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# **WOMEN'S REPRODUCTIVE RIGHTS IN NIGERIA: *A Shadow Report***

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The Center for Reproductive Law & Policy (CRLP)  
Women's Centre for Peace and Development (WOPED)

**June 1998**

Prepared for the Nineteenth Session of the Committee on the Elimination of All  
Forms of Discrimination Against Women

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## INTRODUCTION

This report is intended to supplement, or "shadow," the report of the government of Nigeria to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). It has been compiled and written by the Center for Reproductive Law and Policy (CRLP) in New York and Women's Centre for Peace and Development (WOPED) in Nigeria. As has been expressed by CEDAW members, NGO's such as CRLP and WOPED can play an essential role in providing credible and reliable independent information to CEDAW regarding the legal status and real life situation of women and the efforts made by ratifying governments to comply with the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) provisions. Moreover, if CEDAW's recommendations can be firmly based in the reality of women's lives, NGO's can use them to pressure their governments to enact or implement legal and policy changes.

Discrimination against women permeates all societies. Clearly, this discrimination requires urgent action. However, this report is focused particularly on reproductive rights, laws and policies related to such rights, and the realities affecting women's reproductive rights in Nigeria. As such, this report seeks to follow-up on the December 1996 "Roundtable of Human Rights Treaty Bodies on the Human Rights Approaches to Women's Health with a Focus on Reproductivity and Sexual Health Rights" held in Glen Cove, New York, by bringing to the attention of treaty monitoring bodies the human rights dimensions of health issues, with a particular focus on women's reproductive and sexual health. As articulated at the 1994 International Conference on Population and Development in Cairo, as well as the 1995 United Nations Fourth World Conference on Women in Beijing, reproductive rights consist of a number of separate human rights that "are already recognized in national laws, international laws and international human rights documents and other consensus documents," including the Women's

Convention. We believe that reproductive rights are fundamental to women's health and equality and the States Parties' commitment to ensuring them should receive serious attention.

This shadow report links various fundamental reproductive rights issues to the relevant provision(s) of the Women's Convention. Each issue is divided into two distinct sections. The first, shaded section deals with laws and policies in Nigeria relating to the issues and corresponding provisions of the Women's Convention under discussion. The information in the first section is mainly obtained from the Nigeria chapter of *Women of the World: Laws and Policies Affecting Their Reproductive Lives — Anglophone Africa*, one of a series of reports about each region of the world being compiled by CRLP in collaboration with national-level NGOs. The Civil Liberties Organisation in Nigeria collaborated with CRLP on the Nigeria chapter. The second section focuses on the implementation and enforcement of those laws and policies — in other words, the reality of women's lives. WOPED has provided most of the information included in this section.

This report was coordinated and edited by Katherine Hall Martinez, with the assistance of Naveen Rahman and Alison-Maria Bartolone for CRLP, and by Theresa U. Akumadu for WOPED.

The following organizations in Nigeria also contributed to the report: FIDA Anambra State, Social and Economic Rights Action Center, The Civil Liberties Organisation and The League of Women for Community Action.

**June 1998**



## **Laws and Policies Affecting Women's Reproductive Lives**

### **Implementation, Enforcement, and the Reality of**

### **Women's Reproductive Lives**

#### **A. RIGHT TO HEALTH CARE; INCLUDING REPRODUCTIVE HEALTH CARE AND FAMILY PLANNING (ARTICLES 12, 14(2)(B) AND 10(H) OF CEDAW)**

##### **1. Access to Health Care**

##### **Laws & Policies**

In 1988, the Nigerian government adopted “The National Health Policy and Strategy To Achieve Health for All Nigerians” (National Health Policy) with the goal of enabling all Nigerians to achieve socially and economically productive lives.<sup>1</sup> According to the National Health Policy, health is an “essential component of social and economic development as well as being an instrument of social justice and national security.”<sup>2</sup> The policy seeks to distribute health care and to disseminate information to underserved communities.<sup>3</sup>

In order to operationalize the National Health Policy goals of making health care accessible, the Nigerian government utilizes the Primary Health Care (PHC) approach to the provision of national health care.<sup>4</sup> PHC encompasses basic treatment, including maternal and child health (MCH) and family planning services.<sup>5</sup> In 1992, the importance of the PHC system was reinforced by the establishment of the National Primary Health Care Development Agency (the Agency).<sup>6</sup> The Agency seeks to implement the National Health Policy by revising existing health policies where necessary, translating policies into feasible strategies, and providing technical support to the management of the PHC system.<sup>7</sup>

While the Federal Ministry of Health (Federal MOH) coordinates the national health care policies, establishes service delivery guidelines, and coordinates the efforts of state governments and the private sector,<sup>8</sup> actual basic health care is provided by local governments under the supervision of the State Ministries of Health (State MOHs).<sup>9</sup> The Nigerian health system consists of over 12,000 health care institutions, non-profit service providers, and for-profit

medical providers, as well as commercial pharmaceutical outlets and traditional medical practitioners, which provide health care at three levels.<sup>10</sup> The primary level of care provides a range of medical services through the PHC program.<sup>11</sup> Over a thousand local governments, private health centers, clinics, dispensaries, first aid stations, and maternity centers offer MCH services including: prenatal and postnatal care for mothers, family planning, immunization for children, oral rehydration therapy, nutritional education, and treatment of minor ailments.<sup>12</sup> The secondary level of care, based at the state level, is provided by 899 hospitals which offer comprehensive community-based health care with greater laboratory and facility support.<sup>13</sup> The tertiary level of care is formulated and assisted by the Federal MOH.<sup>14</sup> Highly specialized services, mainly curative care, are available at 13 teaching hospitals and other tertiary health institutions, which are primarily based in urban areas.<sup>15</sup>

Nigeria has no social security system.<sup>16</sup> Instead, the National Health Policy commits state and local governments to the provision of health subsidies for preventive care and additional public assistance for low-income individuals.<sup>17</sup>

While there is no significant body of law protecting patients' rights, a few policies seek to ensure quality of health services by protecting rights of patients. The Medical and Dental Council of Nigeria has published ethical guidelines governing professional conduct, violation of which may result in disciplinary action by the council or suspension from practice.<sup>18</sup> The guidelines prohibit public disclosure of patient information relating to "criminal abortion, venereal [sic] diseases, attempted suicides, concealed birth and drug dependence" unless required by law.<sup>19</sup> The council guidelines also state that medical practitioners "must desist from compulsory treatment of a patient in the absence of illness . . . [and] must always obtain consent of the patient or the competent relatives or seek another professional opinion, before embarking on any special treatment procedures with determinable risks."<sup>20</sup>

## Reality

The Nigerian government estimates that 40% of the population has access to health facilities.<sup>21</sup> In 1992, there was roughly one doctor for every 3,867 people.<sup>22</sup> Approximately one third of all births are attended by a doctor, nurse, trained midwife, or traditional birth attendant.<sup>23</sup>

In its 1996-97 budget, the federal government allocated N30 billion (approximately U.S.\$380 million) of a special petroleum trust to fund improvements in roads and the supply of basic medicines in rural areas.<sup>24</sup> In 1987, the last year for which full budget figures were available, health expenditures comprised 0.8% of the national budget compared to a 2.5% average spent in 1987 by the public sector in sub-Saharan Africa.<sup>25</sup>

There are not enough health facilities in rural areas within the reach of the rural poor. Most women, particularly pregnant women, cannot afford health services. Many of the local health centers and rural clinics are not functional and those that are open to the communities are poorly equipped and poorly staffed.<sup>26</sup> Typically in rural health centers, there is often not more than one nurse at any given time<sup>27</sup> and there are no doctors. The nurse is forced to act as a doctor.<sup>28</sup> In serious cases, patient referrals to bigger hospitals are delayed primarily because of the absence of a qualified doctor to do so.<sup>29</sup> Specialist services are extremely costly and are not easily affordable by the average woman. Most public hospital are general hospitals. Teaching hospitals offer specialist services but they are located mainly in towns and cities. Moreover, services at such hospitals are equally expensive. Patients are required to pay for laboratory tests, drugs, and even first aid, resulting in avoidable deaths.<sup>30</sup> Even teaching hospitals that are supposed to offer specialist services lack the equipment needed to work effectively. Many patients die during the trip from one hospital to another in search of necessary equipment. Most low-income Nigerian women have access mainly to traditional medical health care because it is affordable and readily available.

