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### NGA101047.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 (February 2006)

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### 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 north of the country are under Islamic law, while those in the predominantly Christian south (*Country Reports 2004*, Sec. 2.c) are under statutory law (Denmark Jan. 2005, 68). Even when couples marry under statutory law, customary law generally prevails in personal matters (ibid.).

Marriage between Christians in Nigeria can take place under civil law, customary law, or both civil and customary law (Rahmatian 1996). This Response therefore provides information on divorce under civil law and customary law, as well as general information on divorce between Christians in Nigeria.

Nigerian states that are predominantly Christian include Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Ondo, and Rivers (CSIS Mar. 2002). States in Nigeria that have a mixed Christian and Muslim population include Benue, Kaduna, Kogi, Kwara, Lagos, Ogun, Osun, Oyo, Plateau, and Taraba (ibid.).

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

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 (*Encyclopedia of the Third World* 1992, 1436). This ethnic group is located in Nigeria's southwestern states (*Country Reports 2004* 28 Feb. 2005, Sec. 5; *L'Encyclopédie de L'Agora* n.d.).

### Grounds for Divorce

Quoting information obtained from the Visa Section of the British High Commission in Nigeria, the *Report on Human Rights Issues in Nigeria*, from a joint British-Danish fact-finding mission to Abuja and Lagos, Nigeria, notes that in Christian

marriages, either spouse may seek a divorce (Denmark Jan. 2005, 70). However, divorce may only be sought on the grounds of infidelity (ibid.).

For Christian marriages that have taken place under civil law, the 1970 *Matrimonial Causes Act* governs divorce (Center for Reproductive Rights 2003, 83). According to this *Act*, both the man and the woman have the legal right to seek divorce, if the "marriage has broken down irretrievably" (Nigeria 1970, Part II 15 (2)). The spouse petitioning for a divorce must satisfy the court that the marriage has broken down irretrievably as a result of one or more of the following:

- a. that the respondent has wilfully and persistently refused to consummate the marriage;
- b. that since the marriage the respondent 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 28 April 2003 correspondence from the Executive Director of BAOBAB for Women's Human Rights, grounds for divorce under civil law also include the "commission of rape, sodomy or bestiality" (see also Nigeria 1970, Part II 15 (3) (1a)).

*The Report on Human Rights Issues in Nigeria*, citing information obtained from the British High Commission in Nigeria, related that under customary law, both parties are also able to seek a divorce, and that a marriage can be dissolved for any reason (Denmark Jan. 2005, 71). Citing a law professor from the University of Arizona who is a native Nigerian, the Centre for Reproductive Rights indicated that customary law courts, however, will consider "adultery; cruelty; desertion; and impotence, sterility, or the presence of any reproductive health problem" as grounds for divorce (2003, 83).

## **Procedures and Length of Process**

The high court in any Nigerian state, with the exception of Imo, has jurisdiction over the dissolution of marriages that have taken place under civil law (US 8 Dec. 2005). In Imo state, the Magistrate's Court has jurisdiction (ibid.). In 2003 correspondence, the Executive Director of BAOBAB for Women's Human Rights noted that filing a divorce petition is the procedure by which Christians in Nigeria obtain a civil divorce (28 Apr. 2003). The Executive Director further indicated that "no proceedings for divorce may be instituted within two years of a marriage without leave of court" (BAOBAB 28 Apr. 2003; see also Nigeria 1970, Part II 30 (1) & (2)).

A civil divorce is final once the high court granting the divorce issues a "Decree Absolute" (US 8 Dec. 2005). Other documents issued prior to the "Decree Absolute," which mark the divorce process but do not indicate a final divorce, include the "Enrolment of Order," the "Decree Nisi" [a separation agreement which presumes that the couple can still reconcile (*Vanguard* 14 Aug. 2004)], and the "Certificate of Decree Nisi" (US 8 Dec. 2005).

A Christian marriage under customary law is dissolved "non-judicially" (BAOBAB 28 Apr. 2003; Asylum Aid May 2003, 50) by the customary court in the area where the marriage occurred (US 8 Dec. 2005). The customary courts provide a divorce certificate to render the divorce final (*ibid.*). In Imo state, it is the Chief Magistrate's Court that issues divorce decrees (*ibid.*).

According to the Executive Director of BAOBAB for Women's Human Rights, customary law marriages are dissolved through the "unilateral action of a spouse," where the divorce is deemed final upon the return of the "bride price" (BAOBAB 28 Apr. 2003). The Executive Director noted that this method of dissolving a marriage is, in some parts of Nigeria, "conferred only on the husband" (*ibid.*).

Among the Igbo, the dissolution of a marriage under customary law may involve negotiating and mediating between the families in an attempt to salvage the marriage (*ibid.*). If this process fails, then the "bride price" is returned and the marriage is considered dissolved (*ibid.*).

