require the court to award custody to either of the parents.

When the court determines the award of custody and access to the child, the general welfare advantage of the child and the wishes of the parents are taken into consideration.²⁵ Once the court makes an order on custody, it must be legally upheld by the parents who have separated. Where it is not upheld, custody may become illegal and the erring party will be liable and punished appropriately. In a recent report, a Nigerian woman relocated to the UK with two children and changed their names without informing their father. The couple had divorced, and the custody of the two children was granted to the father, while the mother was granted access to the children only twice within a year. On a certain day, the father got to school to take his children home but realised his ex-wife had abducted them to the UK and had changed their names.²⁶ This kind of situation is becoming more incessant and requires an urgent intervention of the law.

¹⁹ Sec 8 CRA 2003.

²⁰ Sec 8(3) CRA 2003.

²¹ Sec 14 CRA 2003.

²² Sec 14(2) CRA 2003.

²³ Sec 14(1)(a) CRA 2003.

²⁴ Sec14(1)(b) CRA 2003.

²⁵ Sec 69 CRA 2003.

²⁶ V Duru, 'He Nearly Ran Mad' Nigerian Woman Relocates with Two Kids Without Telling her Husband, Changes Their Names' <https://www.legit.ng/people/family-relationship/1531640-ran-mad-nigerian-woman-relocates-2-kids-telling-husband-names/> Accessed 06 January, 2025

4. IMPORTANCE OF THE BEST INTERESTS OF THE CHILD

There are several issues of concern when abduction of children by parents occurs. The major concern of the law is the child's best interests. The court of England stated clearly that delay in resolving any disputes concerning a child will not serve the child's interest.²⁷ To ensure the abducted child's best interest is upheld, it is pertinent to promptly determine if he should be returned to his habitual residence or not.²⁸ The court will therefore assume jurisdiction in exceptional cases. In this circumstance, it is advised that a country should not arbitrarily favour its own laws where such laws will not be in the child's interest.²⁹ In any case, a child's welfare is not *strictu sensu* ensured only in the country of his habitual residence; facts of each case should be considered on its own merits. Under the CRA 2003 in Nigeria, the law is very clear that where the issue of the upbringing of a child is brought before the court, the welfare of the child shall be paramount in any circumstance.³⁰ The Nigerian law also permits the child to express his wishes and his choice.³¹ However, caution should be taken at this point because the ability of the child to make informed decisions based on truth should be a requirement. There are possibilities that the defaulting parent could have inoculated the child with negative perceptions about the other parent. Evidence of this will vitiate and affect the reliability of the wishes of the child, so the court must be careful to rely on it.

Therefore, international abduction of children by parents presents multifarious challenges, which include the cross-border nature of its commission, the challenge of determination of the forum court, and guaranteeing the child's best interest. However, it is important to examine both the international and domestic legal regimes that may provide solutions to determine the questions that arise from international abduction of children by parents.

5. HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 1980

²⁷ Re L (Minors) (Wardship: Jurisdiction) CA 1974.

²⁸ Wall (n 16) 170.

²⁹ Ibid.

³⁰ Sec 71 CRA 2003.

³¹ Sec 75 CRA 2003.

The ‘Hague Convention on Civil Aspects of International Child Abduction’ 1980 (Hague Convention) is an international instrument that protects children abducted by a parent to another country and facilitates their return to their home country by strict adherence to international standards. It also ensures the right of access to the children.³² Consensus exists between states that have ratified the Convention.³³ Contracting parties to the Convention may, between themselves, agree on terms not expressly provided for in the Convention to determine certain questions that may arise from abduction challenges involving the two states.³⁴ Hence, contracting states ensure that they implement the Convention both in the domestic arena and in relation to other contracting states.³⁵ The Convention’s objectives is to:

- i. Return abducted children without any form of delay to their home country.
- ii. Ensure that contracting states have mutual respect for the right of custody and access under their respective domestic laws.³⁶

The objective two above is suggestive that contracting states must resolve conflict of laws challenges in the choice of the forum court, law, and jurisdiction. For example, if a child is abducted from the Netherlands to the US, the court in the US, while determining the welfare and the child’s best interest must also consider the law of the child’s habitual residence (Netherlands).

Why is the Convention important? International abduction of children requires concerted efforts by states to ensure that the menace is curbed. The following was declared by the Congress of the US concerning international abduction and the importance of the Hague Convention of 1980:

- (1) The challenge of international abduction is inimical to the general welfare of a child.
- (2) No one should be granted custody merely because of wrongfully removing or retaining the child within a foreign state.
- (3) International cooperation is imperative to effectively tackle the increasing challenge of international abduction.

