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Nigeria: Levirate marriage practices among the Yoruba, Igbo and Hausa-Fulani; consequences for a man or woman who refuses to participate in the marriage; availability of state protection (February 2006)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Background

Marriages in Nigeria take place under three legal systems (Center for Reproductive Rights 2003, 83): Islamic (*Maliki* school of law), civil (statutory law), and customary (tribal/traditional law) (ibid.; Denmark Jan. 2005, 68). In general, marriages in the northern states of the country, including Adamawa, Bauchi, Borno, Gombe, Jigawa, Kano, Katsina, Kebi, Nasarawa, Niger, Sokoto, Yobe, and Zamfara (CSIS Mar. 2002) are under Islamic law, while those in the south are under statutory law (Denmark Jan. 2005, 68). However, even when couples marry under statutory law, customary law generally prevails in personal matters (ibid.). Customary law tends to vary "from one ethnic group to another, from state to state, and most often from one town to another" (Ewelukwa May 2002, 434).

Levirate marriage, where a "family member inherits a married woman whose husband is dead" (Bamgbose July 2002, 13), continues to be practiced under various customary law systems in Nigeria (AI 31 May 2005, 8; Center for Reproductive Rights 2003, 84). A May 2005 Amnesty International (AI) report states that

[s]ome customary law systems ... prescribe that a widow [be] 'inherited' by a male relative of the former husband. The widow is seen as the property of the former husband's family. Families that migrate to Lagos continue to apply such customary rules to their relationships, even after they have moved away from their traditional areas of origin (31 May 2005, 8).

Described as "degrading and harmful," (Bamgbose July 2002, 13), the practice of levirate marriage has been identified as one of the leading causes of the spread of HIV/AIDS in Nigeria (UN 2004, 13).

Levirate marriage is considered a custom of the Yoruba, the Igbo, and the Hausa-Fulani and continues to be practiced in rural communities (Bamgbose July 2002, 13). However, increased education and urbanization are thought to have reduced this practice (ibid.). It is also thought that women in Nigeria who have greater economic independence are less likely to accept a levirate marriage (Ewelukwa May 2002, 438).

In March 2006 correspondence, the president of Widows Development Organisation (WiDO), a non-governmental organization (NGO) located in Enugu State (WiDO 2 Mar. 2006) with the mandate of supporting the rights of widows in Nigeria (WRI n.d.), wrote, "levirate marriages ... are commonest among the [I]gbo, less so in

[Y]oruba and least among the [H]ausa who are protected by Islam" (WiDO 2 Mar. 2006).

Levirate Practices Among the Yoruba

The Yoruba are located in the southwest of Nigeria (*Country Reports 2004* 28 Feb. 2005, Sec. 5; *L'Encyclopédie de L'Agora* n.d., Sec. B) and represent between 20 and 25 per cent of the country's population (ibid.). The Yoruba population is part Muslim and part Christian (*Encyclopedia of the Third World* 1992, 1436).

Under customary law among the Yoruba, widows are considered part of the estate of their deceased husband and, therefore, have no inheritance rights themselves (WACOL n.d.a, 15; Bamgbose July 2002, 12). A brother or son of the deceased husband, but not the son of the woman, was traditionally allowed to inherit the widow as a wife (ibid., 13). The inheritance of the youngest wife of the deceased by the eldest son reportedly continues to be practiced in Yoruba land (Doi n.d.).

No further information on levirate marriage practices among the Yoruba could be found among the sources consulted by the Research Directorate.

Levirate Practices Among the Igbo

The Igbo, also referred to as "Ibo" (*Encyclopedia of the Third World* 1992, 1435; *Encyclopédie de L'Agora* n.d.), are located in Nigeria's southeast (ibid.; *Country Reports 2004* 28 Feb. 2005, Sec. 5) and make up between 10 and 15 per cent of the country's total population (*L'Encyclopédie de L'Agora* n.d.). The Igbo population is predominantly Christian (*Encyclopedia of the Third World* 1992, 1436).

