

## NIGERIA<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue,</i></p>	<p>Section 15(2) of the Constitution prohibits discrimination on several basis including sex in order to actively encourage national integration.<sup>2</sup></p> <p>Section 42 of the Constitution provides for freedom from discrimination in the law or any executive and administrative actions on several basis including sex.<sup>3</sup></p> <p>Section 17(3)(h) of the Constitution commits the State to direct its policy towards ensuring that the evolution and promotion of family life is encouraged.<sup>4</sup></p>	<p>When deciding on matters within its jurisdiction, the <i>Shar'iah</i> Court of the Federal Capital of Abuja bases its decisions on (i) Islamic law of the Maliki schools as customarily interpreted at the place where the trial at first instance took place, (ii) applicable statutory laws; and (iii) the principles natural justice, equity and good conscience.<sup>12</sup></p>	<p>Nigeria ratified CEDAW without any reservations.<sup>14</sup></p> <p>The Government of Nigeria in its 1997, 2003, 2006 and 2016 reports to the CEDAW Committee:<sup>15</sup></p> <ul style="list-style-type: none"> <li>Explained that three types of marriages are recognised in Nigeria: (i) civil marriages; (ii) customary</li> </ul>		<p>According to the 2016 UNDP Human Development Report, Nigeria ranked 152 on the UNDP Human Development Index and was not ranked on the UNDP Gender Inequality Index.<sup>18</sup></p> <p>According to Nigeria's 2013 Demographic and Health Survey, about 19% of households in Nigeria are headed</p>

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Nigeria country table, we would also like to thank Cassandra Rasmussen from Harvard Law School, and Mufuliat Fijabi for their inputs in its preparation.

<sup>2</sup> Section 15(2) of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<sup>3</sup> Section 42 of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<sup>4</sup> Section 17(3)(h) of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<sup>12</sup> Section 13 of the Sharia Court of Appeal (Federal Capital Territory) Act (1960),

[http://resources.lawscopeonline.com/LFN/SHARIA\\_COURT\\_OF\\_APPEAL\\_ACT\\_CAP.550\\_L.F.N.\\_\(FEDERAL\\_CAPITAL\\_TERRITORY\).htm](http://resources.lawscopeonline.com/LFN/SHARIA_COURT_OF_APPEAL_ACT_CAP.550_L.F.N._(FEDERAL_CAPITAL_TERRITORY).htm)

<sup>14</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>15</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (1997), p. 62; Nigeria State party report, U.N. Doc. CEDAW/C/NGA/4-5 (2003), para. 16.3; Nigeria State party

<p><i>how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>Sections 262(2) and 277(2) of the Constitution mandate the <i>Shari'ah</i> Courts of Appeal of the Federal Capital of Abuja and of any other state in Nigeria that requires such a court, respectively, with the appellate and supervisory jurisdiction over Muslim personal status matters e.g. validity or dissolution of a marriage, family relationship, the guardianship of an infant and inheritance.<sup>5</sup></p> <p>There are 36 states in Nigeria and one Federal Territory (Federal Capital Territory of Abuja). The 36 states are commonly divided into Northern (19 states) and Southern states (17 states).<sup>6</sup> Muslims form the majority population in the Northern states. As such Muslims laws and practices that govern Muslim marriages and family relations are mainly applied in these states. Eighteen of the 19 Northern states have <i>Shari'ah</i> Courts of Appeal with the remaining one state (Benue) sharing a <i>Shari'ah</i> Court of</p>	<p>According to the Government of Nigerian judiciary has been playing an important role in protecting the rights of women and children in the field of marriage and family relations through judicial activism.<sup>13</sup></p>	<p>marriages; and (iii) Muslim marriages;</p> <ul style="list-style-type: none"> <li>Acknowledges that this tripartite system legal system that recognises three types of marriages have led to various manifestations of discrimination in terms of the age of marriage, consent of parties and parental consent, polygamy, divorce rights, health implications such as female genital mutilation and inheritance rights.</li> </ul> <p>In its 2006 report to the CEDAW</p>		<p>by women.<sup>19</sup></p> <p>Twelve Northern states in Nigeria have <i>Shari'ah</i> Penal Codes.<sup>20</sup> There is a bill in process that aims to expand the jurisdiction of the <i>Shari'ah</i> courts in federal capital territory to include criminal laws.<sup>21</sup></p>
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report, U.N. Doc. CEDAW/C/NGA/6 (2006), p. 100; Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (2016), paras. 14.1-14.2, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>18</sup> UNDP, "Human Development Report 2016", Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>5</sup> Sections 262(2) and 277(2) of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<sup>6</sup> The 19 Northern states are Adamawa, Bauchi, Benue, Boru, Gornbe, Jigawa, Kadanu, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara. The 17 Southern states are Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers.

	<p>Appeal with another state (Plateau).<sup>7</sup></p> <p>Nigeria does not have codified laws relating to Muslim marriages and family relations. These areas are governed by a combination of <i>Shari'ah</i> principles, Nigerian customary practices and judicial precedents.<sup>8</sup> With Sunni Muslims of the Maliki School being the majority of Muslims in Nigeria, generally, the rules of Maliki jurisprudence (<i>fiqh</i>) apply in Muslim personal status matters.<sup>9</sup></p> <p>Despite the equality guarantee under Sections 15(2) and 42 of</p>		<p>Committee, the Nigerian government explained further that harmonisation of the complex tripartite system of Nigeria “is a Herculean task.” However, collaborative efforts are being undertaken in that direction.<sup>16</sup></p> <p>In its 2016 report to the CEDAW Committee, the</p>		
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<sup>13</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (2016), para. 14.6, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>19</sup> National Population Commission of Nigeria and ICF International, “Nigeria Demographic and Health Survey 2013”, Table 2.8, p. 19, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>

<sup>20</sup> Ikenga K.E. Oraegbunam, “Sharia Criminal Law, Islam and Democracy in Nigeria Today”, (New Journal of African Studies, 8, 2011), p. 192, <https://www.ajol.info/index.php/og/article/viewFile/71768/60724>

<sup>21</sup> News Wire NGR, “A Bill Seeking to Upgrade Sharia Law Across Nigeria Passed Second Reading,” *News Wire NGR*, 25 May 2016, <http://newswirengr.com/2016/05/25/a-bill-seeking-to-upgrade-sharia-law-across-nigeria-passed-second-reading/#>

<sup>7</sup> Philip Ostien and Albert Dekker, “Sharia and National Law in Nigeria”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 578, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>8</sup> Philip Ostien and Albert Dekker, “Sharia and National Law in Nigeria”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 585-586, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Information obtained from Nigerian advocate, February 2017

<sup>9</sup> E.I. Nwogugu, “Family law in Nigeria”, (HEBN Studies in Nigerian Law, Third Edition, 2014), p. 76; Philip Ostien and Albert Dekker, “Sharia and National Law in Nigeria”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 585, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Baobab, “Women’s Access to Justice and Personal Security in Nigeria: A Synthesis Report”, 2002, p.3, <http://gsdrc.ids.ac.uk/docs/open/ssaj33.pdf> Eighteen of the 19 Northern states have *Shari’ah* Courts of Appeal. Benue shares a *Shari’ah* Court of Appeal with Plateau.