³² Preamble to the “Hague Convention on Civil Aspects of International Child Abduction” (HCCAICA) 1980.

³³ Article 35 HCCAICA 1980.

³⁴ Article 36 HCCAICA 1980.

³⁵ Article 2 HCCAICA 1980.

³⁶ Article 1 HCCAICA 1980.

- (4) It provides extensively a modus operandi for handling jurisdictional challenges and issues of international abduction of children.³⁷

The law of the habitual residence of the abducted child and not the place where he was taken to is relied on to determine whether or not an international abduction has been committed. The Convention provides that the removal of a child is wrong when an order of court granting custody of the child to another is violated.³⁸ In other words, where a couple are divorced and their union have been duly dissolved and the award of the custody of children is granted, it shall be unlawful for the party that was not awarded the custody of the children to forcefully take over the custody by relocating the children to another jurisdiction. Custody can also be given to a third party other than the father or mother. The court can grant residence order in favour of a person who is not the parent or guardian of the child. The person shall be responsible for the child while the residence order remains in force.³⁹ Thus, the court of the habitual residence of the child may grant custody to either of the parents, a third party, or an institution.

Furthermore, each contracting state is required to establish a Central Authority that shall be in charge of discharging the duties imposed upon the state under the Convention. Where a state operates a system of government where the component states are autonomous, each autonomous state may be required to establish its own Central Authority and, by domesticating the Convention determine the extent of the powers of such authorities within their respective territories.⁴⁰ The functions of the Central Authority include:

- a) To detect the exact location of the child that has been internationally abducted;
- b) To ensure and prevent the child from being further subjected to any harmful behaviour and also to protect the interest of parties whose right to custody have been breached;
- c) To provide measures towards amicable settlement of the issues and deliberate return of the child;
- d) To gather information about the background history of such a child for helpful reasons;

³⁷ James D Gabilino '1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges.' Washington, D.C., 2015 Federal Judicial Center.

³⁸ Article 3 HCCAICA

³⁹ Sec 68(6) CRA 2003.

⁴⁰ Article 6-10 HCCAICA.

- e) To provide information concerning the law of the state where the child was abducted from and the Convention;
- f) To set up of judicial and administrative committees towards resolving the issues of the abduction and returning the child and also facilitating arrangement for such return;
- g) Depending on the situation, to facilitate the provision of legal aid and the inclusion of relevant legal personnel in resolving the abduction issues;
- h) To provide such administrative structure to facilitate the child's return;
- i) Ensure adequate communication between the states regarding how the Convention regulates them.⁴¹

5.1 PROCEDURE FOR SECURING THE RETURN OF A CHILD UNDER THE HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 1980

Any person who claims that a child has been abducted against his custodial rights may apply to the Central Authority in the territory of the habitual residence of the child to lay such complaints.

The application shall contain –

- a) Details about the applicant who is in search of an abducted child, identity of the abducted child and the identity of the person who has perpetrated the abduction;
- b) The date of birth of the abducted child;
- c) Details of legal grounds upon which the applicant seeks the abducted child's return;
- d) Other information that may point to where the child is, and any other identifying features of the abductor.
- e) A certified copy of any court order or agreement relating to the child, custody or any other relevant document;
- f) A statement from the Central Authority or any state agency of the place of habitual residence stating the position of the internal law of the state on international abduction;
- g) Other important documents.⁴²

⁴¹ Article 7 HCCAICA 1980.

⁴² Article 8 HCCAICA 1980.

Once the Central Authority receives the application and the accompanying documents, it will transmit the application without delay to the Central Authority of the contracting state.⁴³ The Central Authority of the state where the child is taken to shall take steps towards returning the child promptly.⁴⁴ As stated earlier, delay is seen as a serious prejudice against the child's welfare and interest. It is expected that the proceeding must be concluded within six weeks from the commencement of the application. Where there is delay, it is mandatory for the state from where the application came to make inquiries and for the foreign state to give reasons for such delay.⁴⁵

To determine the welfare and the interests of the child, the Convention provides that the Central Authority of the place where the child is abducted to may refuse to return the child if it believes that:

- a) The applicant or the institution seeking the return of the child had no right to custody at the time the child was abducted or acquiesced to the abduction; or
- b) The return is not in the child's best interest.