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## **2. Access to Comprehensive, Quality Reproductive Health Care Services**

### **Laws & Policies**

Nigeria's population policy provides the framework within which its family planning services are provided. In 1988, the government adopted the National Policy on Population for Development, Unity, Progress and Self-Reliance (National Policy on Population).<sup>31</sup> This policy is designed to achieve the primary goals of decelerating the rate of population growth and improving standards of living.<sup>32</sup> The voluntary policy is predicated upon the principle that couples and individuals have the right to determine the number and the spacing of their children.<sup>33</sup> The National Policy on Population identifies several objectives which include:

promoting awareness of population problems and the effects of rapid population growth on development, providing information on the benefits of reasonable family size, and making family planning services easily accessible to all couples and individuals at an affordable cost.<sup>34</sup>

The National Policy on Population devotes an entire section to the implementation of MCH services. The objective of the policy in this section is to “reduce the current high childhood and maternal morbidity and mortality rates, especially in the rural and suburban areas.”<sup>35</sup>

## Reality

Family planning services are provided through the PHC system and are available at approximately 20% to 25% of MCH facilities.<sup>36</sup> The government providers supply approximately 37% of modern contraceptives in Nigeria, including condoms, spermicides, intrauterine devices, injectables, and the pill.<sup>37</sup> Government family planning clinics require a N50 (approximately U.S.\$0.63) fee for registration and N100 (approximately U.S.\$1.25) for the disbursement of the contraceptive.<sup>38</sup> Despite governmental efforts, there is often a shortage of contraceptives at health clinics.<sup>39</sup> Furthermore, because the PHC system is primarily located in urban and semirural areas, the availability of modern contraceptives in rural areas is extremely limited.<sup>40</sup> Providers generally seek patients' consent for reproductive health care services, but they often fail to adequately check the patient's medical history and thoroughly examine the patient prior to providing services.<sup>41</sup> This results in some cases of profuse bleeding which discourages further use of contraceptive devices by the patient and others known to her. Low-income individuals do not have adequate access to maternal and child health care and contraception chiefly for two reasons. First, most women do not have a say in decision making that affects their reproductive health and capacity. In a recent survey in Nigeria,<sup>42</sup> of the four circumstances in which a woman can refuse sex with her partner, the need to prevent pregnancy was not mentioned as one of them. Second, there is a lack of prompt and adequate treatment in hospitals and a failure to seek medical care for complications in pregnancy early enough due to high cost.<sup>43</sup> The latter reason accounts for why women resort to the use of traditional medicine even for cases that clearly require urgent specialist attention.

The maternal mortality rate in Nigeria is approximately 1,050 per 100,000 births, the worst in Africa<sup>44</sup> and it is estimated that Nigeria may reach a record of 2,000 maternal deaths per 100,000 by the year 2000.<sup>45</sup> The survey concluded that in all cases, “poverty and the inability to pay hospital bills and poor roads and transportation system” are key issues and concluded that the failure of local government authorities, the state government and the federal government to address those issues is at the heart of this deplorable state of affairs.<sup>46</sup>

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### **3. Access to Information on Health, including Reproductive Health and Family Planning**

#### **Laws and Policies**

One of Nigeria’s population policy strategies is to embark on an aggressive information and communication campaign to educate individuals about the importance of maintaining a reasonable family size both for personal and national welfare.<sup>47</sup> The National Health Policy defines family planning to include education, counseling, the provision of information on child spacing, and fertility treatment.<sup>48</sup>

No law prohibits the advertising of contraceptives or the distribution of contraceptive information. However, advertisements or other materials concerning contraceptive use must not contravene laws prohibiting the publication or distribution of “obscene” materials. Materials which “tend to deprave and corrupt” may be deemed obscene and prohibited.<sup>49</sup>

#### **Reality**

Although the National Health Policy defines family planning to include education, counseling, the provision of information on child spacing, and fertility treatment, most governmental facilities only distribute contraceptives.<sup>50</sup> In clinics and general hospitals as well as in teaching hospitals, antenatal classes are given to expectant mothers on care of the woman during pregnancy and on the process of childbirth. However, these classes do not address issues of birth spacing and limiting the number of one’s children. Moreover, the talks given on the use of various forms of contraception do not include information on the needs and rights of women to space their children for reasons of personal development and health. Issues such as the

preference for male children ought to be talked about at such classes to discourage multiple pregnancies, a major factor in the rate of maternal mortality. Written literature on maternal and child health for expectant mothers is completely absent in Nigerian hospitals and health centers.

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## **4. Contraception**

### **Laws and Policies**

There is no law that explicitly regulates the sale or use of contraceptive drugs and devices. The National Policy on Population states that “[n]ational family planning programmes shall make available a variety of methods of fertility to ensure free and conscious choice by all couples.”<sup>51</sup> The Nigerian government does not have a policy directed specifically at the safety requirements of contraceptive drugs and devices. However, the Food and Drugs Act prohibits misleading labeling and advertising practices.<sup>52</sup> The Act authorizes the Minister of Health to require manufacturers of drugs to furnish information on a drug’s chemical composition, its intended use, the results of clinical investigations, and any adverse effects on health.<sup>53</sup> Devices or drugs may not be imported into Nigeria unless they are accompanied by a certificate that guarantees that they comply with Nigerian standards and the standards of the country in which they are manufactured.<sup>54</sup>

### **Reality**

Total contraceptive prevalence is 7.5%, and the use of modern methods is 3.8%.<sup>55</sup> Among married women, the most common methods of contraception are the pill (29.7%) and injectables (24.3%). The private sector is the primary source of contraceptives for women in Nigeria.<sup>56</sup> The government providers supply approximately 37% of modern contraceptives in Nigeria, including condoms, spermicides, intrauterine devices, injectables, and the pill.<sup>57</sup> Government facilities do not favor one method over another. Nigerian families have begun to embrace the use of contraception largely because of the reality of economic hardship facing them.

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## 5. Abortion

### Laws and Policies

In Nigeria's bifurcated criminal law system, abortions are illegal regardless of duration of pregnancy. Both legal systems prohibit abortions performed at all stages of fetal or embryonic development from the time of fertilization, unless the abortion is performed to save a pregnant woman's life.<sup>58</sup> The Criminal Code, applicable in the southern states, stipulates that a person "is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation ... upon an unborn child for the preservation of the mother's life."<sup>59</sup> Similarly, the Penal Code, applicable in the northern states, permits an abortion to save the life of a woman.<sup>60</sup> However, the laws do not clearly distinguish between abortions performed by registered medical practitioners and unregistered medical practitioners, nor do they stipulate the kind of facility in which abortions may take place.<sup>61</sup>

Both legal systems cover other abortion-related offenses. The Criminal Code provides that it is illegal to supply materials knowing that they may be used unlawfully to "procure the miscarriage of a woman."<sup>62</sup> The Penal Code provides that any person who, with intent to cause a "miscarriage," undertakes any act that causes a woman's death is subject to imprisonment for 14 years.<sup>63</sup> It is also unlawful for a person to "use force to any woman and thereby unintentionally caus[e] her to miscarry."<sup>64</sup> Spousal consent is not a requirement for an operation necessary to save a woman's life.<sup>65</sup> The government does not subsidize abortion services.<sup>66</sup>

### Reality

A community-based study in 1987 revealed that 34.8% of women who underwent abortion were married, and 52.2% had two or more children.<sup>67</sup> Of the estimated annual 50,000 maternal deaths, approximately 20,000 result from the complications of unsafe induced abortions.<sup>68</sup> A more recent study found that complications from illegal abortions account for approximately 50% of all maternal deaths in Nigeria.<sup>69</sup>

Though abortion is illegal in Nigeria, society frowns on children born out of wedlock. The result is that affluent clients pay very high fees to procure abortions in private hospitals, while low-income women and girls are forced to undergo unsafe procedures with unqualified individuals and, in doing so, often lose their lives from complications. To deal with unwanted



pregnancies, many women resort to dumping their babies in dustbins, in pit toilets, and in canals. Despite these realities, preventive sex education and moral instruction are not included in school curricula to educate young women and men on the dangers of early and unprotected sex. Health officials generally do not report women who seek medical care for complications of abortion because they view it as the patient's personal problem. Moreover, they do not want to waste their time following up on the resulting criminal case because such cases tend to drag on indefinitely in the Nigerian legal system.

