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Nigeria: Forced marriage under Islamic law; whether an Islamic marriage requires the final "Fatiha" ceremony be completed for the marriage to be consummated and for it to be recognized by Islamic authorities; consequences for a woman who refuses to participate in the wedding; likelihood of a university-educated woman in her twenties from Etsako, Edo state being forced into marriage.

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Forced Marriage Under Islamic Law

Under Shari'a law, a woman cannot be given away in marriage without her consent, except in the case of a minor (WACOL 2003, 251). However, under the *Maliki* school of law, which is practiced by Muslims in Nigeria (Denmark Jan. 2005, 68), the choice of husband by a Muslim woman is subject to the *ijbar*, or over-ruling power, of her father or guardian (Doi n.d.). *Ijbar* allows the father or guardian to select a husband for his daughter based on her "wider interests" (ibid.). According to a report by Theresa Akumadu, cited in a 2003 Center for Reproductive Rights report, a father's *ijbar* allows him to "arrange the marriage of his virgin daughter, regardless of her age and without her consent" (Akumadu in Center for Reproductive Rights 2003, 83).

A prevalent marriage practice in northern Nigeria is that of *daurin aure*, where a girl continues to go to school until she completes her education before the marriage is consummated (WARD and WACOL 2003, 69). However, forced marriage is generally limited to girls who have not been to school or who have not yet reached puberty (ibid., 70).

The Fatiha Ceremony

The *fatiha*, also spelled "*fatihah*" (WLUM 15 Mar. 2006), refers to the opening verse of the Qur'an (Mir-Hosseini 1997, 171; WLUM 15 Mar. 2006) which is read to "solemnize" an Islamic marriage (Mir-Hosseini 1997, 171).

A 2004 journal article published in *African Population Studies* indicated that Nigeria's Hausa-Fulani Muslims practice a marriage ceremony, referred to as the "wedding *fatiha*" (Aug. 2004). According to the report, the *fatiha*

is usually an all male affair, lasting about ten to fifteen minutes. When the *fatiha* is over, the celebration becomes a female affair. After the wedding, the responsibility of feeding, clothing, educating and sheltering of the lady is shifted from her father to the husband (*African Population Studies* Aug. 2004).

Fatiha ceremonies are also practiced among the Nupe (*Studies of Tribes and Tribals* 2003, 106), located primarily in Nigeria's Middle Belt (ACCORD/UNHCR 2002, 180), who first introduced Islam to Edo State in the nineteenth century

(Onlinenigeria.com 30 Jan. 2003). A 2003 report on the Nupe people of Nigeria described the *fatihah* as follows:

On the wedding date, *Mu'alims* (Islamic scholars) are invited by the girl's parents to carry out the solemnization of their children's wedding *fatihah* with representatives of the boy's family in attendance and other well-wishers present to bear witness and share the joy of the occasion.

After the pronouncement of the couple as husband and wife, celebrations follow all through the night. In some families, Islamic preaching is observed all night, while in a majority, beating of drums and folk songs are engaged in with well-wishers joining the families in celebrations.

Late in the evening of the wedding *fatihah*, the new bride is prepared for the journey to her husband's home. She goes round relatives to bid them farewell ... Others give her final counselling and guidance for a successful marriage life. Then the parents finally hand over the girl ... and she is usually accompanied by a little girl and another married woman to her new home.

In the new home she is received into a newly prepared room by the groom's family ... [T]he entire ceremony is [usually] completed within 24 - 48 hours (*Studies of Tribes and Tribals* 2003, 106).

Women Living Under Muslim Laws (WLUML), an international organization that supports the rights of women living under Muslim laws (WLUML n.d), provided the Research Directorate with the following information on the wedding *fatihah* from one of its contacts in Nigeria, a "sociologist with extensive experience and background and long-standing connections with WLUML" (WLUML 15 Mar. 2006):

You are not likely to find any reference in Muslim law and jurisprudence books to anything called a "wedding [*f*]atihah" - it is not a requirement in marriage that a "*fatihah*" - which is the opening verse of the Qur'an - [be] read. The term itself may have just evolved out of some convention.

Strictly speaking there are three classes of sexual relations between men and women in Islamic law. The legitimate sexual relations in a valid marriage, the illegitimate relations in fornication or adultery and sexual relations in an invalid marriage which are not criminal or adulterous but which should stop once the error is realised. Such as temporary marriage in Sunnite Islam (Legal among Shiites) or marriage contracted with a woman during her waiting period after divorce or one which does not fulfill all conditions.

A marriage is valid in Islam if it meets three conditions: First there should be offer and acceptance - and where the girl is a virgin (i.e., previously unmarried) and/or a minor (depending on school of law) the contract is entered into by her father or *waliyy* (guardian). Some schools of Law say that the woman's consent in this case is not necessary - but the *Maliki* school, which Nigeria subscribes to, does not in general allow marriage even of a virgin against her will. However if she does not object her silence is interpreted as coyness and the father proceeds after asking her, whereas if she is previously married her consent must be explicit.

The second condition is that the *Mahr* [i.e., dower or brideprice (Mir-Hosseini 1997, 225)] - a consideration which is fixed as a minimum in law - must pass from the groom to the bride.

Thirdly there must be at least two witnesses to the contract.