Under Igbo customary law, wives do not have inheritance rights as they are considered "property" of the late husband's estate and, as a result, are considered an "object of inheritance themselves" (WACOL n.d.a, 12). Like the Yoruba, a brother or son of the deceased Igbo husband, but not the son of the woman, was traditionally allowed to inherit the widow as a wife (Bamgbose July 2002, 13).

According to a 2005 *Daily Champion* article, following the burial of an Igbo husband, the widow is asked to choose "a man from the kindred that will stand for her and her children" (8 Nov. 2005). The woman either agrees to pick a man from the kindred, or she refuses to do so and "face[s] persecution from the family" (*Daily Champion* 8 Nov. 2005). There has, however, reportedly been a "steady improvement" in the treatment of Igbo widows in Nigeria, granting them

the right to say what they want for themselves and their children whether to remarry and move out of the spouse family or live alone without the interference from family members (ibid.).

A Master's thesis submitted by Chima Jacob Korieh at the University of Bergen, Norway, in 1996, entitled "Widowhood Among the Igbo of Eastern Nigeria," also indicated that "[a] widow in Igbo society is not compelled to become involved in a levirate arrangement" and that a widow with a grown son would no longer be as likely to participate in a levirate marriage as before (Korieh 1996, Sec. 3.3.1). The thesis further stated that, although levirate marriage was common in traditional Igbo society, the practice is now "very uncommon" among the Igbo (ibid.). Reasons identified for the decline in levirate marriages include

- Resources are scarce and men no longer want to waste their resources to cater for a woman and children who do not belong to him legally;

- A widow and her children in the past increased a man's pool of labour for farm work. Farming is increasingly becoming less important as a measure of wealth and status symbol;
- Theoretically a widow and her children are not the levir's property ... [therefore] people are no longer willing to raise children which they may not benefit from [in the future];
- It brings problems in the family;
- It is against Christian ethics;
- [The] children will not like it (ibid.).

Levirate Practices Among the Hausa-Fulani

The Hausa and Fulani ethnic groups are predominantly Muslim (*L'Encyclopédie de L'Agora* n.d). Located in the north (ibid.; *Encyclopedia of the Third World* 1992, 1435; *Country Reports 2004* 28 Feb. 2005, Sec. 2.c) and parts of the Middle Belt of Nigeria (ibid.), the Hausa and Fulani represent between 40 and 45 per cent of the country's total population (*L'Encyclopédie de L'Agora* n.d.).

Under Islamic law, women are entitled to share in the estate of their late husband (WACOL n.d.a, 16). There is no reference made to women being considered as part of the property of the late husband's estate among the sources consulted by the Research Directorate.

While one report noted that the customary practice of levirate marriage is found among the Hausa and is practiced in rural areas (Bamgbose July 2002, 13), it also stated that the practice has become less common (ibid.).

Child Custody

A 2002 *Human Rights Quarterly* article noted that widows in Nigeria are at risk of losing custody of their children, especially if the children are male (Ewelukwa May 2002, 436 - 437). Under Nigerian customary law (ibid., 436), children are generally considered to belong to the man's family (ibid.; Denmark Jan. 2005, 68).

According to the report by the joint British-Danish fact-finding mission to Abuja and Lagos, Nigeria, within Islamic marriages, custody of children is given to the mother following the death of the husband/father (Denmark Jan. 2005, 70). The report stated that children are often "informally adopted" by the husband's/father's family if they are in a better position to support the children, or if the mother wishes to remarry (ibid.). If the widow decides to remarry, however, child custody may be given to her mother, her sister, or her aunt, "especially if the new husband is not related to the child" (ibid.).

Consequences for Refusing to Participate in a Levirate Marriage

Widows in Nigeria often must participate in levirate marriages in order to "ensure the continuing support of their husband's family" (Center for Reproductive Rights 2003, 84). According to one source, women who have refused to participate in a levirate marriage have experienced "all sorts of deprivations," with many having to resort to prostitution in order to support themselves and their family (*Daily Independent* 23 Dec. 2005).