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## **6. Sterilization**

### **Laws and Policies**

Sterilization is legal in Nigeria. Although "emasculatation" is regarded as a "grievous harm" in both the Penal Code, applicable in the northern states, and the Criminal Code, applicable in the southern states, the laws exempt surgical operations that are performed in good faith and with reasonable care from prosecution as a crime.<sup>70</sup> In 1992, the government confirmed in a report to the United Nations Population Fund that sterilization in Nigeria is legal if performed for health, eugenic, or contraceptive purposes.<sup>71</sup>

Sterilization is available in government health institutions and teaching hospitals.<sup>72</sup> In addition, sterilization procedures are available in rural health facilities operated by missionary organizations such as the Nongo U Kristu U Ken Sudan Hen Tiv ("NKST") which provide family planning services.<sup>73</sup> All surgical operations must be performed by registered practitioners in Nigeria.<sup>74</sup>

### **Reality**

Sterilization is not a common method of contraception in Nigeria; women who have elected female sterilization comprise fewer than four percent of female contraceptive users.<sup>75</sup> In practice, sterilization is provided as a contraceptive method only on demand or in cases of high risk and danger to health. In cases of such high risk or danger to health, it may be performed with or without the patient's consent and the consent of the spouse as the case may be.

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## **7. HIV/AIDS and Sexually Transmissible Infections (STIs) and Women**

### **Laws and Policies**

Currently, no laws deal specifically with AIDS, HIV, or STI transmission.<sup>76</sup> The prevalence of STIs, especially among women, are generally not reported in Nigeria.<sup>77</sup> There are no governmental mandates or policies regarding the prevalence of STIs.<sup>78</sup>

Nigeria has not been able to address the AIDS epidemic in a significant manner.<sup>79</sup> However, since 1986, Nigeria has attempted to coordinate governmental responses to the epidemic, and has implemented HIV, AIDS, and STI prevention activities pursuant to its National AIDS and STI Control Program (NASCP). NASCP's Second Medium-Term Plan sets forth four strategic objectives: prevention of HIV infection; reduction of the personal and social impact of HIV/AIDS in HIV-positive individuals and their families; reduction of the impact of HIV/AIDS on society; and the mobilization of efforts and resources to combat HIV/AIDS.<sup>80</sup>

### **Reality**

In a study of three cities in Nigeria, the four most common STIs were non-specific genital infection (59.4%), gonorrhea (19.2%), candidiasis (10.5%), and trichomoniasis (10.5%).<sup>81</sup> As of June 1996, there were 5,500 reported cases of AIDS.<sup>82</sup> Sero-prevalence rates for HIV were estimated in 1994 to be 3.8% of the general population; however, these figures are thought to be underreported.<sup>83</sup> Of the total number of Nigerians who test positive for HIV, 96% are adults (over age 20) and 67% are males.<sup>84</sup>

In most cases, women are not in a position to demand to know the sero status of their spouses even when they strongly suspect AIDS or STI infection. This social reality greatly increases their risk of infection.

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## **8. Adolescent Reproductive Health**

### **Laws and Policies**

Adolescents are not legally restricted from access to contraceptives, but informal restrictions operate to limit contraceptive use.<sup>85</sup>

## Reality

Adolescents face cultural obstacles in obtaining reproductive health care services. Pre-marital sex is frowned upon and adolescents cannot discuss sexual matters openly with their parents. Nonetheless, a number of NGOs are offering sexuality education and have opened counseling clinics.

## B. FAMILY RELATIONS (ARTICLE 16)

### 1. Marriage and Common Law Marriage

#### Laws and Policies

There are three types of marriages — customary, Islamic and civil — in Nigeria. The rights of women vary according to the type of marriage and the region of the country. Marriages adhering to customary or civil law are valid throughout the country.<sup>86</sup> In the northern states, marriages under Islamic law are legally recognized.<sup>87</sup> Pursuant to customary and Islamic law, marriages may be polygamous and registration is not required.<sup>88</sup>

Under customary law, marriages are arranged between families, and the prospective suitor is often required to pay a bride price to the bride's family.<sup>89</sup> Within customary marriages, traditions requiring women to undergo harsh and burdensome rites at widowhood, and the periodic ritual seclusion of women, are prevalent.<sup>90</sup> In the northern states, the customary seclusion of women is particularly rigorous and may restrict women's movement outside of their homes even in emergency situations.<sup>91</sup>

Under Islamic law in northern Nigeria, the father of a woman retains the "right" (*ijbar*) to arrange the marriage of his daughter, regardless of her age and without her consent.<sup>92</sup> Islamic law marriage involves a dower paid directly to the woman to be married.<sup>93</sup> Islamic law in Nigeria permits a man to have up to four wives.<sup>94</sup>

In contrast, civil law marriages must be monogamous and registered.<sup>95</sup> In a civil or customary marriage, the spouses have a reciprocal duty to maintain each other as well as any

children of the union.<sup>96</sup> Valid civil marriages in Nigeria must be voluntarily entered into by both parties.<sup>97</sup> In southern Nigeria, forced marriage under any system of law is formally prohibited by law as a criminal offense, punishable by imprisonment for up to seven years.<sup>98</sup>

## Reality

Polygamy is common. Approximately 42.6% of all married women are in polygamous unions and 56.7% are in monogamous unions.<sup>99</sup> The hallmark of customary marriage in Nigeria is the payment of the bride price,<sup>100</sup> which in turn symbolizes women's inferiority as purchased property to be used at the pleasure of the buyer. Customary law also denies wives the right to inheritance. Even among the Yorubas, where daughters inherit under customary law, it is the children that inherit and not their mothers.<sup>101</sup> It follows that childless wives have no right to inherit family property.

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## 2. Divorce and Child Custody

### Laws and Policies

Similar to marriage, divorce is regulated by various laws. The dissolution of civil marriages is governed by the 1970 Matrimonial Causes Act<sup>102</sup> (1970 Act). Pursuant to the 1970 Act, a civil divorce may only be granted on the ground that the marriage has been broken "irretrievably."<sup>103</sup> Customary and Islamic law marriages, which are not governed by the 1970 Act, may be dissolved non-judicially in accordance with customary law or in Sharia courts.<sup>104</sup> In Northern Nigeria, a man married under Islamic law may divorce his wife unilaterally by repeating the phrase "I divorce you" three times (the *talaq*). Such action is not available to women.<sup>105</sup> However, Islamic law does provide that a woman may divorce her husband with his consent if she returns the dower payment to him.<sup>106</sup> In considering the grounds for divorce, Sharia courts may take into account, *inter alia*, any failure to pay maintenance, a prolonged absence, or the infliction of harm.<sup>107</sup> Many customary law courts will consider as relevant: adultery; cruelty; desertion; and impotence, sterility or the presence of any reproductive health problem.<sup>108</sup> At the dissolution of a customary law marriage, the parties must refund a portion of the bride price or dower payments that were made.<sup>109</sup>

In contrast to formation and dissolution of marriages, the 1970 Act authorizes courts to determine all custody and maintenance disputes for all types of marriages.<sup>110</sup> In any custody dispute, the 1970 Act provides that the interests of the child shall be paramount.<sup>111</sup> In determining responsibility for spousal and child maintenance, courts may consider the “means, earning capacity and conduct” of each party, as well as “all other relevant circumstances.”<sup>112</sup> Nevertheless, irrevocable divorce under Islamic law and any divorce under customary law terminates all rights of spousal maintenance.<sup>113</sup>

## Reality

Though there are no statistics to determine the number of female-headed households in Nigeria, such families are on the increase.<sup>114</sup> Maintenance suits against men are usually subject to the consideration of “all other relevant circumstances” as well as the discretion of the court. Thus, where it is proven that the wife was involved in an adulterous relationship, there is usually no issue that the husband will not pay maintenance. However, where a husband engages in adultery, courts do not regard it as a valid reason for a woman to want to divorce her husband, unless she can prove that he also combined adultery with cruelty. In any case, maintenance is usually awarded in respect of the children. Where there are no children or where the children are taken away from their mother, the question of maintenance does not arise.<sup>115</sup>