<sup>16</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/6 (2006), p. 130, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>the Constitution, uncodified Muslim personal laws in Nigeria provide for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him. It has also led to harmful practices such as:<sup>10</sup></p> <ul style="list-style-type: none"> <li>• Legal protection of wife abuse under Section 55(1)(d) of the Penal Code that is applicable in the Northern states in Nigeria is perpetuated in the <i>Shari’ah</i> Penal Codes which provide that “Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done [...] by a husband for the purpose of correcting his wife”;</li> <li>• The practice of treating wives as near servants and burden them with heavy domestic and</li> </ul>		<p>Government of Nigeria informed that the Nigerian Law Reform Commission has been tasked with harmonising the laws regarding marriage and family relations and redress related existing “offensive” legal provisions such as Section 55(1)(d) of the Penal Codes of Northern Nigeria. Among progress made include the development of a draft model law that makes it mandatory to register all customary and Muslim marriages.<sup>17</sup></p>		
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<sup>10</sup> Pascale Fournier et al, “En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia”, (Amsterdam Law Forum, 3:2, 2011), p. 112, <http://amsterdamlawforum.org/article/viewFile/213/405>; Philip Ostien and Albert Dekker, “Sharia and National Law in Nigeria”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 586-587, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, “Promoting Women’s Rights Through Sharia in Northern Nigeria”, 2005, pp. 8, 14-17, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<sup>17</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (2016), paras. 14.3-14.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>other responsibilities either because it is taken for granted that women bear such responsibilities or because husbands fear being branded as a dominated husband (<i>mijin hajiya</i>); and</p> <ul style="list-style-type: none"> <li>The practice of exclusion and seclusion whereby husbands exclude their wives from household decision-making and restrict their wives' movements (<i>purdah</i>).</li> </ul> <p>Marriage and family relations of Nigeria's non-Muslims are governed either by civil law or customary laws and practices.<sup>11</sup></p>				
<p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of mar-</i></p>	<p>Generally, there is no specified minimum legal age for marriage for Muslim females and males in Nigeria.<sup>22</sup></p> <p>Section 21 of the Child Rights Act (CRA) provides that the minimum age for marriage is 18 for females and males.<sup>23</sup> The CRA, being a national level law, requires the formal adoption by the individual</p>		<p>The Ministry of Women Affairs and Social Development launched a national strategy to end child marriages in November 2016. It seeks to reduce child marriage by 40% by 2020, and end the practice</p>		<p>Various sources suggest a very high prevalence of child marriages in Nigeria:</p> <ul style="list-style-type: none"> <li>According to UNICEF's State of the World's Children 2016 report, 43% of</li> </ul>

<sup>11</sup> Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112, <http://amsterdamlawforum.org/article/viewFile/213/405>; Ayesha Iman, "Working within Nigeria's Sharia Courts", (Human Rights Dialogue 2.10, Violence Against Women, 2003), [https://www.carnegiecouncil.org/publications/archive/dialogue/2\\_10/articles/1053.html#:pf\\_printable](https://www.carnegiecouncil.org/publications/archive/dialogue/2_10/articles/1053.html#:pf_printable)

<sup>22</sup> E.I. Nwogugu, "Family law in Nigeria", (HEBN Studies in Nigerian Law, Third Edition, 2014), p. 76

<sup>23</sup> Section 21 of the Child's Rights Act (2003), [http://www.africanchildinfo.net/clr/Legislation%20Per%20Country/Nigeria/nigeria\\_children\\_2003\\_en.pdf](http://www.africanchildinfo.net/clr/Legislation%20Per%20Country/Nigeria/nigeria_children_2003_en.pdf)

<p><i>riage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>states for it to be domesticated at state level.<sup>24</sup> Only 23 of the 36 states have domesticated the CRA in their respective states. Of these 23 states, 16 are Southern states and seven Northern states.<sup>25</sup></p>		<p>entirely by 2030.<sup>26</sup></p>	<p>women aged 20-24 in Nigeria were first married by 18 and 17% by 15;<sup>27</sup></p> <ul style="list-style-type: none"> <li>• According to an NPR interview, in Northern Nigeria, close to 50% of girls are married before the age of 16,<sup>28</sup></li> <li>• According to Voices for Change, in the North, girls generally marry between 12 and 15, if not younger;<sup>29</sup></li> <li>• According to the Nigerian government in its</li> </ul>
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<sup>24</sup> Section 4, Part II of Second Schedule of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en); UNICEF, "Child rights Legislation in Nigeria", *Fact Sheet*, 2011, p. 2, [https://www.unicef.org/nigeria/Child\\_rights\\_legislation\\_in\\_Nigeria.pdf](https://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf)

<sup>25</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (2016), Table 2.1, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Chineme Okafor, "Failings of Child Rights Law", *THISDAY*, 10 March 2017, <https://www.pressreader.com/nigeria/thisday/20170310/282080571636307>

<sup>26</sup> Girls Not Bride, "Nigeria", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/nigeria/>  
<sup>27</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)

<sup>28</sup> NPR, "In Nigeria, Many Girls Are Married And Divorced Before Adulthood", *Weekend Edition Sunday*, 29 June 2014, <http://www.npr.org/2014/06/29/326669368/in-nigeria-many-girls-are-married-and-divorced-before-adulthood>

<sup>29</sup> Ejiro J.Otipe-Igbuzor, "Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria", *Voices for Change*, 2014, p. 11, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>

					<p>2003 report to the CEDAW Committee, the marriage age prevalent in Southern Nigeria is between 18 and 21 while in the North, it is between 12 and 15. Also, in the North, girls of ages as low as nine, depending on the age of attainment of puberty, are given out in marriage. The age of men too is as low as 15 years.<sup>30</sup></p> <p>According to UN World Marriage Data 2015, the average of first marriage among Nigerian females fell slightly from 21.5 in 2008 to 21.2 in 2013 and among males, from 28.5 in to 28.6 dur-</p>
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<sup>30</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/4-5 (2003), para. 16.5, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

					<p>ing the same period.<sup>31</sup></p> <p>According to the 2013 Nigerian Demographic and Health Survey:<sup>32</sup></p> <ul style="list-style-type: none"> <li>• 23% of women aged 20-49 had their first sexual intercourse by 15 and 53% by 18; and</li> <li>• 7% of women aged 20-49 had given birth by 15 and 32% by 18.</li> </ul> <p>According to civil society and media reports, factors that contribute to the high prevalence of child marriage in Nigeria include:</p> <ul style="list-style-type: none"> <li>• Poverty, poor access to education and strong social and</li> </ul>
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<sup>31</sup> United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

<sup>32</sup> National Population Commission of Nigeria and ICF International, "Nigeria Demographic and Health Survey 2013", Tables 4.5, 5.9, pp. 59, 77, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>



					<p>religious traditions;<sup>33</sup></p> <ul style="list-style-type: none"> <li>• Lack of legal protection. Most of the states with a high prevalence of child marriage have yet to adopt the CRA. These states are reluctant to domesticate the law because they do not want to be tied down by any age limit for marriage. Feminist groups however are encouraging these states to, at the very least, require that girls must have completed their secondary or high school level education before they may marry if these states do not wish to explicitly state a minimum legal</li> </ul>
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<sup>33</sup> Girls Not Brides, "Nigeria", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/nigeria/>

					<p>age for marriage.<sup>34</sup> According to a response to an information request by the Immigration and Refugee Board of Canada, some in northern Nigeria engage in <i>daurin aure</i>, in which a girl may go to school until she completes her education and before the consummation of marriage;<sup>35</sup> and</p> <ul style="list-style-type: none"> <li>• Lack of political will to implement change. For instance, in 2013, a recommendation by Nigeria's Constitutional Review Committee to delete a clause contained in</li> </ul>
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<sup>34</sup> Information obtained from Nigerian advocate, February 2017

<sup>35</sup> Immigration and Refugee Board of Canada, "Nigeria: Forced marriage under Islamic Law", *Responses to Information Requests*, 17 March 2006, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA100418.E.pdf>