Among the Igbo, widows traditionally faced "persecution" from the husband's family if they refused to participate in the levirate marriage, although the situation of Igbo widows has reportedly improved (*Daily Champion* 8 Nov. 2005).

According to 15 October 2000 correspondence from Empowering Widows in Development (EWD), an international organization working on widowhood issues in developing countries, it is possible and not uncommon, for an Igbo man to refuse to participate in a levirate marriage (EWD 15 Oct. 2000). This source was not aware of any consequences that an Igbo man might face as a result of refusing to participate in a levirate marriage (ibid.).

No further information on the consequences faced by men or women who refuse to participate in a levirate marriage could be found among the sources consulted by the Research Directorate.

Availability of State Protection

Nigeria is party to several international treaties that protect the rights of women and minors, including a number of United Nations (UN) conventions and covenants (Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)) as well as the African Charter on Human and Peoples' Rights (Center for Reproductive Rights 2003, 78; OMCT and CLEEN June 2004, 4).

The Executive Director of the Women's Aid Collective (WACOL), a Nigerian non-governmental organization (NGO) committed to protecting the rights of women and young people (WACOL n.d.b), indicated in December 2005 correspondence that the rights of women in Nigeria are protected under the country's constitution, stating,

the 1999 constitution contains [a] bill of rights that protect [the] right to freedom of association, privacy and religion amongst others including freedom from discrimination based on sex (13 Dec. 2005).

In 2001, Enugu State enacted *The Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law, 2001* (Nigeria 8 Mar. 2001). This law protects the rights of widows and widowers, including the right to not participate in a levirate marriage (ibid., 4c). It states that "[n]o person for whatever purpose or reason shall compel a widow/widower ... to be re-married by a relative of the late husband/wife" (ibid.). Violation of this law could result in a fine of 5,000 Naira [approximately CDN\$45 (XE Currency Converter 8 Mar. 2006)], a two-year jail term, or both (ibid., 6). No information on the whether this law has been effectively implemented, or whether other states have enacted similar laws, could be found among the sources consulted by the Research Directorate.

The Widows Development Organisation (WiDO), located in Enugu State, supports the human rights of widows in Nigeria by

- assist[ing] widows to obtain legal protection or redress when they have been dispossessed of their belongings and inheritance;
- enabl[ing] them to hire lawyers and negotiate with their relatives;
- creat[ing] an avenue to facilitate negotiations with the extended families;
- provid[ing] training for support groups in advocacy and campaigning; [and]
- set[ting] up [a] Vanguard Team which engages in mediation efforts with the husband's relatives. Team members also make appearances in court and attend the husband's burial if it has not already taken place (WRI 25 Feb. 2005).

In March 2006 correspondence, the president of WiDO stated that

[w]omen forced in to levirate are handicapped because their little support system comes from the very family that violates her. Even if she goes to court she has the police, magistrate and family against her and yet she has to go HOME to the same environment. Cases in court take an average of three years and lots of money. Organisations like ours offer legal aid but our resources are limited and we work only in Enugu State (2 Mar. 2006).

According to BAOBAB for Women's Human Rights, cited by the Danish Immigration Service, there were between ten to fifteen NGOs operating in Nigeria in 2005 that provided support to women (Denmark Jan. 2005, 37). BAOBAB also indicated that there was no government system in place to support women (ibid., 37).

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: Centre for Gender and Social Policy at Obafemi Awolowo University (OAU) in Ile-Ife and Project Alert on Violence Against Women in Nigeria did not provide information within the time constraints of this Response.

Internet sites, including: European Country of Origin Information (ECOI) Network, Factiva, Freedom House, Human Rights Watch (HRW), United Kingdom (UK) Home Office, United Nations High Commissioner for Refugees (UNHCR), United Nations WomenWatch.

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