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Nigeria: Divorce law and practice among Muslims, including grounds, procedures, length of process, property disposition, child custody and consequences for the woman and her family (March 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, or Shari'a, law (Carnegie Council on Ethics and International Affairs 2003) (*Maliki* school of law), civil (statutory law), and customary (tribal/traditional law) (*ibid.*; Denmark Jan. 2005, 68). In general, marriages in the north of the country are under Islamic law, while those in the south are under statutory law (*ibid.*). Under Islamic law, divorce is "frowned upon," but is permitted if the marriage is unsalvageable (Yusuf 9 June 2005, 15). In Nigeria, only Islamic courts have jurisdiction in cases of the dissolution of marriages that have taken place under Islamic law (US 8 Dec. 2005; see also Asylum Aid May 2003, 50).

Nigerian states that are predominantly Muslim include Adamawa, Bauchi, Borno, Gombe, Jigawa, Kano, Katsina, Kebi, Nasarawa, Niger, Sokoto, Yobe, and Zamfara (CSIS Mar. 2002). Nigerian states that have a mixture of Muslims and Christians include Benue, Kaduna, Kogi, Kwara, Lagos, Ogun, Osun, Oyo, Plateau, and Taraba (*ibid.*).

The Hausa and Fulani ethnic groups, located in northern Nigeria (*Encyclopedia of the Third World* 1992, 1436; *Country Reports 2004* 28 Feb. 2005, Sec. 2c) and parts of the Middle Belt (*ibid.*), are predominantly Muslim (*L'Encyclopédie de L'Agora* n.d.). The Hausa and Fulani make up roughly 40 to 45 per cent of the country's total population (*ibid.*).

The Yoruba, representing between 20 and 25 per cent of the country's population (*L'Encyclopédie de L'Agora* n.d.), are part Muslim and part Christian. The Yoruba are mainly located in Nigeria's southwestern states (*Country Reports 2004* 28 Feb. 2005, Sec. 5; *L'Encyclopédie de L'Agora* n.d.).

Initiating Divorce and Grounds for Divorce

Among the sources consulted by the Research Directorate, there are conflicting reports regarding whether or not a woman may instigate a divorce in an Islamic marriage in Nigeria. According to the report of the Joint British-Danish Fact-Finding Mission to Abuja and Lagos, Nigeria, the Visa Section of the British High Commission indicated that only a man is able to instigate a divorce, and that

"[t]here is no means by which a woman may divorce a man ... If a husband refuses to divorce a woman who no longer wishes to remain in a marriage, the only recourse she

has is to seek the support of her husband's family members in the hope that they will exert pressure on the man to effect a divorce" (Denmark Jan. 2005, 69).

Other sources consulted (Ladan 2003, 35; Orire 2003, 251; Yusuf 9 June 2005, 15), however, indicated that women do have legal rights to seek a divorce. Two sources noted that a woman can enter conditions into the marriage contract, which allow her to seek divorce from her husband should he fail to meet certain conditions (Ladan 2003, 35; Orire 2003, 251).

Regardless of the conditions entered into the marriage contract, however, the woman maintains the legal right to seek a divorce from her husband if he is physically or mentally cruel towards her (Ladan 2003, 35) or "maltreats" her (Orire 2003, 251), if he deserts her (Ladan 2003, 35) or is "missing" (Orire 2003, 251), if he no longer has conjugal relations with her (Ladan 2003, 35), if he fails to provide maintenance (i.e., to provide the woman with clothes, food, and shelter among other needs) (ibid.; Orire 2003, 251), or if he suffers from an "intolerable disease" (ibid., Ladan 2003, 35).

The wife can also seek a divorce if the marriage is between unequal partners, the husband is unable to fulfill his marital obligations, the husband accuses his wife of being unchaste, the husband does not treat his wives equally in a situation where he has more than one wife [under Islamic law, a man can have up to four wives (Doi n.d.; Denmark Jan. 2005, 69)], or the woman, forced to marry as a minor, objects to the marriage (Orire 2003, 251-252). No information on how Muslim women in Nigeria effect their right to divorce could be found among the sources consulted by the Research Directorate.