					<p>Section 29 of the Constitution on the renunciation of citizenship that states “any woman who is married shall be deemed to be of full age” was not adopted following a heated debate in the senate and public demonstrations that were centred on the issue of whether the deletion of the clause would imply that the minimum age for marriage is 18 (Section 29 provided that a citizen must be of full age in order to renounce his or her citizenship and clarified that full age means over 18) hence purportedly contravene <i>Shari’ah</i> as well as discriminate against Muslim</p>
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					women as they would be considered “of age” once they are married. The ultimate decision by the senate to retain the clause has been considered by many as an implicit acceptance of early marriage. <sup>36</sup> Incidentally, one of the more vocal senators have been alleged to have engaged in practice of child marriage. <sup>37</sup>
<p><b>Women’s consent to marriage</b></p> <p><i>Is a marriage valid without the woman’s consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is</i></p>	A prospective bride who has attained puberty and has married at least once must consent to her subsequent marriage. However, it is generally understood that based on the rules of Maliki <i>fiqh</i> , a	For Maliki communities, a biological father has the power of <i>ijbar</i> (courts may refer to Bulugul Marami,		There is no standard marriage Muslim contract in Nigeria. <sup>43</sup>  The registration of Muslim marriages is	According to the Minister of Women Affairs and Social Development, nearly 65% of children below 18 were

<sup>36</sup> OECD Development Centre, “Nigeria”, *Social Institutions and Gender Index*, 2014, p. 2, <http://www.genderindex.org/country/nigeria>; Middle East Research Institute, “Nigerian Women’s Rights Activist Funmi Falana Slams Senate For Not Taking A Stand Against Child Marriage”, *MEMRI Special Dispatch No. 5403*, 12 August 2013, <https://www.memri.org/reports/nigerian-womens-rights-activist-funmi-falana-slams-senate-not-taking-stand-against-child>

<sup>37</sup> Middle East Research Institute, “Nigerian Women’s Rights Activist Funmi Falana Slams Senate For Not Taking A Stand Against Child Marriage”, *MEMRI Special Dispatch No. 5403*, 12 August 2013, <https://www.memri.org/reports/nigerian-womens-rights-activist-funmi-falana-slams-senate-not-taking-stand-against-child>; BBC, “Nigerian senator Sani denies marrying ,girl of 13”, *BBC*, 30 April 2010, <http://news.bbc.co.uk/2/hi/africa/8651043.stm>

<sup>43</sup> Ikenga K. E. Oraegbunam and Benson O. S. Udezo, “Women’s Rights in Matrimonial Jurisprudence under Islamic Family Law in Nigeria: A Need for Reform”, (*Journal of Religion and Human Relations*, 1:4, 2012), p. 105, <http://www.ajol.info/index.php/jrhr/article/viewFile/86984/76761>

<p><i>there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>father has the right to conclude a marriage on behalf of a virgin daughter of any age even if it is against her will. Consequently, <i>ijbar</i> marriage of a prospective bride who has not attained puberty or who has never been married is not prohibited in Nigeria.<sup>38</sup></p>	<p>Fighus Sunnah Vol. II p. 260). However, the <i>wali</i> cannot compel his daughter to marry a man suffering from contagious diseases (such as leprosy), insanity, or reproductive problems. Case law is clear that <i>ijbar</i> cannot be enforced for adult women, and the courts generally accept a variety of circumstances that overrule the possibility of <i>ijbar</i>, including where the woman earns some money herself.<sup>39</sup></p>		<p>not mandatory in most states. Jigawa State is an exception in that under Section 14(1) of the Marriages (Expenses Control) Law, district and village leaders must maintain a marriage register.<sup>44</sup></p>	<p>forced into marriage in the Northern region.<sup>45</sup></p> <p>According to an academic research, although some court cases have nullified forced marriages for lack of consent, women's and girls' consent is rarely sought in practice.<sup>46</sup></p> <p>According civil society and media reports, among the adverse consequences of forced marriages, which is said to be most prevalent among girls who</p>
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<sup>38</sup> Abdulrashid Lawan Haruna and Awwal Ilyas Magashi "Human rights approach to reproductive health in Islam: Appraising Women's Rights to Husband and Family Planning", (Journal of Islamic Law Review, 11:1, 2015), pp. 7-8, <http://www.serialsjournals.com/serialjournalmanager/pdf/1470648339.pdf>; E.I. Nwogugu, "Family law in Nigeria", (HEBN Studies in Nigerian Law, Third Edition, 2014), p. 76; Ikenga K. E. Oraegbunam and Benson O. S. Udezo, "Women's Rights in Matrimonial Jurisprudence under Islamic Family Law in Nigeria: A Need for Reform", (Journal of Religion and Human Relations, 1:4, 2012), pp. 101-103, <http://www.ajol.info/index.php/jrhr/article/viewFile/86984/76761>; Immigration and Refugee Board of Canada, "Nigeria: Forced marriage under Islamic Law", *Responses to Information Requests*, 17 March 2006, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA100418.E.pdf>; Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, "Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, pp. 10-11, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<sup>39</sup> Musawah, "CEDAW and Muslim Family Laws: In Search of Common Ground", 2012, p. 33, [http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition\\_1.pdf](http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf)

<sup>44</sup> E.I. Nwogugu, "Family law in Nigeria", (HEBN Studies in Nigerian Law, Third Edition, 2014), pp. 78-79

<sup>45</sup> NAN, "Worried about prevalence of child marriage in Northern Nigeria, Government moves to stop practice," *Premium Times Nigeria*, 21 November 2016, <http://www.premiumtimesng.com/news/top-news/216659-worried-prevalence-child-marriage-northern-nigeria-government-moves-stop-practice.html>

<sup>46</sup> Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112,

		<p>Some marriages have been annulled on the grounds that they were concluded without the woman's consent. For example, in <i>Haja Kaka and Zama Bukma</i> in Borno in 1991, the wife was able to dissolve the marriage because her consent was not sought before the marriage consummation.<sup>40</sup></p> <p>In <i>Karimatu Yakubu v. Alhaji Paiko</i>, a 19-year-old woman applied for an annulment on the grounds that her father had given her in marriage without</p>			<p>have not been to school or reached puberty, include high maternal mortality and morbidity, illiteracy and other skills, unemployment, poverty and wife abuse.<sup>47</sup></p> <p>According to information on the ground, Muslim marriage contracts do not often take the form of a formally written marriage contracts.<sup>48</sup></p>
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<http://amsterdamlawforum.org/article/viewFile/213/405>

<sup>40</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p. 66,

[http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

<sup>47</sup> NAN, "Worried about prevalence of child marriage in Northern Nigeria, Government moves to stop practice," *Premium Times Nigeria*, 21 November 2016,

<http://www.premiumtimesng.com/news/top-news/216659-worried-prevalence-child-marriage-northern-nigeria-government-moves-stop-practice.html>; Immigration and Refugee Board of Canada, "Nigeria: Forced marriage under Islamic Law", *Responses to Information Requests*, 17 March 2006,

<https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA100418.E.pdf>; Kieran Corcoran, "Divorced at 14: How thousands of Nigerian girls are forced into marriage only to be thrown out and end up with no education and no hope", *Mail Online*, 29 June 2014, <http://www.dailymail.co.uk/news/article-2673817/Divorced-14-How-thousands-Nigerian-girls-forced-marriage-thrown-end-no-education-no-hope.html>