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## 3. Early Marriage

### Laws and Policies

The National Policy on Population discourages early marriage and states that parents should not arrange marriages for girls below the age of 18.<sup>116</sup> A variety of conflicting laws relate to the age at first marriage. The eastern states of Nigeria have enacted legislation that prohibits marriage contracts between parties under the age 16 and declares any such marriage legally unrecognizable.<sup>117</sup> In contrast, in the remainder of the country, the civil law provides that parties to a valid civil marriage be of “marriageable age.” Although the term “marriageable age” is not defined,<sup>118</sup> adolescents under the age of 21 cannot marry without parental consent under the civil law.<sup>119</sup> Yet customary law provides that children can marry when they have attained puberty,

usually at age 14 for boys and 12 for girls.<sup>120</sup> Under Islamic law as practiced in northern Nigeria, on the other hand, there is no minimum age for marriage.<sup>121</sup>

## **Reality**

The average age at first marriage in Nigeria is 16.<sup>122</sup> Child marriage is particularly common in the north, where the majority of girls are married between the ages of 12 and 15.<sup>123</sup> In Bauchi state, legislation entitled the Prohibition of Withdrawal of Girls from School for Marriage Act exists, but its enforcement is lax as the incidence of child marriages continues unabated. There is a need for federal legislation banning child and forced marriages, since child marriages have also been found to exist in Eastern Nigeria. Such a national-level law is also necessary to institute a strict enforcement procedure for the investigation and prosecution of offenders.

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## **4. Right to Access Family Planning, including Abortion and Sterilization, without Spousal Consent**

### **Laws and Policies/Reality**

Spousal consent is not a legal requirement for abortions necessary to save a woman's life, but it is commonly required by medical establishments in Nigeria.<sup>124</sup> Similarly, it is common for Nigerian medical practitioners to require spousal consent for female sterilization as well.<sup>125</sup>

## **C. SEXUAL VIOLENCE AGAINST WOMEN (ARTICLES 5, 6, AND 16)**

### **1. Rape and Sexual Crimes**

#### **Laws and Policies**

Both the Penal Code, applicable in the northern states, and the Criminal Code, applicable in the southern states, define rape to be sexual intercourse<sup>126</sup> with a woman or carnal

knowledge<sup>127</sup> of a woman when consent is obtained by use of fraud, force, intimidation, threats to life, or physical harm. "Carnal knowledge" and sexual intercourse are defined for the purposes of both codes as acts of penetration.<sup>128</sup> This definition excludes other sexual offenses, such as sodomy or the insertion of foreign objects into a woman's vagina, from the definition of rape.<sup>129</sup> Such acts may be prosecuted under the laws prohibiting "unnatural" sexual offenses,<sup>130</sup> assault,<sup>131</sup> "indecent assault,"<sup>132</sup> or acts of "gross indecency."<sup>133</sup> Under the Criminal Code, a woman may be prosecuted under the law prohibiting "unnatural" intercourse for "permitting" a man to have such intercourse with her.<sup>134</sup>

In general, both criminal codes in Nigeria do not recognize marital rape as a crime.<sup>135</sup> However, women may receive limited protection from marital rape under the prohibitions against assault. In addition, the above provisions that preclude prosecution of marital rape do not apply to the rape of an estranged spouse.<sup>136</sup>

Under the Penal Code in northern Nigeria, children under the age of 14 are incapable of providing consent, including consent to sexual acts.<sup>137</sup> In addition, a child under the age of 16 is incapable of consent to any act of "gross indecency" with an adult in a position of authority, such as a teacher or guardian.<sup>138</sup>

In southern Nigeria, the Criminal Code prohibits statutory rape.<sup>139</sup> Sexual intercourse with a girl under the age of 13 is punishable by life imprisonment, with or without caning, and sexual assault of a girl under the age of 13 is punishable by imprisonment of up to three years.<sup>140</sup> Assaults committed against girls between the ages of 13 and 16, including statutory rape, are punishable by imprisonment of up to two years.<sup>141</sup>

In both southern and northern Nigeria, the criminal laws also contain specific prohibitions against the "procurement" or employment of a minor child in prostitution.<sup>142</sup>

## Reality

The number of prison admittances for sex offenses in 1993 was 430, a significant decrease from the 1,201 admittances in 1990.<sup>143</sup> The government is doing nothing to address sexual violence and the punishments given out for such offences are far too mild to serve as deterrents. Indecent assault against women is treated as a misdemeanor punishable with a maximum of two years while indecent assault against men is treated as a felony punishable with a maximum of three years imprisonment.<sup>144</sup> The fact that the number of prison admittances for

sexual violence offenses has decreased does not necessarily prove a decrease in the incidence of rape. Rather, it is a sign of the conspiracy of silence<sup>145</sup> surrounding such acts due to women's fear of stigmatization and of the humiliating and arduous task of proving rape in court. Complaints are not taken seriously by law enforcement officers. Moreover, there have been reported incidents of rape in police custody, further undermining women's confidence in the authorities.<sup>146</sup>

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## **2. Domestic Violence**

### **Laws and Policies**

Incidents of domestic violence may be prosecuted under general criminal code provisions penalizing assault.<sup>147</sup> In northern Nigeria, it is permissible for husbands to "correct" their wives with physical punishment if it is lawful under the system of customary law to which the spouses adhere, and if the punishment is not "unreasonable in kind or in degree" or "does not amount to the infliction of grievous hurt."<sup>148</sup> In all states in Nigeria, a woman may use domestic violence as a ground for divorce if her husband has been convicted of grievously injuring her or attempting to seriously injure or kill her.<sup>149</sup>

### **Reality**

Government has undertaken no specific measures to curb domestic violence, despite evidence of its high incidence. A 1992 study reported that 67.6% of women stated that they had been attacked by their husbands.<sup>150</sup> Law enforcement officers do not take cases of domestic violence seriously, which explains why many such cases are never prosecuted. Rather, they are seen as family matters.<sup>151</sup> Such cases are seldom investigated or prosecuted as criminal assaults until a case results in death.<sup>152</sup> This occurred recently in Obibiezena Ngor Okpala in Imo State, when a man matcheted his wife to death for attending a church function without permission. In most cases, women suffer in silence because they have nowhere to turn, because of the unlikelihood of obtaining a remedy, and because of the cost of the legal process.

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### 3. Female Circumcision/Female Genital Mutilation

#### Laws and Policies

Currently, there is no law in Nigeria that prohibits female genital mutilation (FGM) — also referred to as female circumcision.<sup>153</sup> Although the Constitution recognizes the “sanctity of the human person” and prohibits torture and inhuman or degrading treatment, there has been no constitutional challenge to the customary practice of FGM.<sup>154</sup>

#### Reality

FGM is prevalent among most major ethnic groups in Nigeria, and affects approximately half of Nigerian women.<sup>155</sup> In 1993, a Children’s Decree was drafted that apparently included a ban on FGM.<sup>156</sup> The decree was revised in 1996, but to date that decree has not been passed and no information on its current status has been forthcoming.

The efforts of NGOs to address FGM have primarily focused on public education. These efforts have had a noticeable impact on FGM as it is no longer practiced openly in hospitals. However, recent research<sup>157</sup> suggests that FGM is still being practiced to a significant degree.

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### 4. Violence and/or Coercion in Health Services

#### Laws and Policies

While there is no significant body of law protecting patients’ rights, a few policies seek to ensure quality of health services by protecting rights of patients. The Medical and Dental Council of Nigeria has published ethical guidelines governing professional conduct, violation of which may result in disciplinary action by the council or suspension from practice.<sup>158</sup> However, the council guidelines do not provide protection for the patient’s right to informed consent for treatment, stating only that medical practitioners “must desist from compulsory treatment of a patient in the absence of illness . . . [and] must always obtain consent of the patient or the competent relatives or seek another professional opinion, before embarking on any special treatment procedures with determinable risks.”<sup>159</sup>



## Reality

There is no known case of violence or coercion in health services.