Once these terms are met, whether or not there is a *fatihah* read and whether or not there is a formal ceremony and whether or not either party is present so long as there is a *waliyy* for the bride and a *wakil* (agent) for the groom - a marriage is valid.

The schools of law differ over the combination of the agreements that must be fulfilled simultaneously and PRIOR [original emphasis] to consummation. In some schools where there is an offer and acceptance, witnesses, and a mention of the *mahr* the marriage is valid even if the *mahr* has not been paid. It becomes a debt on the husband but he can have lawful access to the bride. Others allow the marriage to be contracted in private so long as witnesses are informed after the fact while other[s] insist that witnesses must be present at the time of contract. But this I believe sums up the positions.

If such a marriage has been contracted [i.e., a marriage that fulfills the three conditions] - and many customary marriages meet these requirements - then she is his wife. So the answer really is that there is no need for a formal *fatihah* and if indeed the above conditions are met she is his wife in law. However if not met - say for example he did not pay or agree the *mahr* to her or her family - then she is free to leave on that condition.

If there is a marriage then she cannot leave unless he divorces her or she goes to a court of law. The precedent in Shari'a courts is that forced marriages are nullified, and there have been such cases even in Nigeria ... Also if she can show that the conditions were not fulfilled the courts will annul the marriage.

Most victims of forced marriages are victims of custom and not Islamic Law and the judges tend to protect women who seek legal redress. This also applies to cases of maltreatment - including the inability to give satisfaction to sexual appetite.

I just did a quick search in one of my old articles on the case of forced marriage. The case in question was at the Shari'a Court of appeal in Maiduguri, Suit no. BOS/SCA/CV/81/91 in 1991 between Hajja Kaka and Zama Bukama (Zanna Bulama?) and this was a girl forced into marriage by her father. The court annulled the marriage on grounds of lack of consent (ibid.).

Consequences for a Woman Who Refuses to Participate

According to a 2005 Amnesty International (AI) report, in Nigeria, a girl who attempts to run away from her husband or his family risks "harsh punishment" (AI 31 May 2005, 5). One form of punishment involves an "acid bath," where the former partner or a relative throws acid at the woman with the intention of mutilating or killing her (ibid.). The AI report further states that girls who run away from their husbands are often unable to seek protection from their own family who arranged the marriage (ibid.).

A 2002 report on women's human rights in Nigeria indicated that young girls forced into marriage is "one of the causes ... of prostitution in Northern Nigeria as the young girls flee their marital homes and take refuge in brothels (*gidan karuwai*) in urban centres" (WARD and WACOL 2003, 70).

Women Living Under Muslim Laws (WLUML) provided the Research Directorate with the following information, obtained from a WLUML contact associated with the Centre for Women and Adolescent Empowerment (CWAE) in Yola, the capital city (Nigeria 2002) of the predominantly Muslim state of Adamawa (CSIS 2002, 1):

We have been able to stop some of the marriages by appealing to parents and potential husbands, we have gone to court and insisted in the annulment of some of

these marriages, especially those not consummated and we have been able to get young girls divorced even when marriages were consummated ... the appeals have been fairly easy for us because we worked with the community, but still traumatic for the girls and with the courts annulments have been difficult but what was hell was the reaction of the family ... and I think that is the main problem ... people/communities who believe they have a right to force their daughters into marriage so [do] not take it kindly and with one of the cases we went through the poor girl had to leave home and I had to unofficially adopt her (WLUML 15 Mar. 2006).

Edo State and Forced Marriage Under Islamic Law

Edo state, located in the south of Nigeria (Nigeria 2002), is predominantly Christian (CSIS Mar. 2002, 1; Nigeria June 2005, 26); however, approximately six per cent of the population is Muslim, with a "relatively high" number of Muslims located in Etsako Central, East, and West, Owan East and Akoko-Edo (ibid.).

According to BAOBAB for Women's Human Rights, cited by the Danish Immigration Service, forced marriages in Nigeria are especially common in the predominantly Muslim states in the north (Denmark Jan. 2005, 27; WACOL 13 Dec. 2005; HBF 11 Dec. 2005) and are "still prevalent in that part of the country" (WACOL 13 Dec. 2005). According to the final report on Nigeria of the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) and the United Nations High Commissioner for Refugees (UNHCR) Eighth European Country of Origin Information Seminar in 2002, forced marriages are also "prevalent in ... Muslim communities in the south [of the country]" (ACCORD/UNHCR 2002, 168). BAOBAB for Women's Human Rights, cited by the Danish Immigration Service, indicated that they had received reports of many young women escaping forced marriages in both the northern and southern parts of Nigeria (Denmark Jan. 2005, 27). No information on the prevalence of forced marriage in Edo State, in particular, could be found among the sources consulted by the Research Directorate.

No information on whether a woman refusing to participate in a wedding *fatiha* would be sought for arrest by the Nigerian Police Force (NPF) could be found among the sources consulted by the Research Directorate.

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 additional sources consulted in researching this Information Request.

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Oral sources: The following sources did not provide information within the time constraints of this Response: BAOBAB for Women's Human Rights; the CLEEN Foundation; the International Reproductive Rights Research Action Group (IRRRAG) in Nigeria; a professor of law at the Emory Law School in Atlanta, Georgia; a professor of law at the University of London School of Oriental and African Studies (SOAS); a professor of sociology at the University of Tennessee at Chattanooga; and the Women's Consortium of Nigeria (WOCON).

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