<sup>48</sup> Information obtained from Nigerian advocate, February 2017

		<p>her consent. Initially the <i>Shari'ah</i> Court of Appeal upheld the marriage, claiming that under the Maliki school, her father had power over her marriage because she had been a virgin. (i.e. not previously married). However, when the case went to the Court of Appeal, the decision was reversed on the grounds that, because the father had dissuaded her from marrying one suitor and asked her to pick between two others, he had given her independence to choose and had therefore lost his power of <i>ijbar</i>.<sup>41</sup></p> <p>In 2010, the High Court of Sokoto was threw out a case in which a 26-year-old woman claimed that</p>			
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<sup>41</sup> Muhammed Tawfiq Ladan, "A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights", 2005, pp. 16-17, [http://leads-nigeria.org/uploads/2479\\_File\\_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf](http://leads-nigeria.org/uploads/2479_File_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf)

		her father had forced her to marry Zamfara State Senator Sahabi when he knew she was engaged to another man. The court stated that it could not intervene and that it was a matter for an Islamic court. <sup>42</sup>			
<p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under</i></p>	Regardless of her age, a prospective bride requires the consent of a marital guardian ( <i>wali</i> ) to enter into marriage based on Maliki <i>fiqh</i> . <sup>49</sup> The <i>wali</i> must be her father or a male relative. <sup>50</sup>				According to BAOBAB, a woman's right to negotiate for dower ( <i>mahr</i> ) is frequently downplayed or hidden, and women are often convinced that it is more spiritual to ask for little or nothing. <sup>51</sup>

<sup>42</sup> AAP, "Court Rejects 'Forced Marriage' Case Against Zamfara Senator", *Agencia Angola Press*, 23 October 2010, [http://www.angop.ao/angola/en\\_us/noticias/africa/2010/9/42/Court-Rejects-Forced-Marriage-Case-Against-Zamfara-Senator.d26213f3-81ae-4f00-80d6-b33418707057.html](http://www.angop.ao/angola/en_us/noticias/africa/2010/9/42/Court-Rejects-Forced-Marriage-Case-Against-Zamfara-Senator.d26213f3-81ae-4f00-80d6-b33418707057.html)

<sup>49</sup> Abdulrashid Lawan Haruna and Awwal Ilyas Magashi "Human rights approach to reproductive health in Islam: Appraising Women's Rights to Husband and Family Planning", (*Journal of Islamic Law Review*, 11:1, 2015), pp. 6-7, <http://www.serialsjournals.com/serialjournalmanager/pdf/1470648339.pdf>

<sup>50</sup> E.I. Nwogugu, "Family law in Nigeria", (*HEBN Studies in Nigerian Law*, Third Edition, 2014), p. 76

<sup>51</sup> Ayesha M. Imam, Mfuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p.42, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)



<p><i>what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>			
<p><b>Polygamous marriages</b></p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p>	<p>A Muslim man may marry up to four wives at one time. There is no legal requirement for him to seek the permission of the court or his existing wife or wives to enter into a polygamous marriage.<sup>52</sup></p>	<p>Courts have upheld equal treatment between wives in certain cases. For example, in <i>Falmata Kundali v. Awana Zarami</i> in 1994 (Case No 27/94, Uje Area Court 2) the court upheld one wife's suit for equal maintenance and gifts with her co-wife.<sup>53</sup></p>	<p>According to Nigeria's 2013 Demographic and Health Survey, 33% of marriages in Nigeria are polygamous. The survey also found that:<sup>54</sup></p> <ul style="list-style-type: none"> <li>• Women in the Northern states were more likely to report having co-wives than women in the Southern states;</li> <li>• Older women were more likely</li> </ul>

<sup>52</sup> Ikenga K.E. Oraegbunam, "Sharia Criminal Law, Islam and Democracy in Nigeria Today", (New Journal of African Studies, 8, 2011), p. 105, <https://www.ajol.info/index.php/og/article/viewFile/71768/60724>; Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112, <http://amsterdamlawforum.org/article/viewFile/213/405>; Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p.42, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

<sup>53</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, pp.51-52, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

<sup>54</sup> National Population Commission of Nigeria and ICF International, "Nigeria Demographic and Health Survey 2013", Tables 4.2.1, p. 55, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>

<p>Applicable CEDAW Provision Para. 14 GR21 Para. 34 GR29</p>					<p>than younger women to have co-wives. For instance, 42% of married women aged 45-49 reported having co-wives, as compared with 25% of women aged 20-24;</p> <ul style="list-style-type: none"> <li>• Rural women were more likely to report having co-wives than urban women (22% versus 39%);</li> <li>• Women living in poorer households were more likely than women living in richer households to have co-wives. For instance, 46% of women living in households in the lowest wealth quintile reported having co-wives, as compared with 15% of women living in</li> </ul>
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					<p>households in the highest quintile; and</p> <ul style="list-style-type: none"> <li>Lower educated women were slightly more likely to report having co-wives than higher educated women. For instance, 46% of married women with no education reported having co-wives, as compared with 14% of women who has attained secondary or higher education.</li> </ul> <p>According to civil society reports and academic research:<sup>55</sup></p> <ul style="list-style-type: none"> <li>Some Muslim communities encourages polygamy, almost</li> </ul>
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<sup>55</sup> Ikenga K. E. Oraegbunam and Benson O. S. Udezo, "Women's Rights in Matrimonial Jurisprudence under Islamic Family Law in Nigeria: A Need for Reform", (Journal of Religion and Human Relations, 1:4, 2012), p. 105, <http://www.ajol.info/index.php/jrhr/article/viewFile/86984/76761>; Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112, <http://amsterdamlawforum.org/article/viewFile/213/405>; Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, pp. 12-13, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

					<p>to be point of mandating the practice;</p> <ul style="list-style-type: none"> <li>• The unequal treatment of wives is the prevailing norm in a polygamous marriage.</li> </ul> <p>According to media reports, the Emir of Kano, the second most influential Muslim leader in Nigeria, has announced that there will soon be a law which would stop men from taking more than one wife if they did not have the means to support them.<sup>56</sup></p> <p>According to information on the ground, temporary marriage is not practiced in Nigeria</p>
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<sup>56</sup> Africa News, "Poor men to be legally barred from polygamy – Emir of Kano", *Africa News*, 20 February 2017, <http://www.africanews.com/2017/02/20/poor-men-to-be-legally-barred-from-polygamy-emir-of-kano/>; Anthony Ogbonna, "Law to ban polygamy: There's a connection between polygamy, poverty, terrorism – Emir of Kano", *Vanguard Nigeria*, 20 February 2017, <http://www.vanguardngr.com/2017/02/law-ban-polygamy-theres-connection-polygamy-poverty-terrorism-emir-kano/>

					and is culturally frowned upon. <sup>57</sup>
<p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to</i></p>	<p>There are four main ways in which Muslims can seek for divorce in Nigeria:<sup>58</sup></p> <ul style="list-style-type: none"> <li>• <i>Unilateral repudiation of the marriage (talaq):</i> This can only be initiated by the husband unless he has delegated this right to his wife. The wife does not need to return her dower (mahr);</li> <li>• <i>Divorce by mutual consent of the husband and wife (mubarat):</i> This is usually initiated by the wife and decided by a court. However, if both husband and wife wish, they can agree to it between themselves, or with their guardians (walis). Whether the wife needs to return the mahr depends on the agreement of the parties;</li> </ul>	<p><i>Shari'ah</i> court cases have found that the compensation in <i>khul'</i> divorce cases should not be more than the original value of the dower (mahr) received or promised at marriage. For example, in <i>Babajo vs. Dontsho</i>, the <i>Shari'ah</i> Court of Appeal found that the maximum the wife should pay her husband is the amount of the mahr she had received, which in this case was N100, and that to demand for more was unjust and amounted to</p>	<p>The Government of Nigeria in its 1997 report to the CEDAW Committee explained that the same opportunity is given to both spouses to terminate a marriage when it no longer serves its purposes and has turned into an unbearable burden. The husband can bring about the dissolution of marriage in three different ways, namely <i>talaq</i>, <i>ila</i> and <i>zihar</i> and similarly, the wife can terminate the marriage by three</p>	<p>Registration of Muslim divorces are not mandatory except in Jigawa State (under Section 14(1) of the Marriages (Expenses Control) Law, district and village leaders must maintain a divorce register).<sup>66</sup></p> <p>The assigning of the husband's right to repudiation (<i>talaq</i>) to his wife is usually agreed upon at the time of the marriage contract, either in writing or with two witnesses present.<sup>67</sup></p>	<p>According to information gathered by the Immigration and Refugee Board of Canada and civil society reports:<sup>68</sup></p> <ul style="list-style-type: none"> <li>• <i>Talaq</i> divorce is the most common form of Muslim divorce in Nigeria. Due to its informal character, it is often abused by a husband to the detriment of wives;</li> <li>• The husband's delegation of his lateral right to divorce to his wife is something</li> </ul>