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## D. EDUCATION AND ADOLESCENTS (ARTICLE 10)

### 1. Access to Education

#### Laws and Policies

State and local governmental authorities are responsible for the provision and maintenance of primary educational facilities.<sup>160</sup> Some Nigerian states have established scholarship funds for female students and made school attendance mandatory, prohibiting the withdrawal of female students for the purposes of marriage.<sup>161</sup>

#### Reality

According to 1990 estimates, literacy rates were between 31%<sup>162</sup> and 39% for women and 51% for the total population.<sup>163</sup> In 1988, only 76% of girls and 74% of boys reached grade four in school.<sup>164</sup> An estimated 76% of primary school-aged children were actually enrolled, with only 67% of girls enrolled. The figures declined drastically by secondary school, to a total enrollment of 20% and a female enrollment of 17%.<sup>165</sup>

Though officially there is equal opportunity to go to school, young girls are often withdrawn from school for marriage. Those who get pregnant leave school and seldom return to complete their education. There is no government program specifically aimed at encouraging this class of young women to return to school.

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### 2. Information and Education on Sexuality and Family Planning

#### Laws and Policies

The National Social Development policy gives primary importance to the role of family-life education in achieving “planned parenthood.”<sup>166</sup> Family education is defined to include child

spacing and family information and may also include sex education and AIDS prevention information.<sup>167</sup> This information is presently a component of secondary-school curricula.<sup>168</sup> The National Policy on Population seeks to incorporate this information, including education on issues related to fertility, into community programming and the curricula of training and vocational schools.<sup>169</sup>

## **Reality**

The average age at first sexual intercourse for all women is 15.9 years.<sup>170</sup> Half of all women have children by age 20,<sup>171</sup> and 17% of all births in 1993 were to women under the age of 20.<sup>172</sup> The sexual education programs that exist are mostly run by NGOs and the number of people reached in rural areas, though significant, is still insufficient. Young women who are out of school, if identified, are encouraged to participate in such programs.

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## **E. EMPLOYMENT RIGHTS (ARTICLE 11)**

### **1. Maternity Leave and Benefits**

#### **Laws and Policies**

By law, all women are entitled to 12 weeks of maternity leave, during which period they must receive, at minimum, 50% of their regular wages.<sup>173</sup> In addition, the labor laws require employers to provide women workers with at least one hour each day to nurse their children.<sup>174</sup>

#### **Reality**

Nigerian women encounter informal discrimination in employment and often do not receive wages commensurate with those received by male coworkers.<sup>175</sup>

Labor laws are not enforced in privately owned enterprises, and in some cases pregnant women are compelled to resign and reapply after confinement.<sup>176</sup> Employers in the private sector are permitted to formulate their own policies and entitlements with respect to maternity benefits. A woman is on the average entitled to 84 days away from work,<sup>177</sup> part of which is her annual

leave with or without full pay as the employer may wish. In other words, she is not entitled to both annual and maternity leave within the same year. If 30 days is her usual annual leave, it means the woman would be entitled maternity leave of 64 days only or just 2 months in all. Women need more time both before and after delivery to look after their own well-being and that of the new baby.

In some states such as Kaduna, unmarried mothers must take maternity leave without pay and, in some cases, pregnancy results in outright dismissal.<sup>178</sup> Rule 03303 of the Kaduna state civil service rules requires that a woman civil servant, married or unmarried, who is about to undertake a course of training of not more than six months duration must enter into an agreement to refund part or the whole cost of the course should it be interrupted on grounds of pregnancy.

In practice, most single mothers are taxed as though childless even though under the current regulation of the Joint Tax Board, they are entitled to tax relief provided they can show documented evidence of sole responsibility for the child. This occurs because the burden of producing the required evidence is too cumbersome for most single mothers to meet, especially those with limited education.

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## **2. Protection in Pregnancy**

### **Laws and Policies**

The Labour Act contains some provisions that — although designed to protect women — prohibit women from engaging in certain areas of employment, such as working at night or underground. The Constitution seeks to ensure working conditions are “just and humane” and do not endanger worker health, safety, or welfare.<sup>179</sup>

### **Reality**

In 1990, less than 10% of Nigerian women were employed in nonagricultural jobs. Although the prohibition of night and underground work for women in the Labour Act purports to protect women, it is discriminatory because it narrows the opportunities for work available to women. It is discriminatory to prohibit women from certain jobs because it infringes on their right to choose their work.<sup>180</sup> Legislation is needed to improve safety conditions in the workplace

such that the work environment is safe for both men and women. Measures mandating safety devices, body coverings, strict penalties for sexual impropriety at work, and in-house training on emergency procedures are needed. Legislation exempting women from night and underground work during the tenure of pregnancy without penalty should be the only exception.

## ENDNOTES

<sup>1</sup> FEDERAL MINISTRY OF HEALTH, THE NATIONAL HEALTH POLICY AND STRATEGY TO ACHIEVE HEALTH FOR ALL NIGERIANS 9 (1988) [hereinafter HEALTH POLICY].

<sup>2</sup> *Id.* at 7.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> PHC is defined in the National Health Policy in accordance with World Health Organization guidelines to include general health services, preventive, curative, promotive, and rehabilitative care. *Id.* at 12.

<sup>5</sup> *Id.* at 9-10.

<sup>6</sup> Decree No. 29, The National Primary Health Care Development Agency, pt. 1 (1992), in 44 INT'L DIG. OF HEALTH LEGIS. 576 (1993) [hereinafter Health Care Agency].

<sup>7</sup> *Id.* § 3(a), (b).

<sup>8</sup> FEDERAL OFFICE OF STATISTICS, LAGOS, NIGERIA AND DEMOGRAPHIC AND HEALTH SURVEYS, IRD/MACRO INTERNATIONAL, NIGERIA DEMOGRAPHIC AND HEALTH SURVEY (1990) 1 (Apr. 1992) [hereinafter NDHS]; HEALTH POLICY, *supra* note 1, at 2.

<sup>9</sup> NIGERIA CONST. (1979), 4<sup>TH</sup> Sched., § 2(c); HEALTH POLICY, *supra* note 1, at 2.

<sup>10</sup> *Market Reports: Nigeria-Health Care Development Plan*, NATIONAL TRADE DATA BANK, Sept. 11, 1995, available in LEXIS, World Library, MKTRPT File; HEALTH POLICY, *supra* note 1, at 11.

<sup>11</sup> O.Y. Oyeneye, *Population and Health Planning*, in POPULATION AND DEVELOPMENT IN NIGERIA 50, 54 (I.O. Orubuloye & O.Y. Oyeneye eds., 1983).

<sup>12</sup> Grace E. Delano, *Examination of Health Services and the Service Delivery System*, in PREVENTION OF MORBIDITY AND MORTALITY FROM UNSAFE ABORTION IN NIGERIA 25, 26 (Friday E. Okonofua & Adetoun Ilukoma eds., 1993); see also U.N. Population Fund (UNFPA) 33 PROGRAMME REVIEW AND STRATEGY DEVELOPMENT REPORT: NIGERIA [hereinafter UNFPA].

<sup>13</sup> HEALTH POLICY, *supra* note 1, at 13; Delano, *supra* note 12, at 26.

<sup>14</sup> NDHS, *supra* note 8, at 5, 117.

<sup>15</sup> Delano, *supra* note 12, at 26.

<sup>16</sup> FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, NIGERIA: A COUNTRY STUDY 152 (Helen Chapin Metz, ed., 1992).

<sup>17</sup> HEALTH POLICY, *supra* note 1, at 49.

<sup>18</sup> MEDICAL AND DENTAL COUNCIL OF NIGERIA, RULES OF PROFESSIONAL CONDUCT FOR MEDICAL AND DENTAL PRACTITIONERS IN NIGERIA 16 (Revised Edition, 1995).

<sup>19</sup> *Id.* at 21-22.

<sup>20</sup> *Id.* at 12-13.

<sup>21</sup> *Governing Council of the United Nations Development Program, Proposed Programmes and Projects*, United Nations Population Fund, 39<sup>th</sup> Sess., Agenda Item 7, at 4, U.N. Doc. DP/FPA/CP/94 (1992).