No information on the total length of the process for obtaining a divorce, under civil law or customary law, could be found among the sources consulted by the Research Directorate.

## **Property Dispositions**

Under Nigeria's 1970 *Matrimonial Causes Act*, the high courts have the power to rule on property dispositions and maintenance rights in a civil law divorce (Nigeria 1970, Part IV). This *Act* allows the court to render decisions on the settlement of property based on what is considered "just and equitable in the circumstances of the case" for the benefit of any or all of the parties involved, whether the spouses and/or children of the marriage (*ibid.*, Part IV 72(1)). To be considered a factor in determinations of property rights, a child must be under the age of 21 years, unless there are "special circumstances" which the court needs to take into account (*ibid.*, Part IV 72 (3)).

With respect to maintenance rights, under the *Matrimonial Causes Act*, the court can order that payments be made to a party to the marriage, as well as when, where, and to whom the payments are to be made (*ibid.*, Part IV 73).

For the dissolution of marriages that have taken place under customary law, the "bride price" must be refunded to the husband (BAOBAB 28 Apr. 2003). In addition, a woman's right to spousal maintenance is terminated upon divorce (Asylum Aid May 2003, 50).

Citing a 1997 study of maternity among local communities in Enugu State, BAOBAB notes that in cases of divorce under customary law, a woman is only entitled to personal property such as pots and wrappers (BAOBAB 2003, 43).

## **Child Custody**

The *Report on Human Rights in Nigeria*, citing information obtained from the Visa Section of the British High Commission in Nigeria, noted that the woman usually

maintains custody of the children in cases, generally speaking, of divorce between Christians (Denmark Jan. 2005, 70). However, the father may fight for custody of his children through family courts, although this is rarely done (ibid.). Children born outside of the marriage remain in their mother's care (ibid.).

Pertaining to the dissolution of a civil law marriage, the mother usually maintains custody of her children; however, a father may fight for custody by going to court (ibid.). Custody disputes are decided under the 1970 *Matrimonial Causes Act*, which determines spousal and child maintenance based on the "means, earning capacity and conduct" of both parties to the marriage, and "all other relevant circumstances" (Nigeria 1970, Part IV 70 (1)). According to one source, the age of the children also affects the court's rulings: custody of older children is reportedly more likely to be granted to the father, while custody of younger children is more likely to be given to the mother (*Vanguard* 14 Aug. 2004). In cases where maternal custody is granted, the man must pay for the maintenance of his children until they reach the age of 21 years (ibid.).

According to the British High Commission in Nigeria, as cited in the *Report on Human Rights Issues in Nigeria*, in cases of divorce under customary law, the father retains custody of the children should he wish to, yet such instances are rare and the responsibility for the children rests with the mother and her family (Denmark Jan. 2005, 71). Also cited in this same report, BAOBAB confirmed that customary laws favour the father and added that custody is usually granted to men in cases where children are over the age of seven, whether or not the father is in a position to care for the children (ibid.). According to BAOBAB, further cited in the report,

a woman could try a claim of custody in a court in the event of divorce. This is in general very difficult as the child, according to customary law, belongs to the father's family or lineage. Divorced women, who find themselves in a weak family position, will also find it very hard to return to their home village. In such circumstances the children often stay with their father (ibid.).

## **Consequences for a Woman and her Family**

According to correspondence sent to the Research Directorate by 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[fulness] of the society's ridicule (2 Mar. 2006).

BAOBAB for Women's Human Rights likewise indicated that societal pressures dictate women remain married, that there is a social stigma attached to a woman "who [would] dare take her 'children's father' to court" (BAOBAB 2003, 52).

A 2005 Amnesty International (AI) report indicated that women may also be deterred from seeking a divorce, even from an abusive spouse, because of their financial dependency on a husband (May 2005, 11). The report further notes that "[I]tigation to obtain a divorce or to seek custody of the children is expensive and beyond the means of most women [in Nigeria]" (AI May 2005, 11).

Referring generally to separated and divorced women 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 Sharia), lack of property and land rights and inadequate access to education and health services (May 2003, 50).

*Country Reports 2005* also noted that women in Nigeria, especially those who are unmarried, "endured many forms of discrimination" (8 Mar. 2006, Sec. 5).

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

According to April 2003 correspondence from the Executive Director of BAOBAB for Women's Human Rights, under native law and as per custom, an Igbo woman would have the option of returning to her parents if she were ill-treated by her husband (28 Apr. 2003).

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. A law professor at the University of Ibadan could not provide information within the time constraints of this Response.

**Internet sites, including:** AllAfrica; British Broadcasting Corporation (BBC); Emory Law School; Factiva; Human Rights Watch (HRW); OnlineNigeria; United Kingdom (UK) Home Office, Immigration and Nationality Directorate; and Women's Aid Collective (WACOL).

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