<sup>57</sup> Information obtained from Nigerian advocate, February 2017

<sup>58</sup> Baobab, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BOABAB Legal Literacy Leaflet No. 2*, <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>; Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html); Muhammed Tawfiq Ladan, "A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights", 2005, pp. 78-79, [http://leads-nigeria.org/uploads/2479\\_File\\_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf](http://leads-nigeria.org/uploads/2479_File_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf)

<p>register a divorce?</p> <p>Applicable CEDAW Provision Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<ul style="list-style-type: none"> <li>• <i>Divorce following the payment of compensation by the wife to her husband (khul')</i>: This is initiated by the court. The wife need not give a reason for wanting the divorce. Where there is dispute over the compensation amount, the sum will be decided by the court;</li> <li>• <i>Court-decided divorce (tafriq or faskh)</i>: This is usually initiated by the wife on the grounds of violation of marriage terms and arbitrated by the court. Valid grounds for divorce include: (i)</li> </ul>	<p>promoting immorality.<sup>59</sup> In addition, in cases involving long-term marriages, the wife is usually required to pay only a "token amount," in addition to court fees she pays as the initiator of the divorce.<sup>60</sup></p> <p>Examples of court-decided divorce cases include the following.<sup>61</sup></p>	<p>ways: (i) repudiation of marriage in exchange for material compensation (<i>khul'</i>); (ii) divorce by way of the husband's delegation of his authority to divorce his wife (<i>tafwid</i>); or (iii) by option of puberty i.e. a minor who was married to her husband, could upon attaining majority, opt out or</p>	<p>almost "unknown" in Nigeria;</p> <ul style="list-style-type: none"> <li>• Women often resort to <i>khul'</i> divorce even where they may have good grounds to seek for a court-decided divorce. This could be due to their lack of awareness that in the case of a court-decided divorce, they do</li> </ul>
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<sup>66</sup> E.I. Nwogugu, "Family law in Nigeria", (HEBN Studies in Nigerian Law, Third Edition, 2014), pp. 78-79

<sup>67</sup> Baobab, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BOABAB Legal Literacy Leaflet No. 2*, p. 5  
<http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>. See also Immigration and Refugee Board of Canada, Nigeria: Divorce Laws and Practices among Muslims (2012), [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html).

<sup>68</sup> Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html); BAOBAB, Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria, p. 5, <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>; Ejiro J.Otive-Igbuzor, "Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria", *Voices for Change*, 2014, p. 13, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>; Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, "Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, pp. 18-21, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<sup>59</sup> Baobab, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BOABAB Legal Literacy Leaflet No. 2*, p. 5  
<http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>

<sup>60</sup> Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html)

<sup>61</sup> Baobab, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BOABAB Legal Literacy Leaflet No. 2*, p. 6  
<http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>

	<p>the husband's failure to provide maintenance; (ii) 'defect' on the part of husband or wife; (iii) prolonged absence of a spouse; (iv) injury or discord between wife and husband; (v) failure to provide sexual satisfaction; and (vi) refusal of the husband to enable the wife to undertake her religious obligations. If the court grants a divorce for any of these reasons, the wife does not have to make any payment to the husband or reimburse the <i>mahr</i>.</p>	<ul style="list-style-type: none"> <li>• In <i>Yahaya vs. Adama Salusy</i>, the wife called witnesses to prove lack of provision of food or adequate medical care. The <i>Shari'ah</i> Court of Appeal, Kano, affirmed the divorce;</li> <li>• In the case of <i>Aisha Umar</i>, the wife complained to the Area Court 1, Sokoto, that her husband had left her for two years and three months. She produced witnesses and was granted the divorce;</li> <li>• In <i>Luba Mamaman vs Tukur Ibrahim</i>, the wife complained to the Area Court, Sokoto that her husband often verbally abused her father and</li> </ul>	<p>affirm the marriage.<sup>65</sup></p>		<p>not have to pay compensation to their husband, or because of delays in the judicial system or proceedings, in which case a wife would rather pay her husband than wait; and</p> <ul style="list-style-type: none"> <li>• The lengthy process and costly procedure of seeking divorce places women in a vulnerable position.</li> </ul>
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<sup>65</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/2-3 (1997), p. 64, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

		<p>accused her of committing adultery. The husband protested against the divorce. Finally, the <i>Shari'ah</i> Court of Appeal ruled that the wife could have the divorce on the grounds of cruelty and destruction of property. The Area Court, Zaria, granted the divorce;</p> <ul style="list-style-type: none"> <li>• In the case of <i>Modu Fugurambe vs. Amina Alirambe</i>, the wife complained that her husband was 'not her match sexually' to the Lamisula Area Court 11, Maduguri. Eventually she swore on the <i>Qur'an</i> that her complaint was true, and the marriage was dissolved;</li> </ul>			
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		<ul style="list-style-type: none"> <li>• In the case of the case of <i>Haja Kaka v. Zama Bukma</i> in Borno State, the marriage was dissolved at the request of the wife on the grounds that her consent was not sought before the marriage was consummated.<sup>62</sup></li> <li>• In <i>Balaraba Magaji Shika v. Magaji Isa Giwa</i>, a wife sought divorce on the grounds that the husband constantly accused her of immorality even when she went to her parents' home. He demanded N30,000 is payment, even though her dowry had only been</li> </ul>			
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<sup>62</sup> Ikenga K. E. Oraegbunam and Benson O. S. Udezo, "Women's Rights in Matrimonial Jurisprudence under Islamic Family Law in Nigeria: A Need for Reform", (Journal of Religion and Human Relations, 1:4, 2012), p. 108, <http://www.ajol.info/index.php/jrhr/article/viewFile/86984/76761>

		<p>N500, and the court required her to pay N10,000;</p> <ul style="list-style-type: none"> <li>• In <i>Indo Ibrahim v. Danladi</i>, the <i>Shari'ah</i> Court of Appeal, Jos, held that marriage expenses should not be considered part of the dowry for the purpose of <i>khul'</i> payments, and should be viewed instead as gifts.<sup>63</sup></li> <li>• In <i>Fatimah Aliyu and Jilia</i> in Sokoto in 1988, a wife had her marriage dissolved on grounds of lack of maintenance.<sup>64</sup></li> </ul>			
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal di-</i></p>	<p>Generally, upon divorce, a woman is only entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>). The <i>iddah</i> period is generally</p>	<p>Fathers may be prosecuted for the failure to provide financial support for his children:</p>			<p>According to information gathered by the Immigration and Refugee Board of Canada and civil</p>

