

Immigration and Refugee Board of Canada

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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

2 November 2012

NGA104209.E

Nigeria: Divorce law and practices among Christians, including grounds, procedures, length of process, property dispositions, child custody and consequences for the woman and her family
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Overview

According to the US *International Religious Freedom Report for 2011* for Nigeria, Christians constitute the majority of the population in the Niger Delta Region, with only one percent of the population being Muslim (US 30 July 2012, 2). P.O. Oviasuyi and Jim Uwadiae, both in the Department of Public Administration at Ambrose Alli University in Edo State, writing in the *Journal of Peace, Conflict and Development*, indicate that the Niger Delta Region is made up of the states of Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers (Nov. 2010, 1). The US report also points out that in the southeast of the country, Catholics, Anglicans and Methodists are a majority, although Igbos continue to practice traditional rites along with Christianity (US 30 July 2012, 2). In the "Middle Belt" and the southwest of the country, Christians and Muslims are about equally represented (ibid.). Yorubas, who predominate in the southwest, practice either Christianity or Islam alongside Yoruba traditions (ibid.). The Nigerian constitution allows states to establish either common law or customary courts (ibid., 3).

2. Marriages

According to BAOBAB for Women's Human Rights (BAOBAB), a non-profit NGO that works for the human and legal rights of women in religious, common and customary laws (n.d.), marriages take place in Nigeria under three legal systems: common law (civil or statutory law), customary law, and Islamic law (2007, 40). Abdulmumini Oba, a lecturer at the Faculty of Law at Nigeria's University of Ilorin, writing in the *Emory International Law Review*, while not specifically mentioning marriage practice, similarly notes the coexistence of the three legal systems (2011, 881). Section 69 of the *Matrimonial Causes Act* of 1970 indicates, for the purposes of maintenance, custody and settlements upon divorce, that "'marriage' includes a purported marriage that is void, but does not include one entered into according to Muslim rites or other customary law" (Nigeria 1970). In correspondence with the Research Directorate, Ayesha Imam, an independent consultant on women's rights and former Head of the Department of Culture, Gender and Human Rights of the UN Population Fund (20 Oct. 2012), indicated that, even though Christian marriages are generally assumed to be governed by the *Matrimonial Causes Act* of 1970, most Christian women, including the majority of urban women and those living in the higher socio-economic strata of Nigerian society, also marry under customary law (Imam 19 Oct. 2012). In the paper "Marriage, Divorce and Succession: The Legal Aspects," presented on the occasion of the tenth anniversary of the Anglican Diocese of Lagos West, Nigerian lawyer San Bambo Adesanya indicates that marriages under common law may be celebrated in any licensed place of worship by any recognized minister of the church (12 June 2009, 3). He also says that marriages under customary law are mostly polygamous (ibid., 10). BAOBAB notes in a publication on divorce under Muslim law in Nigeria that some Christian priests officiate at marriages under common law (n.d.).

3. Grounds for Divorce

According to BAOBAB, in most Christian denominations in Nigeria, divorce is still prohibited, since couples are expected to "endure whatever challenge they are facing ... even at the risk of their lives (in the case of domestic violence) and this has been justified through interpretations of the scriptures" (2007, 46).

For marriages that have taken place under common law, the *Matrimonial Causes Act* says that a divorce may be granted to the petitioner if the "marriage has broken down irretrievably" (Nigeria 1970, Sec. 15). Section 15 of the *Matrimonial Causes Act* further says that the petitioner must satisfy the court that the marriage has broken down irretrievably, with one or more of the following conditions:

- a. that the respondent has wilfully and persistently refused to consummate the marriage;
- b. that since the marriage the [r]espondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- c. that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- d. that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;
- e. that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;
- f. that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;
- g. that the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;
- h. that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead. (ibid.)

According to Bambo Adesanya, the types of behaviour referred to in paragraph (c) above include "rape, sodomy, bestiality, habitual drunkenness or intoxication, misuse of drugs, frequent convictions, habitually leaving spouse without support, attempted murder, assaults, insanity, humiliating treatment, nagging, [and the] use of juju [a charm of fetish]" (12 June 2009, 16). He adds that in a 1972 court ruling

unreasonable refusal of sexual intercourse, nagging habitual intemperate consumption of alcohol and inordinate sexual indulgences of the [r]espondent with all sorts of women particularly housemaids were held to be weighty and unreasonable acts to expect the [p]etitioner to put up with. (ibid.)