Divorce is relatively easy to obtain for both men and women among the Fulani; however, it is more common for men to initiate divorce (Emory Law School 2002). According to BAOBAB for Women's Human Rights, cited by the Danish Immigration Service, Muslim women in northern Nigeria rarely leave or divorce their husbands (Denmark Jan. 2005, 69). According to correspondence sent to the Research Directorate from a Master of Law (LLM) candidate of Nigerian origin at the University of Arizona

there [are not many] divorce cases in Nigeria because of the deep rooted culture ... most women will remain in an unhappy marriage in the interest of their children and fear of the society's ridicule (2 Mar. 2006).

A 2005 report on Islamic marriages among the Hausa-Fulani in Northern Nigeria noted that some husbands "misuse" the divorce clause under Shari'a law (Yusuf 9 June 2005, 15). For instance, some wives are divorced by their husbands for not cooking or completing household chores (ibid., 14), or are abandoned because they are no longer attractive to their husbands (ibid., 15).

Procedures and Length of Process

If the woman initiates the divorce, the bridewealth [bride price], paid by the husband at the time of the marriage, must be returned (Emory Law School 2002; BAOBAB in Denmark Jan. 2005, 69) and the amount is usually decided by the courts (ibid.).

Following the divorce of a Muslim couple, the woman must complete a period of retreat, or *idda* [also spelled *iddah* (Doi n.d.; Yusuf 2005, 15)] (Mir-Hosseini 1997, 224; Emory Law School 2002; Doi n.d.). One source indicated that this period of retreat lasts approximately forty days (Emory Law School 2002), while another source noted that it could last as long as three months (Ladan 2003, 34). The purpose of the *idda* is to be certain that the woman "does not remarry before it is established beyond reasonable doubt that she is not pregnant with the previous husband's child" (Ladan

2003, 35). During this period of retreat, the husband must continue to maintain the woman (ibid.). If the woman is pregnant, the husband must continue to support her throughout the pregnancy (ibid., 35). If the husband should die during this period, the woman maintains her inheritance rights as his widow (ibid., 34-35).

One divorce process that is occasionally used by husbands within the Muslim Hausa community is *saki uku*, where the husband pronounces the divorce three times (Yusuf 9 June 2005, 15). This process "make[s] reconciliation impossible and the divorce irrevocable" (ibid.). *Saki uku* is disapproved of as it deprives the woman of her divorce entitlements, such as child custody and the right to maintenance during the period of retreat (ibid., 15).

Property Disposition

Under Islamic law, the woman has the right to "own and dispose of her property" (Orire 2003, 252). In addition, the marriage dower [bride price (Mir-Hosseini 1997, 225)] belongs to the woman and should "never be taken by her husband unless offered by the woman as a free gift" (Ladan 2003, 34); however, the dower must be returned to the husband if the woman initiates the divorce (Emory Law School 2002). No further information on property disposition in divorce under Islamic law in Nigeria could be found among the sources consulted by the Research Directorate.

Child Custody

Following the dissolution of civil, customary, and Islamic marriages, decisions with respect to child custody lawsuits are reportedly based on the 1970 Nigeria *Matrimonial Causes Act (Islamic Family Law in a Changing World 2002, 299)*. This Act "directs that the interests of the child shall be paramount" (ibid.).

In an interview with *Human Rights Dialogue*, Ayesha Imam of BAOBAB for Women's Human Rights stated in that Nigeria's Shari'a Courts had been recognizing divorced women's rights to child custody, as well as possession of property belonging to their children (Carnegie Council on Ethics and International Affairs 2003).