<sup>63</sup> Muhammed Tawfiq Ladan, "A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights", 2005, p. 18, [http://leads-nigeria.org/uploads/2479\\_File\\_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf](http://leads-nigeria.org/uploads/2479_File_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf)

<sup>64</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p. 53, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

<p><i>vision of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p>	<p>three months, unless she is pregnant, in which case she is entitled to maintenance only until the baby is born.<sup>69</sup></p> <p>Following a divorce, fathers remain responsible for the financial maintenance of their children.<sup>70</sup></p>	<p><i>Abubakar Aajam and Hauwa Haladu, in 1995 (Case No 62/95).<sup>71</sup></i></p>			<p>society reports, in practice.<sup>72</sup></p> <ul style="list-style-type: none"> <li>• Whether by their own choice or not, women generally do not remain in their husband's home after the divorce and forfeit any support; and</li> <li>• Enforcement of child maintenance payments is difficult. As such, whether the father pays child maintenance</li> </ul>
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<sup>69</sup> BAOBAB, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BAOBAB Legal Literacy Leaflet No. 2*, p. 7 <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>; Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html); Pascale Fournier et al, "Engendering Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112, <http://amsterdamlawforum.org/article/viewFile/213/405>

<sup>70</sup> Baobab, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BAOBAB Legal Literacy Leaflet No. 2*, p. 7 <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>; Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html)

<sup>71</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, pp. 72-73, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

<sup>72</sup> Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html); Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p. 73, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf); Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, "Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, p. 23, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<p>Applicable CEDAW Provision Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>					<p>depends very much on the disposition of the father.</p>
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p>Applicable CEDAW Provision Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A mother has priority right over the custody of her daughter until she marries and her son until he reaches puberty based on Maliki <i>fiqh</i>.<sup>73</sup></p> <p>A mother may lose custody of her child if she may lose her right to custody, and the next female relation on the mother's side (her mother, her sister, etc.) takes custody.<sup>74</sup></p>	<p>In <i>Jatau v. Mamman Hajiya</i>, the <i>Shari'ah</i> Court of Appeal of Bauchi state upheld the custody rights of the mother to her four-year-old daughter, and in <i>Jumai Yaqub and Adamu Idah</i>, and in the <i>Shari'a</i> court of appeal in Kogi, the court upheld a mother's right to her male child and his maintenance.<sup>75</sup></p>	<p>The Government of Nigeria in its 1997 report to the CEDAW Committee explained that at the dissolution of Muslim marriages, the interests of the child is paramount in custody related matters.<sup>76</sup></p>		<p>According to information gathered by the Immigration and Refugee Board of Canada and civil society reports, in practice:<sup>77</sup></p> <ul style="list-style-type: none"> <li>• Most women are forced to give up custody of their children immediately upon divorce because the father will not pay maintenance. The father then decides where</li> </ul>

<sup>73</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p. 72, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf); Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, "Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, p. 22, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<sup>74</sup> Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html)

<sup>75</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, pp. 72-73, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

<sup>76</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/2-3 (1997), p. 64, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>77</sup> Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html); Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p. 72, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf); Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, "Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, p. 22, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

					<p>and with whom the children shall live;</p> <ul style="list-style-type: none"> <li>• Where a mother who has custody of her children, but remarries, the father often takes the child from his or her mother regardless of age;</li> <li>• Increasingly, though still rarely, a mother will fight for custody and guardianship and has been known to get it.</li> </ul>
<p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p>	<p>A father has priority right over the guardianship of his children.<sup>78</sup></p>				

<sup>78</sup> Immigration and Refugee Board of Canada, "Nigeria: Divorce Laws and Practices among Muslims", 7 November 2012, [https://www.ecoi.net/local\\_link/232040/340619\\_en.html](https://www.ecoi.net/local_link/232040/340619_en.html); Baobab, "Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria", *BOABAB Legal Literacy Leaflet No. 2*, p. 7 <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20-%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>

<p>Applicable CEDAW Provision Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>					
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p>Applicable CEDAW Provision Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Abortion is strictly prohibited by law, except when it is necessary to save the pregnant woman's life.<sup>79</sup></p>		<p>The Government of Nigeria has developed a Family Planning Blueprint (Scale-Up Plan) 2014-2018 that has the overarching goal of increasing women's use of family planning services (contraceptive prevalence rate to increase from 15% in 2014 to 36% in 2018), thereby contributing to the reduction of maternal mortality by 75% and infant mortality by 66% across Nigeria by 2018.<sup>80</sup></p>		<p>According to World Bank data, the total fertility rate decreased from 6.4 children per woman in 1960 to 5.6 in 2015.<sup>81</sup></p> <p>According to Nigeria's 2013 Demographic and Health Survey:<sup>82</sup></p> <ul style="list-style-type: none"> <li>• The median birth interval in Nigeria is 31.7 months, with 23% of children being born less than 24 months after their siblings;</li> <li>• 16% of married women have an unmet need for</li> </ul>

<sup>79</sup> UN Department of Economic and Social Affairs, "Abortion Policies and Reproductive health around the world 2013", Annex 2, pp. 21, 27,

<http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>

<sup>80</sup> Federation Government of Nigeria, "Nigeria Family Planning Blueprint (Scale-Up Plan)", 2014, [http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2015/09/CIP\\_Nigeria.pdf](http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2015/09/CIP_Nigeria.pdf)

<sup>81</sup> World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>82</sup> National Population Commission of Nigeria and ICF International, "Nigeria Demographic and Health Survey 2013", Tables 5.5, 7.2, 7.4, 7.13.1, pp.73-74, 91-92, 95-96, 106-107, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>

					<p>family planning services, with 12% having an unmet need for spacing and 4% an unmet need for limiting of children;</p> <ul style="list-style-type: none"> <li>• 15% of married women are using a method of contraception, with 10% of women using a modern method;</li> <li>• Knowledge of at least one method of family planning is quite high (85%) among married women in Nigeria.</li> </ul> <p>According to the Guttmacher Institute, in spite of Nigeria's restrictive abortion laws, abortion is very common in Nigeria and mostly done in secret. About 40% of those abortions run into</p>
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					complications serious enough that a medical professional should be seen (but often isn't). <sup>83</sup>
<p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Section 35(1) of the Constitution provides that no person shall be deprived of his or her personal liberty.<sup>84</sup></p> <p>Section 41(1) provides that provides that every Nigerian is entitled to move freely throughout Nigeria and to reside in any part of the country.<sup>85</sup></p> <p>Section 3 commits the state to direct policies to provide equal opportunities to all Nigerians to secure adequate means of livelihood and suitable employment.<sup>86</sup></p> <p>Despite the constitutional provisions stating otherwise, the personal rights of Muslim women can potentially be restricted for reasons that include:</p> <ul style="list-style-type: none"> <li>• The recognition that the</li> </ul>		<p>The Government of Nigeria has asserted a policy of encouraging women to pursue an education and works to assist in development efforts. This contradicts the tradition of seclusion (<i>purdah</i>), still practiced by many women, particularly in northern Nigeria.<sup>91</sup></p>		<p>According to Nigeria's 2013 Demographic and Health Survey:<sup>92</sup></p> <ul style="list-style-type: none"> <li>• 71% of married Nigerian women were employed at the time of the survey;</li> <li>• 70% of married women earning cash made independent decisions on how to spend their earnings;</li> <li>• 82% of married women aged 15-49 do not own a house while 85% do not own land;</li> </ul>

<sup>83</sup> Guttmacher Institute, "Fact Sheet: Abortion in Nigeria", 2015, <https://www.guttmacher.org/fact-sheet/abortion-nigeria>  
<sup>84</sup> Section 35(1) of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)  
<sup>85</sup> Section 41(1) of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)  
<sup>86</sup> Section 3 of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)



