Nigeria: Forced marriage, including child marriage; prevalence, related legislation, state protection, support services and the ability to refuse a forced marriage (2016-November 2019)

1. Overview

Islamic Relief [1] defines forced marriage as a marriage "in which at least one spouse has not given their free consent, either with regards to the timing of the marriage or the choice of partner" (Islamic Relief 11 May 2017, 5). The same source notes that people can be affected by forced marriage regardless of their age or ability (Islamic Relief 11 May 2017, 5). Additionally, in the State of African Women report [2], forced marriage is defined as "marriages in which one of the parties is not permitted to end it or leave," and includes exchange or trade-off marriages, servile marriages, levirate marriages and child marriages (State of the African Woman Campaign Project Aug. 2018, 175). Levirate marriages occur when a widow is forced to remarry within the family of her deceased husband (State of the African Woman Campaign Project Aug. 2018, 175; Oluwakemi May 2017, 761). The EU's European Asylum Support Office (EASO) reports that forced marriage [affecting women over the age of 18] "especially" occurs in northern Muslim communities "due to cultural and religious practices linked to polygamy"; the source notes that "forced marriage is common among urban and rural poor population[s], but not very common among the more educated," and not common in Southern Nigeria (EU Feb. 2019, 64). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Information on exchange or trade-off marriages and servile marriages could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Child Marriage or Early Marriage

Sources indicate that child marriage may also be referred to as early marriage (Oluwakemi May 2017, 766; Onyido and Brambaifa 13 Sept. 2018, 105) or "early forced marriage" (Oluwakemi May 2017, 766). According to the African Union (AU)'s African Common Position of the AU Campaign to End Child Marriage in Africa, a marriage in which any party is below 18 years of age is defined as a child marriage (AU 6 July 2015, 2). Similarly, early marriage, according to Islamic Relief, occurs when at least one spouse is under the age of 18 "[and/or] lacks comprehensive maturity, encompassing their biological, intellectual, emotional and psychological readiness to enter into a marriage" (Islamic Relief 11 May 2017, 5). Sources note that the practice of child marriage or early marriage is common in Nigeria (France Dec. 2016, 42; Center for Reproductive Rights and WARDC 28 Sept. 2016, 12; Walker, et al. Aug. 2019, 19), and that "widespread socio-cultural acceptance" is associated with its prevalence (Walker, et al. Aug. 2019, 20). Sources further indicate that girls face a higher risk of child marriage (UN Nov. 2018, 24; State of the African Woman Campaign Project Aug. 2018, 175; Nigeria 2016, 19), though it affects both boys and girls (Nigeria 2016, 19; State of the African Woman Campaign Project Aug. 2018, 175).
The main drivers of the practice are reported to include poverty, [low levels of] education (Nigeria 2016, 10; Girls Not Brides n.d.a), and "[g]eographic location or cultural landscape" (Nigeria 2016, 10). The Nigerian Federal Ministry of Women Affairs and Social Development (FMWASD) indicates that views on child marriage vary by region, and in the north, child marriage decisions are made primarily by parents and, in the North West, grandparents (Nigeria 2016, 21, 24-25). According to the same source, poverty and teen pregnancy are the main drivers of child marriage in the South (Nigeria 2016, 25). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources indicate that child marriage is more prevalent in Northern Nigeria (Nigeria 2016, 10; France Dec. 2016, 42; Walker, et al. Aug. 2019, 20). According to the FMWASD, Islamic laws and the interpretation of Islamic prescriptions also explain the higher prevalence of forced marriage in Northwestern Nigeria (Nigeria 2016, 25). Similarly, Musawah [3] explains that efforts to prevent marriage of individuals under the age of 18 are "often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic'" and that the "example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage" (Musawah July 2017, 11).

2. Statistics

According to a UN report on child marriage, there are 22 million girls and women who married in childhood in Nigeria (UN Sept. 2018, 5). Nigeria is said to be one of the countries with the highest rates of child marriage in the world (ARFH 9 Mar. 2018; Nigeria 2016, 19; Girls Not Brides n.d.a), with a prevalence rate of 43 percent (Nigeria 2016, 19). A national survey by Nigeria’s National Bureau of Statistics (NBS) and UNICEF, conducted between September 2016 and January 2017 and which interviewed approximately 34,000 women across Nigeria, indicates that 18.5 percent of women aged 15-49 and 20.5 percent of those aged 20-49 were married before the age of 15 (NBS of Nigeria and UNICEF Feb. 2018, 1, 6, 229). According to the same source, the rates of child marriage before the age of 18 among women aged 20-49 by region are as follows: 67.6 percent in the North West; 56.6 percent in the North East; 39 percent in the North Central zone; 13.9 percent in the South East; 21.5 percent in the South South; and 14.6 percent in the South West (NBS of Nigeria and UNICEF Feb. 2018, 229). The same source also indicates prevalence rates of early marriage (before age 18) of 29.4 percent and 52.3 percent in urban and rural areas, respectively, among women aged 20-49 (NBS of Nigeria and UNICEF Feb. 2018, 229).