In *G (Abduction: Cosent/Discretion)*,⁴⁶ the Court of Appeal of England said that where a child is abducted within the context of the Hague Convention, it shall take all necessary caution to ensure the immediate return of the child unless there is a justifiable reason not to do so. Such reasons may only include that the return of such a child is not in his or her best interests.⁴⁷

The child may decide he is not returning to his habitual residence, and this decision should be respected by the relevant Authority. However, the child must have attained the age of maturity and can make such a decision. Moreover, the relevant background of the child will be considered in the circumstance.⁴⁸ The challenge of returning the child must first be addressed by the Convention before an order for return is made. To achieve this, the Convention provides that to establish if wrongful removal or retention occurred, the relevant judicial and administrative authorities shall

⁴³ Article 9 HCCAICA 1980.

⁴⁴ Article 10 HCCAICA 1980.

⁴⁵ Article 11 HCCAICA 1980.

⁴⁶ (2021) EWCA Civ 139.

⁴⁷ (Supra).

⁴⁸ Article 13 HCCAICA 1980.

give consideration to the domestic laws of the state of habitual residence in determining the return.⁴⁹ This suggests that if Nigeria becomes a signatory to the Convention (in reality, Nigeria is not a signatory), a contracting state that retains an abducted Nigerian child may request for the laws that govern custody, marriage and matrimonial causes, enforcement of foreign judgment, judgment enforcement rules, and others.

Where abduction is wrongful, the relevant authority handling the abduction shall not determine the right of custody except it is concluded in accordance with the Convention that the child should not be returned.⁵⁰ As stated earlier, the state where the child is abducted to may refuse to return the child on the ground of best interests. For example, before Alberta signed the Convention, it refused to return back to South Africa children that were abducted into Alberta because of Apartheid.⁵¹ Thus, the fact that there is a valid grant of custody to the applicant does not mean that he/she is automatically entitled to the return of the child.⁵²

The Convention is very extensive in its model for the processes by which an abducted child is returned to his habitual residence with provisions that have utmost regard for the laws of contracting states. States are also permitted to apply any other laws if mutually agreed upon by states concerned in the resolution of international abduction of children by parents. As at December 2024, 101 states have assented to the Convention.⁵³ Nigeria is not a signatory to the Convention.

5.2 WHAT HAPPENS TO STATES THAT ARE NOT PARTIES TO THE HAGUE CONVENTION?

There are states that are not parties to the Hague Convention.⁵⁴ Some factors militate against a peaceful and satisfactory(easy) resolution of issues regarding international parental abduction in

⁴⁹ Article 14 HCCAICA 1980.

⁵⁰ Article 16 HCCAICA 1980.

⁵¹ Ibid

⁵² Article 17 HCCAICA 1980.

⁵³ M Blitt, 'International Child Abduction' (2019) 44 Law Now 32

⁵⁴ These are some of the states that have signed the Hague Convention 1980.-: Former Yugoslav Republic of Macedonia, Finland, Croatia, Denmark, Czech Republic, France (for the whole of the territory of the French Republic), Germany, Greece, Ireland, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, <http://www.hcch.net/e/status/abdshte.html#ratifications> Accessed 1 May 2023.

states that are not parties to the Hague Convention, for example culture and religion. France has bilateral treaties with certain Muslim nations like Algeria⁵⁵ and Morocco. Few European nations have treaties with a number of Muslim nations in the North Africa and Middle East.⁵⁶ Most of these Muslim nations depend heavily on sharia law in the conduct of their family law matters. Women under sharia law are normally granted custody of children. However, the father has exclusive rights to guardianship of education and property or other male relatives.⁵⁷ However, if the mother is to have custody, it must be clear that she is mentally capable of “safeguarding the child’s interests.”⁵⁸ Where she is unable, custody will be given to a female relative who can maintain the child.⁵⁹ In a particular report, it is said that after a divorce, the children remained with the father if that is his wish, However, the woman may contest this arrangement in court, but may not succeed.⁶⁰ Most of the time, fathers would abduct the children into a fellow Muslim country where safe haven will be achieved, and his actions will go unchallenged.⁶¹

Nigeria, with a heterogeneous society of a federal nature, may encounter some challenges of culture and religion. The northern part of Nigeria is predominantly Islamic, and sharia law is applied in the administration of the family system. The criminal law of the northern part also recognises the tenets of the sharia law⁶² while the southern, eastern, western region apply some other different laws.⁶³ If Nigeria domesticates the Convention, it will become a Federal Law. However, each state must consciously domesticate the Convention within its own state and

⁵⁵Algeria Welcomes French Prime Minister, Signs New Bilateral Agreement to Deepen Relations <https://www.africanews.com/amp/2022/10/10/algeria-welcomes-french-prime-minister-signs-new-bilateral-agreement-to-deepen-relations/> Accessed on 15 March 2025.