	<p>husband as the decision-maker in the marriage and family;<sup>87</sup></p> <ul style="list-style-type: none"> <li>• The requirement for a woman to obey her husband or risk losing her financial maintenance;<sup>88</sup></li> <li>• The practice of exclusion and seclusion whereby husbands exclude their wives from household decision-making and restrict their wives' movements (<i>purdah</i>);<sup>89</sup></li> <li>• While a woman can own property (including landed property) without the consent of the husband, she cannot legally dispose of it without her husband's consent.<sup>90</sup></li> </ul>				<p>among women who do own assets, 4% and 5% of women own a house and land by themselves, respectively;</p> <ul style="list-style-type: none"> <li>• 31% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases, and visits to their family or relatives; and</li> </ul>
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<sup>91</sup> Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112,

<http://amsterdamlawforum.org/article/viewFile/213/405>

<sup>92</sup> National Population Commission of Nigeria and ICF International, "Nigeria Demographic and Health Survey 2013", Tables 15.1, 15.2.1, 15.4.1, 15.6.1, 15.7.2, pp. 280-

282, 285-286, 289, 295-296, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>

<sup>87</sup> Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, "Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, p. 15,

[http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<sup>88</sup> Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112,

<http://amsterdamlawforum.org/article/viewFile/213/405>

<sup>89</sup> Philip Ostien and Albert Dekker, "Sharia and National Law in Nigeria", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 586-587,

<https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria,

"Promoting Women's Rights Through Sharia in Northern Nigeria", 2005, pp. 8, 14-17, [http://www.ungei.org/srgbv/files/dfid\\_promoting\\_womens\\_rights.pdf](http://www.ungei.org/srgbv/files/dfid_promoting_womens_rights.pdf)

<sup>90</sup> Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, pp. 81-82,

[http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf); Ejiro J. Otiye-Igbuzor, "Analysis of the Structural and

					<ul style="list-style-type: none"> <li>• 35% of women aged 15-49 accept at least one reason as a justification for wife beating. Women are most likely to agree that if a wife goes out without telling her husband, it justifies wife beating (25%).</li> </ul> <p>According to World Bank data, female labour force participation increased from 39% in 1990 to 48% in 2016.<sup>93</sup> During the same period, male labour force participation rate decreased from 75% in to 64%.<sup>94</sup></p> <p>According to the 2016 UNDP Human Development Report.<sup>95</sup></p>
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Systemic Causes of Gender Inequality in Nigeria”, *Voices for Change*, 2014, p. 20, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>

<sup>93</sup> World Bank, “Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)”, <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>94</sup> World Bank, “Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)”, <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

<sup>95</sup> UNDP, “Human Development Report 2016”, Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

					<ul style="list-style-type: none"> <li>• 65% of females aged 15-24 are able to read and write a short simple sentence as compared to 80% of males in the same age group; and</li> <li>• 71% of women are satisfied with their freedom of choice as compared to 65% of men.</li> </ul> <p>According to a civil society report, in northern Nigeria, women still frequently require their husbands' permission to travel, and some Muslim Hausa women must be accompanied by their husbands.<sup>96</sup></p>
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<sup>96</sup> Ejiro J.Otipe-Igbuzor, "Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria", *Voices for Change*, 2014, p. 21, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>

<p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>Generally, inheritance rights between women and men are unequal. In many instances, for example in the case of siblings, a woman is entitled to half the share of a man based on the rules of Maliki <i>fiqh</i>.<sup>97</sup></p> <p>However, a Muslim can expressly choose make a will under the Wills Act and exclude Islamic law from governing her or his estate upon death.<sup>98</sup></p>	<p>In <i>Yunusa v. Adesubokan</i>, a Muslim father chose to make a will under the Wills Act of 1873. One son (who was given much less than the others) sued, arguing that the will was contrary to Maliki Law. Ultimately, the Supreme Court held that any person, Muslim or not, may make a will under the Wills Act of 1873 and dispose of their estate under that act in any manner they choose.<sup>99</sup></p> <p>Under <i>Apatire v.</i></p>	<p>The Government of Nigeria in its 1997 and 2003 reports to the CEDAW Committee explained that upon her husband's death, a Muslim wife has a share in his estate.<sup>101</sup></p>	<p>According to civil society reports and academic research, in practice:<sup>102</sup></p> <ul style="list-style-type: none"> <li>• Daughters and particularly wives, are frequently deprived of their inheritance rights, especially in terms of land and property;</li> <li>• In some communities, including some Muslim communities, women are also considered part of a man's property to be</li> </ul>
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<sup>97</sup> Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), pp. 113-114, <http://amsterdamlawforum.org/article/viewFile/213/405>

<sup>98</sup> Muhammed Tawfiq Ladan, "A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights", 2005, p. [http://leads-nigeria.org/uploads/2479\\_File\\_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf](http://leads-nigeria.org/uploads/2479_File_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf)

<sup>99</sup> Muhammed Tawfiq Ladan, "A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights", 2005, pp. 12-13, [http://leads-nigeria.org/uploads/2479\\_File\\_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf](http://leads-nigeria.org/uploads/2479_File_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf)

<sup>101</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/2-3 (1997), p. 65; Nigeria State party report, U.N. Doc. CEDAW/C/NGA/4-5 (2003), para. 16.3, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>102</sup> Ejiro J.Otipe-Igbuzor, "Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria", *Voices for Change*, 2014, p. 16, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>; Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), pp. 113-114, <http://amsterdamlawforum.org/article/viewFile/213/405>; Ayesha M. Imam, Mufu-liat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", *BAOBAB*, 2005, p. 77, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

		<i>Akande</i> , the court held that Islamic law will not be applied to a person's estate if it can be inferred from his conduct that he intends to be bound by another law (in this case, by leaving legacies to his sons, it was implied that he meant to be bound by received English law). <sup>100</sup>			<p>inherited by male relatives upon the death of their husbands;</p> <ul style="list-style-type: none"> <li>• In 2007, the Chronic Poverty Research Centre reported that in Nigeria only 27.8% of widows inherited majority of assets;<sup>103</sup></li> <li>• There is a strong belief that it making a will is not permissible in Islam.</li> </ul>
<p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by tradi-</i></p>	<p>Section 17(2) of the Constitution states that the sanctity of the human person must be recognised and human dignity maintained and enhanced.<sup>104</sup></p> <p>The Violence Against Persons (Prohibition) Act 2015 ('VAPP') criminalises a whole wide range of acts of domestic violence</p>		<p>The Government of Nigeria in its 2006 report to the CEDAW Committee explained that there is a recommendation to repeal Section 55(1)(d) of the Northern States</p>	<p>Only the High Court of the Federal Capital Territory has jurisdiction to hear and grant applications (including restraining orders) related to VAPP (2015).<sup>112</sup></p>	<p>According to Nigeria's 2013 Demographic and Health Survey:<sup>114</sup></p> <ul style="list-style-type: none"> <li>• Overall, 25% of married women aged 15-49 reported having</li> </ul>

<sup>100</sup> Muhammed Tawfiq Ladan, "A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights", 2005, p. 13, [http://leads-nigeria.org/uploads/2479\\_File\\_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf](http://leads-nigeria.org/uploads/2479_File_SHARIA%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf)

<sup>103</sup> OECD Development Centre, "Nigeria", *Social Institutions and Gender Index*, p. 3, 2014, <http://www.genderindex.org/sites/default/files/datasheets/NG.pdf>

<sup>104</sup> Section 17(2) of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<sup>112</sup> VAPP (2015), Section 27, <http://www.refworld.org/docid/556d5eb14.html>.