According to Islamic law, child custody belongs to the woman but is subject to her physical and mental capacity to care for the children (Ladan 2003, 35). If she is unable care for her children, then custody rights are transferred to one of her female relatives (ibid.). Generally, daughters remain with the mother until they are married, while sons remain with the mother until they reach puberty (Orire 2003, 252). Although the former husband must bear the costs of maintaining the children following the divorce (ibid., Ladan 2003, 35), he is granted custody only as "the very last resort" (ibid.).

Citing information from J.O. Debo Akande's 1979 report, *Law and the Status of Women in Nigeria*, an Emory Law School report indicated that, among the Hausa, a divorced woman maintains custody of children only until they reach the age of seven (Emory Law School 2002). Among the Fulani, it is the husband who decides who will have custody of the children following a divorce, according to a 2002 publication on Islamic Family Law (*Islamic Family Law in a Changing World 2002, 291*).

According to information obtained from the Visa Section of the British High Commission, the report of the Joint British-Danish Fact-Finding Mission to Abuja and Lagos, Nigeria, stated that,

following a divorce, children remain with the father if that is his wish. The woman may contest this arrangement through the court, but this is rarely done and she is unlikely to be successful (Denmark Jan. 2005, 69).

However, the report further cited information obtained from BAOBAB for Women's Human Rights, indicating that, following a divorce, child custody belongs to the mother, or a female relative of the mother if she is unable to care for the children (ibid.). Any child born outside of the marriage remains in the custody of the mother (ibid., 70).

BAOBAB for Women's Human Rights also noted that it is possible for a mother to lose custody of her children following a divorce if she lives more than 48 kilometres away from the father's residence, if she is seen to be living an 'immoral' life, or if she neglects the child (ibid. 70).

Consequences for a Divorced Woman and her Family

A 2005 report published by the Africa Regional Sexuality Resource Centre (ARSRC) indicated that a woman married under Islamic law whose husband divorces her through *saki uku*, that is, by pronouncing the divorce three times,

is not entitled to all the post-divorce entitlements such as staying in the matrimonial home for the three months (*iddah*) waiting period, provision for maintenance and custody of her young children (Yusuf 2005, 15).

In Nigerian states under Islamic law, non-married women have allegedly been "frequently harassed, evicted, forced to leave their states of residence and/or charged and convicted with *zina* [or illicit sexual intercourse (BAOBAB 2003, 9)] and 'immoral behaviour'" (BAOBAB 2003, 9). According to the Christian Association of Nigeria (CAN), cited by Christian Solidarity Worldwide (CSW), "a woman not married, irrespective of her religious background, is seen by Muslim enforcers of the Shari'a as a prostitute" (CSW Oct. 2005). In 2003, eight women in Bauchi state were charged with being unmarried, were fined and given ten lashes (ibid.).

Referring to separated and divorced women in general in Nigeria, a 2003 Asylum Aid report stated that these women face a number of problems, including

social stigma and ill-treatment as a divorced woman, rejection by the family, possible loss of custody of her children, difficulty in supporting herself financially, discrimination in employment (especially in states implementing Shari'a), lack of property and land rights and inadequate access to education and health services (Asylum Aid May 2003, 50).

Country Reports on Human Rights Practices for 2005 also noted that women in Nigeria, especially unmarried women, "endured many forms of discrimination" (8 Mar. 2006, Sec. 5).

A 2005 Amnesty International (AI) report on violence against women in Nigeria stated that "[w]omen who seek a divorce may be at particular risk of violence" (May 2005, 12). The report, however, did not make reference to a particular religion, ethnic group, or region of Nigeria in which women may be at risk.

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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Additional Sources Consulted

Oral sources: Attempts to contact the International Federation of Women Lawyers in Nigeria were unsuccessful. BAOBAB for Women's Human Rights in Nigeria and a law professor at the University of Ibadan did not provide information within the time constraints of this Response.

Internet sites, including: Africa Confidential, Africa Research Bulletin, AllAfrica.com, Factiva, Human Rights Watch (HRW), United Nations (UN) WomenWatch, and UN Integrated Regional Information Network (IRIN), Women Living Under Muslim Laws (WLUML).

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