⁵⁶ Europe and Middle East, <https://ustr.gov/countries-regions/europe-middle-east> Accessed on 1 May 2023.

⁵⁷ Research Directorate, Immigration and Refugee Board of Canada, Ottawa, Nigeria: Divorce Law and Practice Among Muslims, Including Grounds, Procedures, Length of Process, Property Disposition, Child Custody, and Consequences for the Woman and her Family (March 2006) NGA101046.E: <https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA101046.E.pdf>(accessed 7 January 2025).

⁵⁸ Anne-Marie Hutchinson, International Parental Child Abduction (Jordans Publishing Limited, 1998) 17, 141.

⁵⁹ Research Directorate, Immigration and Refugee Board of Canada, Ottawa, Nigeria: Divorce Law and Practice Among Muslims, Including Grounds, Procedures, Length of Process, Property Disposition, Child Custody, and Consequences for the Woman and her Family’ (March 2006) <https://www.refworld/docid/45f147882f.html> (accessed 1 May 2023).

⁶⁰ Danish Immigration Service, ‘Report on Human Rights Issues in Nigeria: Joint British-Danish fact finding Mission to Abuja and Lagos, Nigeria’ 19 October – 2 November 2004 (accessed 7 January 2025).

⁶¹ AA An-Naim (ed) *Islamic Family Law in the Changing World* (2002).

⁶² Penal Code Act cap 53 LFN 2004.

⁶³ Criminal Code Act, LFN 2004.

establish its own Central Authority. It is doubtful that Northern states will domesticate the Convention. Dualism and plurality of the Nigerian legal system, especially within the family law system, may constitute a major impediment to the Convention in Nigeria. Schnitzer-Reese stated emphatically that cross-border abduction brings about a clash of different cultures, and the countries concerned face challenges of diversity in culture, religion, and legal systems, and more often than not, the parent deprived of the child has little or no recourse under international law.⁶⁴

How then can a child abducted from Nigeria to a state party of the Hague Convention be returned? Nigeria may follow the path of the US in addressing this issue. The US International Parental Kidnapping Crime Act of 1993 provide imprisonment not exceeding three years for abducting a child with the intention to deny the parent his lawful parental right. The abducted child must be under 16 years and parent in this law refers to anyone who has lawful custody of the said child.⁶⁵

The essence of this law is to categorise the matter of international abduction of children by parents as a form of kidnapping rather than a civil matter that may be resolved by parties on terms. If Nigeria adopts the kidnapping ideology in the context of international abduction of children by parents, it is possible to invoke extradition laws to ensure that a criminal who has abducted a child may be sent back by the other country. However, extradition laws also require a documented agreement⁶⁶ with the state where the child is abducted to, for it to operate.⁶⁷

The United Nations Convention on the Rights of the Child (UNCRC) of 1989 is an international treaty that has received a 98% response from nations of the world, including Islamic states. The articles of the Convention focus on a child's "best interests," which are defined as the right to be cared for by parents, maintain contact with their parents, the right of children and their parents" to leave and enter their country for the purpose of maintaining contact with one another", and the right for children to be "heard" and to" participate in matters that affect their lives."⁶⁸ The

⁶⁴EA Schnitzer-Reese 'International Child Abduction to non-Hague Convention Countries: The need for an International Family Court' (2004) 2(1) *Northwestern Journal International Human Rights* 3.

⁶⁶ Sec 1(1) Extradition Act E25 LFN 2004. Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender by each country to the other, of persons wanted for prosecution or punishment, the National Council of Ministers may by order published in the Federal Gazette apply this Act to that country.

⁶⁷ For example, there exists an Extradition Treaty between Nigeria and South Africa.

⁶⁸ Article 9 of the United Nations' Convention on the Rights of a Child (UNCRC) 1989.

Convention also states clearly that children on no occasion shall be taken away from their parents unless it can be shown that the separation is to eventually save the child from harm.⁶⁹ Furthermore, the Convention states that no child shall be treated unfairly because children all over the world should not be discriminated against on the basis of colour, race, culture, religion, association or for any other reason.⁷⁰

Nigeria has domesticated the UNCRC (as CRA 2003 at the Federal level and Child's Right Law in 34 out of 36 states) and may take advantage of the wider coverage and global acceptance of the UNCRC to prosecute international abduction of children by parents. These and many other legal actions may be deployed towards ensuring that the parent who abducts children does not end up having a field day while leaving the other parent helpless and without remedy.