<p><i>tional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>(defined as “any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well-being of any person”) including:<sup>105</sup></p> <ul style="list-style-type: none"> <li>• Spousal battery (Section 19);</li> <li>• Female circumcision or genital mutilation (Section 6);</li> <li>• Forceful ejection of a spouse from home (Section 9);</li> <li>• Forced financial dependence or economic abuse (Section 12);</li> <li>• Harmful traditional widowhood practices (Section 15);</li> <li>• Abandonment of a spouse and/or children (Section 16);</li> <li>• Harmful traditional practices (Section 20);</li> <li>• Harmful uses of chemical substance on another (Section 21);</li> <li>• Forced isolation and separation from family and friends (Section 13);</li> <li>• Depriving persons of their liberty (Section 10); and</li> <li>• Incest (Section 25).</li> </ul>		<p>Penal Code Law which endorses wife battery as chastisement and equates the relationship of husband and wife with that of a master and servant. It gives the husband license to discipline his wife by beating.<sup>111</sup></p>	<p>The VAPP also requires a police officer at the scene of a violent incident or to whom a report of violence have been made to: (a) assist victims of violence to file complaints; (b) provide or arrange safe transport for victims to safe places; (c) provide or arrange transportation for the victim to the nearest hospital or medical facility to treat any injury; (d) explain the rights and remedies to the victims under VAPP; (e) explain the right to lodge a criminal complaint in addition to remedies under VAPP; and (f) accompany the victim home to</p>	<p>experienced emotional, physical and/or sexual violence from their spouse at least once, and 19% reported having experienced one or more of these forms of violence in the past 12 months;</p> <ul style="list-style-type: none"> <li>• 19% of married women aged 15-49 reported having experienced emotional violence from their spouse at least once, and 15% reported having experienced such violence within the 12 months prior to the survey;</li> <li>• 14% of married women aged 15-</li> </ul>
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<sup>114</sup> National Population Commission of Nigeria and ICF International, “Nigeria Demographic and Health Survey 2013”, Table 16.9, 16.1.4, p.314, 321, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>

<sup>105</sup> Violence Against the Persons (Prohibition) Act (2015), <http://www.refworld.org/docid/556d5eb14.html>

<sup>111</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/6 (2006), p. 101, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>Section 47 of VAPP provides that the Act applies only to the Federal Capital Territory of Abuja.<sup>106</sup> Thirteen out of 36 states in Nigeria have passed similar legislation.<sup>107</sup></p> <p>The Penal Code applicable in all Northern states and the Criminal Code applicable all Southern states as well as the <i>Shariah</i> Penal Codes applicable in some Northern states contain general prohibitions that are applicable to domestic violence such as rape, sexual assault, assault, battery and abduction with the intention of forcing a woman to marry or rape.<sup>108</sup> However:</p> <ul style="list-style-type: none"> <li>• The Penal Code and the <i>Shari'ah</i> Penal Codes applicable in the Northern states accords legal of wife abuse under Section 55(1)(d) of the Penal Code and the relevant provisions of the <i>Shari'ah</i> Penal Codes which provide that “Nothing is an</li> </ul>			<p>collect personal belongings.<sup>113</sup></p>	<p>49 reported having experienced physical violence from their spouse at least once, and 9% reported having experienced such violence within the 12 months prior to the survey;</p> <ul style="list-style-type: none"> <li>• 5% of married women aged 15-49 reported having experienced sexual violence from their spouse at least once, and 4% reported having experienced such violence within the 12 months prior to the survey;</li> <li>• Among married</li> </ul>
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<sup>106</sup> Section 47 of the Violence Against the Persons (Prohibition) Act (2015), <http://www.refworld.org/docid/556d5eb14.html>

<sup>107</sup> Chinedu Anarado, “Why Nigeria’s Violence Against Persons (Prohibition) Act is only the beginning”, *Ventures Africa*, 15 June 2015, <https://venturesafrica.com/why-nigerias-new-violence-against-persons-prohibition-act-is-only-the-beginning/>

<sup>108</sup> Section 220-285 the Penal Code (Abuja) (1960), [http://oceansbeyondpiracy.org/sites/default/files/Nigeria\\_Penal\\_Code\\_Act\\_1960.pdf](http://oceansbeyondpiracy.org/sites/default/files/Nigeria_Penal_Code_Act_1960.pdf); Section 300-372 of the Criminal Code (1916), <http://www.wipo.int/edocs/lexdocs/laws/en/ng/ng025en.pdf>; Olanweraju Olamide, “Territorial Jurisdiction in Nigerian Criminal Law”, *The Jet Lawyer*, 30 March 2016, <http://www.djetlawyer.com/territorial-jurisdiction-nigerian-criminal-law/>; Philip Ostein, “Sharia Implementation I Northern Nigeria”, (Nigeria: Spectrum Book, Vol. III, 2007), pp. 203, 209-216, [http://www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol\\_3\\_5\\_chapter\\_3\\_part\\_IV.pdf](http://www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol_3_5_chapter_3_part_IV.pdf)

	<p>offence which does not amount to the infliction of grievous hurt upon any person and which is done [...] by a husband for the purpose of correcting his wife”;<sup>109</sup></p> <ul style="list-style-type: none"> <li>• Marital rape is not specifically criminalised.<sup>110</sup></li> </ul>			<p>women who had experienced spousal violence (physical or sexual) in the past 12 months, 29% reported experiencing physical injuries; and</p> <ul style="list-style-type: none"> <li>• A sizeable number of abused women in Nigeria do not seek assistance from any source for violence they have experienced. 45% of women never sought help and never told anyone about the violence they have experienced.</li> </ul> <p>According to Voices for Change.<sup>115</sup></p>
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<sup>113</sup> VAPP (2015), Section 32(1), <http://www.refworld.org/docid/556d5eb14.html>

<sup>109</sup> Philip Ostien and Albert Dekker, “Sharia and National Law in Nigeria”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 586-587, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>110</sup> Section 282(2) of the Penal Code (Abuja) (1960), [http://oceansbeyondpiracy.org/sites/default/files/Nigeria\\_Penal\\_Code\\_Act\\_1960.pdf](http://oceansbeyondpiracy.org/sites/default/files/Nigeria_Penal_Code_Act_1960.pdf); Section 6 of the Criminal Code (1916), <http://www.wipo.int/edocs/lexdocs/laws/en/ng/ng025en.pdf>

<sup>115</sup> Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 7, 15-16, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>



					<ul style="list-style-type: none"> <li>• 1/3 of Nigerian women have experienced female genital mutilation;</li> <li>• 44% of divorced, separated, or widowed women have experienced violence since age 15;</li> <li>• Police commonly dismiss domestic violence as a “family affair”; and</li> <li>• Demeaning and often violent widowhood practices are still prevalent.</li> </ul>
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be</i></p>	<p>A Nigerian man may pass his nationality to his non-Nigerian wife.<sup>116</sup> However, the law does not specifically provide for a Nigerian woman to confer her nationality to her foreign husband.</p>		<p>The Government of Nigeria in its 2016 report to the CEDAW Committee acknowledged that the law does not</p>		

<sup>116</sup> Section 26(2) of Nigeria’s Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<p><i>arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>A Nigerian mother or father may pass their citizenship to their children.<sup>117</sup></p>		<p>provide for a Nigerian woman married to a foreigner to transmit citizenship to her spouse by reason of marriage and informed that the matter is under review.<sup>118</sup></p>		
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<sup>117</sup> Section 25 of Nigeria's Constitution (1999), [https://www.constituteproject.org/constitution/Nigeria\\_1999.pdf?lang=en](https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en)

<sup>118</sup> Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (2016), paras. 2.7-2.8, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>