3. Legislation and Age of Marriage

In its National Strategy to End Child Marriage report, the Nigerian government indicates a need for the "[h]armonization of all relevant policies and legislation relevant to the prevention of child marriage" (Nigeria 2016, 30). According to a 2016 report on child marriage published by the World Bank, Nigeria has "three different legal systems - the English common law system, ethnic customary law, and Islamic law - [which all] impose different rules for child marriage" (The World Bank July 2016, 15). An academic article published in the Journal of International Women’s Studies adds that statutory law is also part of Nigeria’s pluralist legal system (Ekhatar Jan. 2015, 285). The same source further indicates that customary law is prevalent in the South of Nigeria whereas Islamic law is "widely" used in the North (Ekhatar Jan. 2015, 285). Musawah also notes that Islamic law is mainly applied in Northern Nigeria (Musawah July 2017, 4).
Sources indicate that there are multiple laws regarding the minimum legal age of marriage in Nigeria, including:

- The constitution (Musawah 31 May 2017, 11; ARFH 9 Mar. 2018);
- The [2003] Child Rights Act (Musawah 31 May 2017, 5; Girls Not Brides n.d.a); and
- The 1990 Marriage Act (Girls Not Brides n.d.a; Ekhator Jan. 2015, 290).

Section 29(4)(a) of Nigeria's 1999 constitution (amended 2011) provides that "'full age' means the age of eighteen years and above"; however, section 29(4)(b) adds that "any woman who is married shall be deemed to be of full age" (Nigeria 1999). Sources report that the inclusion of this second provision is interpreted as [an implicit (Musawah 31 May 2017, 11-12)] acceptance of child marriage (Musawah 31 May 2017, 11-12; ARFH 9 Mar. 2018).

According to an academic journal article by a law lecturer at Ekiti State University in Nigeria, statutory marriage is governed by the Marriage Act and the Matrimonial Causes Act, but these laws "do not define marriageable age" (Oluwakemi May 2017, 767). Under the 1990 Marriage Act, 21 years is the legal age of marriage, but girls and boys may marry before this age with written consent [from a guardian or parent] (Nigeria 1990a, Art. 11 (1)(b)).

In correspondence with the Research Directorate, a national program officer of the International Federation of Women Lawyers (FIDA) Nigeria, a non-profit, non-political, voluntary association that aims to "protect, promote and preserve the rights of women and children in Nigeria," noted that there is an Islamic Law provision that provides 12 years as the minimum age for marriage in some states (FIDA Nigeria 28 Oct. 2019). In contrast, Musawah states that "[g]enerally, there is no specified minimum legal age for marriage for Muslim females and males in Nigeria" (Musawah 31 May 2017, 5). The 2016 report published by the World Bank also indicates that "under Islamic law the minimum age of marriage corresponds to puberty" (The World Bank July 2016, 15). Further and corroborating information on minimum legal age of marriage in Islamic law could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 3.1 Legislation Prohibiting Early and Forced Marriage

According to the Premium Times, a Nigerian online news publication, early marriage became illegal following the adoption of the 2003 Child Rights Act, which is a federal law (Premium Times 24 June 2019). Articles 21 to 23 of the Child's Right Act, 2003, provide the following:

21. No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever.

22.

1. No parent, guardian or any other person shall betroth a child to any person.
2. A betrothal in contravention of subsection (1) of this section is null and void.