<sup>22</sup> INTERNATIONAL REPRODUCTIVE RIGHTS RESEARCH ACTION GROUP—NIGERIA (IRRRAG), VOICES: FINDINGS OF A RESEARCH INTO REPRODUCTIVE RIGHTS OF WOMEN IN NIGERIA 30 (1995) [hereinafter VOICES].

<sup>23</sup> NDHS, *supra* note 8, at 90.

<sup>24</sup> *Sub-Saharan Africa: Nigeria*, IBC International Country Risk Guide, December 1995, available in LEXIS, World Library, IBCCRG File. One U.S. dollar is worth approximately 79 Nigerian Nairas. See U.N. Operational Rates of Exchange (visited Feb. 27, 1997) <gopher://gopher.undp.org/00/uncurr/exch\_rates>. Since 1994, the official exchange rate has remained fixed at N 21.9996 per U.S.\$.

<sup>25</sup> *Nigeria Country Reports*, KCWD/KALEIDOSCOPE, Feb. 20, 1995, available in LEXIS, News Library, KCWD File; *World Development Report, Investing in Health*, WORLD BANK 210 (1993).

<sup>26</sup> *Finding from a Needs Assessment Workshop* (Women's Rights Project, CLO, 1998).

<sup>27</sup> *Id.*

<sup>28</sup> Franca Ofor, Report of FIDA Anambra (on file with WOPED).

<sup>29</sup> *Finding from a Needs Assessment*, *supra* note 26.

<sup>30</sup> Ofor, *supra* note 28.

<sup>31</sup> FEDERAL REPUBLIC OF NIGERIA, NATIONAL POLICY ON POPULATION FOR DEVELOPMENT, UNITY, PROGRESS AND SELF-RELIANCE 1 (1988) [hereinafter NAT'L POLICY].

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> *Id.* at 12-13.

<sup>35</sup> *Id.* at 18.

<sup>36</sup> UNFPA, *supra* note 12, at 12, 33.

<sup>37</sup> Planned Parenthood Foundation of Nigeria, Country Programme Situation Information, tbl.

A1 (1996) (unpublished paper, on file with The Center for Reproductive Law and Policy) at 36.

<sup>38</sup> Theresa Akumadu, Data on the Nigerian Chapter of the Anglophone Africa Report 9 (unpublished paper, on file with The Center for Reproductive Law and Policy).

<sup>39</sup> Bamikale J. Feyisetan & Martha Ainsworth, *Contraceptive Use and the Quality, Price, and Availability of Family Planning in Nigeria*, in THE WORLD BANK, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, Living Measurement Study Working Paper No. 108, at 4-5 (1994).

<sup>40</sup> UNFPA, *supra* note 12, at 12.

<sup>41</sup> Women's Rights Project, Civil Liberties Organization, *Beasts of Burden, A Study of Women's Legal Status and Reproductive Health Rights In Nigeria*.

<sup>42</sup> INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, *WOMEN'S ROLE IN HOUSEHOLD DECISION-MAKING: A CASE STUDY IN NIGERIA* (June 1997).

<sup>43</sup> *Maternal Mortality: Travails of Nigerian Womanhood*, 3 WOMEN'S HEALTH FORUM 1. (Published by the Women's Health and Action Research Centre (WHARC), Nigeria, Dec. 1996).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> WOMEN'S ROLE IN HOUSEHOLD DECISION-MAKING, *supra* note 42.

<sup>47</sup> NAT'L POLICY, *supra* note 31, at 15-17.

<sup>48</sup> UNFPA, *supra* note 12, at 34; HEALTH POLICY, *supra* note 1, at 9-10.

<sup>49</sup> CRIM. CODE §§ 233C(1), 233D; PENAL. CODE § 202 (also covering "willful exhibition" of obscene matters).

<sup>50</sup> UNFPA, *supra* note 12, at 34; HEALTH POLICY, *supra* note 1, at 9-10.

<sup>51</sup> NAT'L POLICY, *supra* note 31, § 5.1.7, at 16.

<sup>52</sup> Food and Drugs Act, § 5(a), ch. 150 (1990).

<sup>53</sup> *Id.* § 4.

<sup>54</sup> *Id.* § 8(2).

<sup>55</sup> Planned Parenthood Foundation of Nigeria, Country Programme Situation Information (1996) (unpublished paper, on file with The Center for Reproductive Law and Policy) at 147.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 36.

<sup>58</sup> CRIM. CODE § 228; *see* PENAL CODE § 232. The criminal code provision is based on the Offenses Against the Persons Act 1861, § 58. *See* T.B.E. Ogiamen, *A Legal Framework to Liberalize Abortion in Nigeria*, NIG. CURRENT L. REV. 107, 111 (1988-91). The Criminal Code also proscribes the "killing of an unborn child," which under English law was criminalized as "child destruction." *See* CRIM. CODE § 228. The offense criminalizes any deliberate act or omission when a woman is about to give birth which prevents the child from being born alive, encompassing "the wilful [sic] infliction of ante-natal injuries on a child in order to cause its death before it has an independent existence of its mother." CRIM. CODE §§ 328, 309. *See* EMMANUEL OLAWUYI FAKAYODE, THE NIGERIAN CRIMINAL CODE COMPANION 391, ¶ 64 (1977). This offense is punishable by life imprisonment. However, any operation performed for the preservation of a woman's life is excluded from prosecution under this provision. *See* CRIM. CODE § 297. The Penal Code contains a similar provision which criminalizes intentional performance of an act "preventing [a] child from being born alive or causing it to die after its birth...." but does not limit the applicability of this offense to situations where a woman is about to give birth. PENAL CODE § 235. The definition of pregnancy utilized in Nigerian laws on abortion is derived from developed English law. *See* I. E. Adi, *The Question of Abortion*, NIG. CURRENT L. REV. 191, 192 (1982).