6. LIMITATIONS OF REGULATION OF INTERNATIONAL CHILD ABDUCTION BY PARENTS IN NIGERIA

There is no specific comprehensive law that regulates international abduction of children by parents in Nigeria. The CRA 2003 deals with the protection of children generally. The provisions of section 27(1)-(3) of the CRA 2003 on abduction of a child within Nigeria or one taken outside Nigeria by any person are general provisions. The offender shall be convicted and imprisoned for a period ranging from seven to twenty years.⁷¹ The CRA 2003 provides only punitive measures but does not deal directly with the multifarious issues that arise in respect of international abduction of children by parents, such as the return of the child to the habitual residence. The Criminal Code Act and the Penal Code Act also provide punishment for abduction and kidnapping a person.⁷² Furthermore, prosecuting international abduction of children by parents under criminal law may be a slow process that would most likely not serve as a means of having the child returned.

Nigeria is not a party to the Hague Convention. As earlier discussed, the Convention is an international legal framework that resolves international abduction of children by parents, for example, it could prevent likely complications that arise in courts of countries that can also decide

⁶⁹ Article 9 UNCRC 1989.

⁷⁰ Article 2 UNCRC 1989.

⁷¹ Section 27(1)-(3) CRA 2003.

⁷² Ten years imprisonment for anyone convicted under section 364 Criminal Code Act, LFN 2004 and sections 271 and 273 Penal Code Act cap 53 LFN 2004.

the matter and facilitate the return of the child to Nigeria. To be implemented in Nigeria, the Hague Convention must be ratified and domesticated to make it part of Nigeria's local laws. Currently, Nigerian courts resort to discretion in deciding international abduction of children by parents.⁷³

7. PERSPECTIVES FROM THE LEGAL REGIMES IN AUSTRALIA AND UNITED STATES

Australia has developed a comprehensive legal framework that deals with international abduction by parents. Australia ratified the Hague Convention on the 1st day of January 1987 and inserted it into Section.111 B of the Family Law Act 1975, which provides the necessary structures to enhance the performance of Australia under the Convention.⁷⁴The Family Law (Child Abduction Convention) Regulations were subsequently enacted.⁷⁵ The Australian Court has expressed its firm view on international abduction of children in the case of *H. and H.*⁷⁶ stating emphatically that states ought to discourage international abduction by ensuring that the court that takes preeminence should be that of the state where the child was abducted.⁷⁷ The Family Law Act 1975 also spells out situations that are wrongful removals of the child, which qualify as abduction in Article 3 of the Convention.

The US has taken laudable domestic measures towards curbing the challenge of international abduction of children by parents before international abduction became an international concern.⁷⁸ Laws made on parental abduction include the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) 1997 and Parental Kidnapping Prevention Act of 1980. Under the UCCJEA, US courts accorded little recognition to the custody decrees of foreign courts, just the same way they treat decrees from their own neighbouring states. In theory, the US standard of

⁷³ Chaman Law Firm, 'Navigating Cross-Border Family Law Disputes and International Child Abduction in Nigeria' <https://chamanlawfirm.com/family-law-dispute-and-child-abduction> Accessed 17 May 2025.

⁷⁴ J.V. Kay 'International Abduction of Children: An Australian Perspective' (1994) 32 *Family & Council Courts Review* 170.

⁷⁵ *Ibid.*

⁷⁶ (1985) FLC 91-640.

⁷⁷ (1985) FLC 91-640.

⁷⁸ E.C. McDonald 'More Than Mere Child's Play: International Parental Abduction of Children' (1988) 6 *Dick Journal International Law* 284.

comity⁷⁹ governs the recognition and enforcement of decrees of other countries. Despite this standard, the courts in the US did not recognise foreign custody orders. The case of *State ex rel. Domico v. Domico*⁸⁰ illustrates the fact that before the adoption of the UCCJEA, the Supreme Court of Appeals of West Virginia did not apply comity principles but independently decided custody-related issues on the principle of the child's best interests. In this case, consequent upon marital challenges, a father took his two children from West Germany to West Virginia. The mother of the children commenced a suit in a West German court to obtain an order granting her custody of the children. The court issued a decree granting her their custody. Subsequently, they were divorced in Germany. The mother thereafter made efforts to get custody of her children by filing a habeas corpus petition in the Supreme Court of Appeals of West Virginia. After careful consideration of the situation, the court refused to honor the German decree for custody on the basis that, considering the welfare of the children, it is more desirable for the father to retain the custody of the children.⁸¹