23. A person -

1. who marries a child, or
2. to whom a child is betrothed, or
3. who promotes the marriage of a child, or
4. who betroths a child,
commits an offence and is liable on conviction to a fine of ₦500,000 [approximately C$1,800]; or imprisonment for a term of five years or to both such fine and imprisonment. (Nigeria 2003)

According to sources, 12 [of 36] Nigerian states have not domesticated the Child Rights Act (Girls Not Brides n.d.a; Daily Trust 27 Sept. 2019). These states are Bauchi, Yobe, Sokoto, Adamawa, Borno, Zamfara, Gombe, Katsina, Kebbi, Jigawa, Kano (Premium Times 24 June 2019; Sahara Reporters 12 May 2019) and Kaduna; these states are located in Northern Nigeria (Sahara Reporters 12 May 2019). In its report on a fact-finding mission to Nigeria in September 2016, the Office français de protection des réfugiés et apatrides (OFPRA) and the Cour nationale du droit d'asile (CNDA) note that, despite the Child Rights Act, child marriage is not criminalized in Nigeria; the source explains that there has been only a [translation] "partial transposition" to the state level and there is opposition to the legislation in certain regions due to "cultural and religious reasons" (France Dec. 2016, 42). According to Musawah, the states that have not domesticated this legislation "are reluctant to domesticate the law because they do not want to be tied down by any age limit for marriage" (Musawah 31 May 2017). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Organisation for Economic Co-operation and Development (OECD)'s 2019 Social Institutions and Gender Index (SIGI) identifies Nigeria’s Penal Code as a measure to prevent early marriage (OECD 7 Dec. 2018, 3). According to sources, the code is operational in Northern Nigeria (Musawah 31 May 2017, 4; Ekhator Jan. 2015, 287), "in the non-Muslim majority states" (Ekhator Jan. 2015, 287). The OECD states that the Penal Code "criminalizes sexual intercourse with girls under 13 years of age, yet ... is not applicable to girls of this age in customary law marriages" (OECD 7 Dec. 2018, 3). The 2016 report published by the World Bank likewise states there is "no minimum age for marriage under customary law" (The World Bank July 2016, 15).

The US Department of State's Country Reports on Human Rights Practices for 2018 indicates that the Violence Against Persons (Prohibition) Act, 2015 (VAPP Act) serves to criminalize "harmful traditional practices," that is, "all traditional behavior, attitudes, or practices that negatively affect the fundamental rights of women or girls," such as forced marriage (US 13 Mar. 2019, 34). Article 20 of the VAPP Act provides the following:

20. (1) A person who carries out harmful traditional practices on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding ₦500,000.00 or both. (Nigeria 2015)

For information on the parts of Nigeria in which the VAPP Act, a federal law, is applicable, see Response to Information Request NGA106360 of November 2019.

According to the academic article by the law lecturer in Nigeria, the Matrimonial Causes Act provides that "free, full [and] informed consent" is a precondition for marriage (Oluwakemi May 2017, 768). The Matrimonial Causes Act provides the following:

3(1) Subject to the provisions of this section, a marriage that takes place after the commencement of this Act is void in any of the following cases but not otherwise, that is to say, where-

... (d) the consent of either of the parties is not a real consent because-
1. it was obtained by duress or fraud; or
2. that party is mistaken as to identity of the other party, or as to the nature of the ceremony performed; or
3. that party is mentally incapable of understanding the nature of the marriage contract;

(e) either of the parties is not of marriageable age. (Nigeria 1990b, Art. 3(1))

Information on the application of this law could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The FIDA Nigeria National Program Officer indicated that the Sharia Penal Code, implemented in the states of Zanzafara, Kano, Kebbi, Kaduna and Sokoto, prohibits forced marriage (FIDA Nigeria 28 Oct. 2019). Other sources note that the Sharia Penal Code is [or Sharia Penal Codes are] operational in 12 northern states (Ekator Jan. 2015, 287; Musawah 31 May 2017, 2), and that these penal codes "contain general prohibitions that are applicable to domestic violence," including "abduction with the intention of forcing a woman to marry" (Musawah 31 May 2017, 39). For information on legislation pertaining to domestic violence, see Response to Information Request NGA106360 of November 2019.

4. Consequences of Refusing a Forced Marriage and State Protection

EASO reports that the consequences of refusing to marry include "neglect and ostracism, physical violence and rape" (EU Feb. 2019, 64). In a telephone interview with the Research Directorate, the Executive Director of the Women’s Rights and Health Project (WRAHP) in Nigeria stated that if pregnant, a girl may run away from home and get an abortion or "resort to baby factories" [4] to avoid forced marriage (Executive Director of WRAHP 1 Nov. 2019). Similarly, media sources report cases in which girls have run away from home to avoid or escape forced marriage (VOA 22 Mar. 2018; Reuters 8 June 2017).