- <sup>59</sup> CRIM. CODE § 297. The ground of preservation of mother's life may include consideration of risks posed by the pregnancy to the mother's physical or mental health, as defined by developed law following the English case of *R. v. Bourne* [1939] 1 K.B. 687 (Ireland); see Ogiemien, *supra* note 57, at 121.
- <sup>60</sup> PENAL CODE § 235.
- <sup>61</sup> See *Abortion in Nigeria: What the Law Says and What it Doesn't Say*, CAMPAIGN AGAINST UNWANTED PREGNANCY NEWSLETTER (Campaign Against Unwanted Pregnancy) June 1993, at 3-4.
- <sup>62</sup> CRIM. CODE § 230.
- <sup>63</sup> PENAL CODE § 233.
- <sup>64</sup> *Id.* § 234.
- <sup>65</sup> Theresa Akumadu, Data on the Nigerian Chapter of the Anglophone Africa Report 1 at 10 (unpublished paper, on file with The Center for Reproductive Law and Policy); Delano, *supra* note 12, at 25.
- <sup>66</sup> Delano, *supra* note 12, at 25.
- <sup>67</sup> INTERNATIONAL PLANNED PARENTHOOD FEDERATION, UNSAFE ABORTIONS AND POST-ABORTION FAMILY PLANNING IN AFRICA: THE MAURITIUS CONFERENCE at 9 (1994).
- <sup>68</sup> POPULATION COUNCIL, PREVENTION OF MORBIDITY AND MORTALITY FROM UNSAFE ABORTION IN NIGERIA, CRITICAL ISSUES IN REPRODUCTIVE HEALTH AND POPULATION vii (1991).
- <sup>69</sup> WORLD HEALTH ORGANIZATION, MATERNAL HEALTH AND SAFE MOTHERHOOD PROGRAMME, ABORTION: A TABULATION OF AVAILABLE DATA ON THE FREQUENCY AND MORTALITY OF UNSAFE ABORTION 33 (2d ed. 1994).
- <sup>70</sup> PENAL CODE § 54; CRIM. CODE § 297.
- <sup>71</sup> *Sterilization Laws, Practices, Policies and Conditions in Africa*, at 17 (1994) (unpublished paper on file with the Center for Reproductive Law and Policy).
- <sup>72</sup> Akumadu, *supra* note 38, pt. III.; DHS *Regional Analysis Workshop for Anglophone Africa*, Fertility Trends and Determinations in Six African Countries, at 70 (1994) [hereinafter *DHS Analysis*].
- <sup>73</sup> *DHS Analysis*, at 70.
- <sup>74</sup> Decree No. 23, Medical and Dental Practitioners Decree §§ 17(1)(a), (5), (7), (1988) [hereinafter *Medical Decree*].
- <sup>75</sup> Planned Parenthood, *supra* note 37, tbl. B, § 2.8 (female sterilization as a form of contraception estimated at 3.9%); see generally Akumadu, *supra* note 38, at 10.
- <sup>76</sup> Akumadu, *supra* note 38, app., ¶ 3.
- <sup>77</sup> VOICES, *supra* note 22, at 106-107.
- <sup>78</sup> Feyisetan & Ainsworth, *supra* note 39, at 9.
- <sup>79</sup> TONY BARNETT & PIERS BLAKIE, AIDS IN AFRICA; ITS PRESENT AND FUTURE IMPACT 636 (1992).
- <sup>80</sup> Feyisetan & Ainsworth, *supra* note 39, at 1.
- <sup>81</sup> Bamikale Feyisetan, Prevalence of Sexually Transmitted Diseases in Nigeria: Background Paper 10 (1994) (unpublished paper on file with The Center for Reproductive Law and Policy) [hereinafter *Prevalence of STDs*].
- <sup>82</sup> NATIONAL AIDS/STD CONTROL PROGRAMME, FACT SHEET OF HIV/AIDS IN NIGERIA (June 1996).
- <sup>83</sup> *Id.*
- <sup>84</sup> Prevalence of STDs, *supra* note 80, at 22.
- <sup>85</sup> Akumadu, *supra* note 38, app.
- <sup>86</sup> See LESLYE OBIORA ET AL., WHAT EVERY WOMAN IN NIGERIA SHOULD KNOW 1-3 (1986).
- <sup>87</sup> *Id.* at 2.
- <sup>88</sup> *Id.*
- <sup>89</sup> VOICES, *supra* note 22, at 72, 115.
- <sup>90</sup> *Id.* at 78-83, 119-120.
- <sup>91</sup> *Id.* at 120-121.
- <sup>92</sup> Akumadu, *supra* note 38, at 12. However, the father may lose this right if he has given his daughter an option to choose amongst suitors. See *Yakubo v. Paiko*; CA/K/80s/85, at 18-19, 24 (Kaduna Ct. App. 1985) (noting also that fathers that chose to exercise this right should consult the wishes of their daughters if they are over 14 years old); Auwalu H. Yadudu, *Colonialism and the Transformation of the Substance and Form of Islamic Law in the Northern States of Nigeria*, 9 J. L. & RELIGION 17, 43 (1991).
- <sup>93</sup> VOICES, *supra* note 22, at 72, 115.
- <sup>94</sup> OBIORA, *supra* note 85, at 2.
- <sup>95</sup> MARRIAGE ACT [Chapter 218], §§ 11 (1)(d), 30, 33, 35, 39, 46-47 (1971) (Nig.) (stating the penalties for contravention of these provisions). In practice, the requirement of monogamy in civil marriage has not invalidated subsequent customary law marriages. See OBIORA, *supra* note 85, at 2.

<sup>96</sup> OBIORA, *supra* note 85, at 6.

<sup>97</sup> *Id.* at 4.

<sup>98</sup> CRIM. CODE § 361 (punishing "[any] person who, with intent to marry or carnally know a female of any age, or to cause her to be married...takes her away, or detains her against her will").

<sup>99</sup> FEDERAL REPUBLIC OF NIGERIA AND UNICEF, CHILDREN AND WOMEN IN NIGERIA, A SITUATIONAL ANALYSIS 12 (1990).

<sup>100</sup> Gender Violence in Cultural Contexts, WOPED, 1997.

<sup>101</sup> Family Law in Nigeria, a keynote address by Chief (Mrs) P. Kuye to Women In Nigeria, March 24, 1994.

<sup>102</sup> MATRIMONIAL CAUSES ACT [Chapter 220] (1970) (Nig.).

<sup>103</sup> An exclusive list of situations satisfy this condition: the willful and persistent refusal to consummate the marriage; adultery that is "intolerable"; the absence of consortium for two or more years; desertion lasting at least one year; and marital behavior such that "the petitioner cannot reasonably be expected to live with the respondent." Unreasonable marital behavior includes the failure to pay maintenance for at least two years and the commission of sexual assault, including rape. MATRIMONIAL CAUSES ACT §§ 15(1), 15(2)(a)-(h), 16. *See* E.N.U. Uzodike, *A Decade of Matrimonial Causes Act 1970*, NIG. CURRENT L. REV. 55, 56 (1983).

<sup>104</sup> OBIORA, *supra* note 85, at 11; Akumadu, *supra* note 38, at 13.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> OBIORA, *supra* note 85, at 12.

<sup>108</sup> OBIORA, *supra* note 85, at 13; Akumadu, *supra* note 38, at 13.

<sup>109</sup> VOICES, *supra* note 22, at 77.

<sup>110</sup> Akumadu, *supra* note 38, at 13; *see generally* MATRIMONIAL CAUSES ACT § 3(a)(i), 25.

<sup>111</sup> MATRIMONIAL CAUSES ACT § 71(1).

<sup>112</sup> *Id.* In addition, the criminal laws in the south require heads of households to maintain their legitimate children. *See* CRIM. CODE § 301. The head of a household is usually considered to be the father. *See* O. A. Ipaye, *Custody and Child-Support Laws in Nigeria*, NIG. CURRENT L. REV. 67, 75 (1988-91).

<sup>113</sup> OBIORA, *supra* note 85, at 25; VOICES, *supra* note 22, at 78.

<sup>114</sup> CLO, PATTERNS OF ABUSE OF WOMEN'S RIGHTS IN EMPLOYMENT AND POLICE CUSTODY (1995).

<sup>115</sup> FIDA Anambra Report Ref. FIDA case files # FIDA/AE/C/97 and FIDA/AE/C/61 (on file with WOPED).

<sup>116</sup> NAT'L POLICY, *supra* note 31, at 14.

<sup>117</sup> AGE OF MARRIAGE LAW [Chapter 6] §§ 2-4, 6 (Eastern Region 1956).

<sup>118</sup> *Id.* § 3(1)(e); OBIORA, *supra* note 85, at 4. English common law doctrines set a minimum age for marriage at 14 for boys and 12 for girls. *See* Harrod v. Harrod, 69 E. R. 344, 349 (1954).

<sup>119</sup> MARRIAGE ACT §§ 18-20, 48 (proscribing penalties for contravention of these provisions).

<sup>120</sup> OBIORA, *supra* note 85, at 3-4. In the eastern states, the minimum age for customary marriages is set by law at 16. *See* Akumadu, *supra* note 38, at 12.

<sup>121</sup> Sarah Y. Lai & Regan E. Ralph, *Female Sexual Autonomy and Human Rights*, 8 HARV. HUM. RTS. J. 201, 219 (1995).

<sup>122</sup> Akumadu, *supra* note 38, at 13.

<sup>123</sup> VOICES, *supra* note 22, at 118.

<sup>124</sup> Akumadu, *supra* note 38, at 10.

<sup>125</sup> *Id.* at 10.

<sup>126</sup> In northern Nigeria, the Penal Code defines rape to be sexual intercourse with a woman against her will or without her consent, or sexual intercourse with a girl under the age of 14. PENAL CODE §§ 282 (1)(a)-(b), (e). Furthermore, the Penal Code criminalizes consensual intercourse if the woman's consent was obtained through use of threats to her life or threats of physical harm. *Id.* § 282 (1)(c).

<sup>127</sup> In southern Nigeria, the Criminal Code defines rape as "unlawful carnal knowledge of a woman or girl, without her consent"... (e.g. consent obtained by force, fraud, threats, or "intimidation of any kind." Attempted rape is included within the definition. CRIM. CODE § 357.

<sup>128</sup> PENAL CODE § 282 (stating that [m]ere penetration is sufficient to constitute the sexual intercourse necessary for the offense of rape"); CRIM. CODE § 6 (defining "carnal knowledge" and "carnal connection").