The *Matrimonial Causes Act* stipulates that courts may award damages from an adulterer under conditions specified in sections 31 and 32 of the Act (Nigeria 1970).

According to Bambo Adesanya, as a general rule, a divorce may not be granted within two years of marriage, except when there is a "wilful and persistent refusal to consummate the marriage, adultery, commission of rape, sodomy or bestiality" (12 June 2009, 14-15). BAOBAB indicates that among some Pentecostals a woman may seek divorce and remarry if her life is threatened by her husband (2007, 47).

According to an article published in the *African Journal of Social Sciences*, a woman married under common law may seek a divorce if she has a reasonable fear that her life, body or health is in danger; physical violence is not necessary and reasonable fear of danger is enough (Okunola and Ojo 2012, 140). The husband, in this case, must have already been convicted of attempted murder or "intentional affliction of grievous bodily harm" (ibid.).

For marriages that took place under customary law, Bambo Adesanya says that

[t]echnically, there are no grounds for divorce ... because divorce may be effected by the mutual consent of the spouses. However there are a number of reasons which are generally regarded as providing sufficient moral cause for dissolving marriage. Adultery (particularly by a wife), loose character, impotence of the husband, sterility of the wife, laziness, ill-treatment and cruelty, leprosy and other harmful disease affecting procreation, witchcraft, addiction to crime and desertion are some of these reasons. (12 June 2009, 18)

Imam says similarly that, under customary law, there are "common patterns" of the husband seeking divorce on the grounds of "adultery, lunacy and witchcraft" and women seeking divorce on the grounds of "adultery, impotence, ill treatment, cruelty, lunacy and witchcraft" (19 Oct. 2012). According to Imam, women are frequently divorced because they do not have children or have no male children (19 Oct. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Procedures and Length of Process

According to Imam, both husband and wife may commence divorce proceedings under the *Matrimonial Causes Act* (19 Oct. 2012). The US State Department Nigeria Reciprocity Schedule indicates that a divorce under common law is granted only by the high court of the state in which the procedures are taking place (US n.d.). The documents that evidence the dissolution of the marriage and order the final divorce or divorce absolute are a "'Decree Absolute'," or a "'Certificate of Decree Nisi Having Become Absolute'" or "'Enrolment of Order'," also called "'Enrolment Order'" (ibid.). Appeals can be filed with the Court of Appeal (ibid.).

Imam indicated that judicial separation can be granted by the court, allowing a couple to live apart but without dissolving the marriage (19 Oct. 2012). She explained further that judicial separation "is often a precursor to actual divorce" (Imam 25 Oct. 2012).

BAOBAB notes that the Catholic Church grants an "annulment," saying in effect that the marriage never happened, instead of a divorce (BAOBAB 2007, 47). The annulment of marriage is a long process that must be approved by the Vatican (ibid.). Information on the process of annulment could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. However, according to the Vatican *Code of Canon Law*, "[a] marriage that is ratum et consummatum can be dissolved by no human power and by no cause, except death" (Vatican 1983, Art. 1, Can. 1141).

For a marriage under customary law, Imam indicated that a divorce is "generally passed through a family or clan head, or a customary court" (19 Oct. 2012). Sources indicate that there are two avenues for its dissolution, judicial and non-judicial (US n.d.; Bambo Adesanya 12 June 2009, 18). In the non-judicial avenue, the marriage can be dissolved either by mutual consent of the parties or can be unilaterally initiated by one of the spouses (ibid.). The judicial dissolution of the marriage is granted by a customary court or magistrate court (ibid.; US n.d.). The document that evidences the non-judicial dissolution of a marriage is an affidavit deposing to the fact of the divorce, and for judicial dissolutions, it is a "Court Judgement" or "Court Order" (ibid.).