According to Nigeria’s FMWASD, the legislation in place "lack[s] implementation structures to address child marriage" (Nigeria 2016, 10). Further information on the application of legislation prohibiting forced marriage could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Support Services

According to the FIDA Nigeria National Program Officer, the National Agency for the Prohibition of Trafficking in Persons (NAPITIP) is a government agency offering services to persons who refuse or flee forced marriage (FIDA Nigeria 28 Oct. 2019). The services offered by the NAPITIP include counselling, rehabilitation, medical care at "eight mini-clinics," and shelters (Nigeria n.d.). The NAPITIP website indicates that it operates eight shelters across Nigeria "with the capacity to accommodate the following number of victims at a time" (Nigeria n.d.):

<table>
<thead>
<tr>
<th>S/N</th>
<th>LOCATION OF SHELTER</th>
<th>NUMBER OF BEDSPACE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Abuja</td>
<td>38</td>
</tr>
<tr>
<td>2.</td>
<td>Lagos</td>
<td>60</td>
</tr>
<tr>
<td>3.</td>
<td>Benin</td>
<td>40</td>
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<tr>
<td>S/N</td>
<td>LOCATION OF SHELTER</td>
<td>NUMBER OF BEDSPACE</td>
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<tr>
<td>4.</td>
<td>Uyo</td>
<td>45</td>
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<tr>
<td>5.</td>
<td>Enugu</td>
<td>30</td>
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<tr>
<td>6.</td>
<td>Kano</td>
<td>30</td>
</tr>
<tr>
<td>7.</td>
<td>Sokoto</td>
<td>30</td>
</tr>
<tr>
<td>8.</td>
<td>Maiduguri</td>
<td>20</td>
</tr>
</tbody>
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(Nigeria n.d.)

For information on shelters for women and girls who are victims of domestic violence, see Response to Information Request NGA106360 of November 2019.

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

Notes

[1] Islamic Relief is an "independent humanitarian and development organisation" that works in over 40 countries and aims to "provide poor people with access to vital services," "protect communities from disasters and deliver life-saving emergency aid" (Islamic Relief n.d.).

[2] The *State of African Women* report, published by the State of the African Woman Campaign Project, "focuses on increasing civil society’s contributions to promote the implementation of the African Union policy frameworks" and is "implemented at the global, continental, regional, national and sub-national levels by a consortium that includes International Planned Parenthood Federation Africa Region (IPPFAR), International Planned Parenthood Federation European Network (IPPFEN), Organisation of African First Ladies Against HIV/AIDS (OAFLA), Deutsche Stiftung Weltbevölkerung (DSW), Royal Tropical Institute (KIT), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Faith to Action Network (F2A), and the Young Women Christian Association Kenya (YWCA)" (State of the African Woman Campaign Project Aug. 2018, 3).

[3] Musawah is "a global movement for equality and justice in the Muslim family" comprised of "NGOs, activists, scholars, legal practitioners, policy makers, and grassroots women and men from around the world" (Musawah n.d.).


References


Executive Director, Women’s Rights and Health Project (WRAHP). 1 November 2019. Telephone interview with the Research Directorate.


International Federation of Women Lawyers (FIDA) Nigeria. 28 October 2019. Correspondence from a National Program Officer to the Research Directorate.


Additional Sources Consulted

**Oral sources:** Arise Nigerian Woman Foundation; Canada – high commission in Nigeria; Civil Resource Development and Documentation Centre; Girls Not Brides; Project Alert on Violence Against Women; Society to Heighten Awareness of Women and Children Abuse; UN – UNICEF Nigeria; Women Aid Collective (WACOL) Nigeria; Women for Peace and Gender Equality Initiative; Women Information Network; Women Living Under Muslim Laws; Women’s Consortium of Nigeria; Women’s Rights Advancement and Protection Alternative.

**Internet sites, including:** Africa Check; Africa Parent; Amnesty International; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD); Center for Girls Education; ecoi.net; Economic Community of West African States (ECOWAS); Factiva; Freedom United; Global Partnership to End Violence Against Children; *The Guardian* (Nigeria); Human Rights Watch; Institute of Current World Affairs; International Federation of Women Lawyers (FIDA) International; International Women’s Health Coalition; *The New York Times*; Pinnacle Health Radio; Plan International; Society to Heighten Awareness of Women and Children Abuse; Southern African Legal Information Institute; *This Day*; UN – Food and Agriculture Organization; UN Women; Women Living Under Muslim Laws; World Watch Monitor.