This ideology is akin to the provision of Hague Convention that allows a state where a child is retained to refuse his return to his habitual place of residence on the ground that such return may not be in the child's best interest. The UCCJEA as an advanced law, resolves many issues raised from the former law. It resolves jurisdictional issues. When jurisdiction is determined, the court may make orders on custody accordingly. The purposes of the UCCJEA are clearly stated as follows:

- (1) To avoid unhealthy competition among states on issues relating to child custody;
- (2) To promote cooperation amongst courts by ensuring that the court that can best determine the child's best interest is allowed to do so;
- (3) Ensure that suit for custody is commenced in a state where the child and his family have the closest connection;

⁷⁹ Comity is defined as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.

⁸⁰ 153 W. Va. 695, 172 S.E.2d 805 (1970).

⁸¹ The Court explained that the children had completely adapted and blended to life in the United States of America and that they were adequately catered for in an adequate accommodation provided by their father, and that their father's income was five times better than the earnings of their mother who lived in Germany.

- (4) Ensure that unending controversies on custody end, as this will enhance a conducive environment devoid of hostility for the said child;
- (5) Deter persons from abducting children for the hope of securing awards of custody;
- (6) Through cooperation have regard to the custody decrees of other States by avoiding re-litigation of custody proceedings;
- (7) Ensure that custody orders or decrees are enforced in other States;
- (8) That custody related matters may be improved through adequate communication and exchange of ideas on how custody matters.⁸²

From the foregoing, it is apparent that domestic legislative activism is imperative in addressing the international abduction of children by a parent. The Hague Convention gives opportunities to states like the US to showcase their intelligible legislative ideas on the issue to other states that are currently experiencing the menace international abduction of children by parents in an increasing manner. Many African states including Nigeria, require international, regional and sub-regional cooperation on this matter so as to protect the child's best interest.

7. CONCLUSION

Despite court orders on custody, international abduction of children by parents has become prevalent, and Nigeria is not left out of the menace. At the international level, the Hague Convention on Civil Aspects of International Child Abduction 1980, with the extensive mechanism it provides and strict adherence to international standards, ensures that children abducted by parents are protected and returned to their habitual residence, except when it is not in the child's best interest. The Convention also handles jurisdictional challenges and fosters global cooperation. The US and Australia, which are both signatories to the Convention, have further addressed international abduction of children by parents through enactment of local legislation. Nigeria is not a signatory to the Convention and has no specific legislation that addresses international abduction of children by parents.

In conclusion, Nigeria requires a comprehensive legal regime to protect and ensure the return of children who are victims of international abduction by parents and should ratify and domesticate the Hague Convention.

⁸² Section I of the UCCJEA states that the purposes of the Act.

7.1 RECOMMENDATIONS

The following suggestions are hereby put forward for Nigeria:

- a. It is important that the executive arm of government in Nigeria tasked with signing treaties and conventions accede the Hague Convention and the National Assembly domesticate it by enacting it as law as required by section 12 of the 1999 Constitution to become a part of Nigeria's local law. Each state may also domesticate it as state law because it falls within the purview of Family Law,
- b. The government of Nigeria may become more proactive by entering into bilateral treaties, that would be country-specific to ensure that the abductor is duly apprehended, no matter the jurisdiction he has escaped to. Such treaties would should not jeopardise the religious and cultural tenets other countries.
- c. Nigeria may also advance the scope of its extradition treaty to more nations. This suggestion is further hinged on the proposal that a Parental Kidnapping Act be enacted, putting the matter of parental abduction within the purview of criminal law. This will diversify options available to a parent that the court has awarded custody and the state itself.
- d. Local legislation could also be enacted at the Federal and State. Level in Nigeria. Useful provisions of legislation of other countries can be used as a guide.
- e. Nigeria's religious and cultural diversities ought not hinder the ratification and domestication of the Hague Convention to enable her begin the journey to global cooperation with other contracting states.
- f. It is important that the Hague Convention be reviewed to include enforcement mechanism and sanctions for non-compliance by contracting parties that fail to comply with its provision. Sanctions could be economic or diplomatic. The review could also include allowing courts to deal with cases of abductors who could be victims of abuse and domestic violence. It should also extend the age of children to be protected to seventeen years old.