<sup>129</sup> ISABELLA OKAGBUE, THE REFORM OF SEXUAL OFFENSES IN NIGERIAN CRIMINAL LAW 6(1991); PENAL CODE § 282 (using the term "sexual intercourse" to define rape); § 284 (using the term "carnal intercourse" to define "unnatural" sexual offences); *see ALSO* EMMANUEL OLAWUYI FAKAYODE, THE NIGERIAN CRIMINAL CODE COMPANION 430 ¶ 71 (1977) (defining "carnal knowledge" and "carnal connection").



<sup>130</sup> PENAL CODE. § 284. Section 214 of the Criminal Code contains a similar provision. Under both codes, conviction for an unnatural sexual offense is punishable by 14 years of imprisonment. *See* CRIM. CODE § 214.

<sup>131</sup> Assault with intent to commit an unnatural offence is punishable by 14 years of imprisonment. CRIM. CODE § 352.

<sup>132</sup> CRIM. CODE §§ 353, 360. Under these provisions, indecent assault on a woman is punishable by two years of imprisonment, while indecent assault of a man is punishable by three years of imprisonment. *See* OKAGBUE, *supra* note 128, at 6.

<sup>133</sup> PENAL CODE § 285. This provision criminalizes acts of "gross indecency" committed upon the person of another without that person's consent, or through the use of threats or force. *See id.* The offense is punishable by seven years of imprisonment, with or without a fine. Children under 16 years of age in certain relationships are presumed incapable of consenting for the purposes of this section.

<sup>134</sup> *Id.*

<sup>135</sup> Under the Criminal Code in southern Nigeria, intercourse between a husband and wife can never constitute rape. CRIM. CODE § 6; Pursuant to the Penal Code in northern Nigeria, the definition of rape explicitly excludes the marital rape of a woman who has attained the age of puberty. PENAL CODE § 282(2).

<sup>136</sup> OKAGBUE, *supra* note 128, at 14.

<sup>137</sup> PENAL CODE § 39; *see also* PENAL CODE § 282(1)(b).

<sup>138</sup> *Id.* § 285.

<sup>139</sup> CRIM. CODE §§ 218, 221. Any prosecution for statutory rape under the criminal code must be brought within two months after the offense was committed. *See id.*

<sup>140</sup> *Id.* §§ 218, 222. Attempted statutory rape of a girl under the age of 13 is punishable by imprisonment for up to 14 years, with or without caning. *See id.*

<sup>141</sup> *Id.* §§ 221, 222.

<sup>142</sup> *See* PENAL CODE §§ 275, 276, 278, 281; CRIM. CODE §§ 219, 223, 224.

<sup>143</sup> FEDERAL OFFICE OF STATISTICS, 221 STATISTICAL NEWS 1 at tbl. 85 (Government of Nigeria, Dec. 8, 1995).

<sup>144</sup> WOPED, GENDER VIOLENCE IN CULTURAL CONTEXT (1997).

<sup>145</sup> *Id.*

<sup>146</sup> SUNDAY CHAMPION, Sept. 15, 1991.

<sup>147</sup> Akumadu, *supra* note 38, at 14.

<sup>148</sup> PENAL CODE §§ 55(1)(d), 56. "Grievous hurt" is defined exclusively under the penal code to be: "emasculat[i]on; permanent deprivation of sight, hearing or speech; loss of a limb or permanent disfigurement of the head or face; the fracture or dislocation of a bone or tooth; or harm that is life-threatening, or which causes the victim to suffer for 20 days either incapacitated or in severe physical pain..." PENAL CODE § 241.

<sup>149</sup> MATRIMONIAL CAUSES ACT §§ 5(2)(c), 16(1)(e); *see also* PENAL CODE § 241 (defining "grievous hurt"). The Act provides that a conviction for attempted murder or the infliction of grievous harm is "sufficient" evidence of marital behavior such that "the petitioner cannot reasonably be expected to live with the respondent."

<sup>150</sup> S. O. Bianlowu, Women and Domestic Violence in Nigeria (B. Sc. Sociology Research Project, Dept of Sociology, University of Jos, Nigeria 1992). *See also* Etannibi E. O. Alemika, Family Violence and Human Rights (EMPARC Monograph Series 1, 1996).

<sup>151</sup> Hon. Justice Ifunanya Udom-Azogu in her chairman's address at the Legal Rights Advocacy Seminar of the Women's Centre for Peace and Development (WOPED), Feb. 1998.

<sup>152</sup> Mrs. F. I. Igwe in a Keynote address at the Legal Rights Advocacy Seminar of WOPED, Feb. 1998.

<sup>153</sup> Christine Adebajo, *Female Genital Mutilation Educational Approach*, in RESEARCH ACTION & INFORMATION NETWORK FOR THE BODILY INTEGRITY OF WOMEN AND COLUMBIA SCHOOL OF PUBLIC HEALTH, CENTER FOR POPULATION AND FAMILY HEALTH, REPORT OF THE GLOBAL ACTION AGAINST FEMALE GENITAL MUTILATION FIRST INTER-AGENCY WORKING GROUP MEETING at 8 App. IV (1994).

<sup>154</sup> NIGERIA CONST. 1985 §§ 17(2)(b), 31(1)(a); Akumadu, *supra* note 38, at 17.

<sup>155</sup> NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 25 (Rainbo 1995); Mairo U. Mandara, *Prevalence Of Female Genital Mutilation in Zaira: A Critical Appraisal*, in DISCUSSING REPRODUCTIVE RIGHTS IN NIGERIA, at 29, 36 (1995).

<sup>156</sup> Nigeria's Initial Report to the Committee on the Rights of the Child (drafted by Amb Judith Attah, Geneva, Sept. 1996).

<sup>157</sup> Beasts of Burden, *supra* note 41.

<sup>158</sup> MEDICAL AND DENTAL COUNCIL OF NIGERIA, RULES OF PROFESSIONAL CONDUCT FOR MEDICAL AND DENTAL PRACTITIONERS IN NIGERIA 16 (Revised Edition, 1995).



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<sup>159</sup> *Id.* at 2-13.

<sup>160</sup> NIGERIA CONST. 4<sup>th</sup> Sched., § 2(a).

<sup>161</sup> UNFPA, *supra* note 12, at 4.

<sup>162</sup> *Id.* at 7.

<sup>163</sup> WORLD BANK, WORLD DEVELOPMENT REPORT 1995: WORKERS IN AN INTEGRATING WORLD 210 (1995) [hereinafter WORLD DEVELOPMENT REPORT 1995].

<sup>164</sup> *Id.* at 218.

<sup>165</sup> *Id.* at 216.

<sup>166</sup> FEDERAL REPUBLIC OF NIGERIA, SOCIAL DEVELOPMENT POLICY FOR NIGERIA, 21 (1989).

<sup>167</sup> NIGERIAN EDUCATIONAL RESOURCES AND DEVELOPMENT COUNCIL, POPULATION EDUCATION DEPARTMENT, POPULATION AND FAMILY LIFE EDUCATION SUPPLEMENTARY TEACHER'S GUIDE ON INTEGRATED SCIENCE FOR JUNIOR SECONDARY SCHOOLS (1990).

<sup>168</sup> *Id.*

<sup>169</sup> NAT'L POLICY, *supra* note 31, at 22-23.

<sup>170</sup> *Nigeria 1990: Results from the Demographic and Health Survey*, 23 STUDIES IN FAMILY PLANNING 211, 213 (1992).

<sup>171</sup> NDHS 1990, *supra* note 8, at xv.

<sup>172</sup> WORLD DEVELOPMENT REPORT 1995, *supra* note 162, at 212.

<sup>173</sup> LABOR ACT § 54.

<sup>174</sup> *Id.*

<sup>175</sup> Akumadu, *supra* note 38, at 15; UNITED STATES DEPARTMENT OF STATE, NIGERIAN HUMAN RIGHTS PRACTICES 1995 (1996).

<sup>176</sup> Ofor, *supra* note 28.

<sup>177</sup> Patterns of Abuse, *supra* note 113.

<sup>178</sup> *Id.*

<sup>179</sup> NIGERIA CONST. ch. II, §§ 17(3)(b)-(c).

<sup>180</sup> Patterns of Abuse, *supra* note 113.