4. Property Dispositions

An article by a Nigerian lawyer, researcher and gender advocate in Pambazuka News, a web forum for social justice in Africa (Pambazuka News n.d.), reports that a woman who separates under common law is entitled to the part of the property she contributed during marriage (ibid. 24 Nov. 2010). Imam indicated that a court may require one spouse to provide economic support to the other spouse and their children, depending on the income and behaviour in the marriage (19 Oct. 2012). She also indicated that even though the applicant may resort to the court to enforce unpaid support payments, it is "rare and practically ineffective" (Imam 19 Oct. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

For marriages that take place under customary law, sources indicate that if a woman seeks a divorce, she has to refund the "bride price" to the husband (Imam 19 Oct. 2012; Bambo Adesanya 12 June 2009, 18). According to Imam, the refund is "extremely hard" for poor women since the bride price was not originally paid to her but to her father or guardian (19 Oct. 2012). She indicated that the marriage can also be dissolved if the family head or the village head pays the bride price (Imam 19 Oct. 2012). Imam further indicated that there are no maintenance provisions for a divorced wife under customary law (ibid.). The Nigerian lawyer indicates that women have no claim on a house even if it is jointly owned with her husband, and that the *Matrimonial Causes Act* does not have provisions with respect to the maintenance and settlement of property for marriages under both customary and Islamic law (Pambazuka News 24 Nov. 2010).

5. Child Custody

The *Matrimonial Causes Act* indicates that "the court shall regard the interests of those children as the paramount consideration" (Nigeria 1970, Sec. 71 (1)). It also stipulates that "the court may, if it is satisfied that it is desirable to do so, make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage" (ibid., Sec. 71 (3)). The Act also provides that the court may require the maintenance of the other spouse and the children of the marriage (ibid., Sec. 70 (1)). The Act says that maintenance is provided to children until they reach the age of 21 (ibid., Sec. 72 (3)).

According to Imam, there are no distinctions on the basis of the child's gender and "in practice, many judges will give custody of very young children to mothers, and, of older children to fathers" (Imam 19 Oct. 2012). She also said that, "in principle and [in] almost all practice, [children] are held to 'belong' to the father" (ibid.). In other correspondence, Imam noted that

[i]n the absence of state social provisions and pensions, the loss of custody of their children may mean that women have no one to depend on in their old age or infirmity. It also means that access to children's labour (a common phenomenon especially in poor families) is lost to mothers, but not fathers. (ibid. 20 Oct. 2012)

According to the Nigerian lawyer, "[m]any women are denied custody and access to their children" upon divorce (Pambazuka News 24 Nov. 2010).

6. Consequences for a Woman and Her Family

In 20 October 2012 correspondence with the Research Directorate, Imam provided the following information. The consequences of divorce are "more severe" for women than for men. Women are economically worse off after marriages are dissolved. Seeking divorce can render women more likely to experience domestic violence, or, if this was already a feature of the marriage, "more extreme" violence. Domestic violence may come not only from her

husbands, but also from in-laws who may view her wish to dissolve the marriage as an insult to their family. Throughout Nigeria, childless divorced women have difficulties (as do married childless women) because of the high value placed on having children, and, the assumption that childlessness (or indeed having female rather than male children) is the woman's fault. Also, the presumption throughout Nigeria that all women should be married can pose difficulties for unmarried women (whether never-married, divorced, or widowed). They are, for instance, more likely to be subjected to discrimination in jobs and to sexual harassment. In southern Nigeria, divorced women are stigmatized. In secular law, and in Christian marriages, the judiciary, which is dominantly male, is prejudiced against women. For example, the law against bigamy, a frequent occurrence amongst men, including those professing Christianity, has never been invoked. For these reasons, many women decide to stay in "unhappy or abusive" marriages. The decision by women in Nigeria to divorce is not undertaken lightly. Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. For more information on treatment and situation of divorced women or women who head their own household in Nigeria, please see Response to Information Request NGA103907.E.

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

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Additional Sources Consulted

Oral sources: Attempts to contact professors at the following universities were unsuccessful: University of Bristol School of Law; University of Florida Center for African Studies; University of Lagos Faculty of Law; University of London - Centre for Gender Studies, School of Law.

A professor from the University of Glasgow School of Law could not provide information.

Internet sites, including: African Journals Online; African Union; AllAfrica.com; Amnesty International; Asylum Aid; Austrian Centre for Country of Origin and Asylum Research and Documentation; Center for Reproductive Rights; *Christian Science Monitor*; Denmark – Danish Immigration Service; ecoi.net; Encyclopedia of the Third World; Factiva; Freedom House; GERDDES-AFRICA; *The Guardian*; Human Rights Watch; Nigeria – Ministry of Interior, Police Force; *Nigerian Tribune*; *The Punch*; United Kingdom – Border Agency; United Nations – Integrated Regional Information Networks, Refworld, Reliefweb; United States – Central Intelligence Agency, Overseas Security Advisory Council; *Vanguard*.

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