



musawah

For Equality in the Muslim Family

Musawah Thematic Report on Article 16 & Muslim Family Law:

NIGERIA

67th CEDAW Session
Geneva, Switzerland
July 2017

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ANNEX 1: MUSAWAH VISION

I. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of Nigeria, reporting before the 67th Session of the CEDAW Committee in July 2017.*

This is the CEDAW Committee's sixth engagement with Nigeria, which signed the CEDAW Convention on April 23rd, 1984, and ratified it on July 13th, 1985, without reservations.

In particular, this report examines Nigerian laws and practices that enforce *de jure* and *de facto* discrimination against women in the follow areas: *equal rights and responsibilities in marriage, violence against women, early, child, and forced marriage, polygamy, divorce, custody and guardianship, and inheritance*.

Musawah hopes that the research, analysis, and recommendations in this report will provide critical information in (1) highlighting key concerns and identifying gaps in the State party report and the State party's reply to the list of issues; (2) providing alternative arguments *within* Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-compliance with its international human rights treaty obligations; and (3) suggesting recommendations for reform based on progressive developments in reform of Muslim family laws in several Muslim countries and contexts.

Musawah hopes that the CEDAW Committee will utilize this report as a key resource during its Constructive engagement with the State party, and in follow-up activities on the Concluding observations.

*This report was prepared with research assistance from the International Human Rights Clinic at the Harvard Law School.

II. LEGAL BACKGROUND

Nigeria is a federation of states and operates under a tripartite legal system: federal law, customary law, and Islamic law. These three tend to operate in different spheres, and marriage and family matters within each system operate by the rules of that system. There are 36 states in Nigeria and one Federal Territory (Federal Capital Territory of Abuja). The 36 states are commonly divided into Northern (19 states) and Southern states (17 states).¹

Muslims constitute 52% of the population.² The majority of Muslims in Nigeria are Sunni Muslims (estimates between 70-90%).³ Sunni Islam has four main schools of Islamic jurisprudence, and most Muslims in Nigeria follow the *Maliki* school which is the basis of the Muslim personal status law.

Islamic law in Nigeria

Muslims form the majority population in the Northern states of Nigeria. As such Islamic law and practices that govern Muslim marriages and family relations are mainly applied in these states. Eighteen of the 19 Northern states have *Shari'ah* Courts of Appeal with the remaining one state (Benue) sharing a *Shari'ah* Court of Appeal with another state (Plateau).⁴ The 1999 Constitution gives *Shari'ah* courts separate jurisdiction. Section 262 of the Constitution grants the *Shari'ah Court of Appeal* the right to decide questions of personal law for Muslims, including marriage, guardianship, inheritance, and succession. The Northern States also have a separate Penal Code of Northern Nigeria⁵, additionally 12 individual Northern states have their own *Shari'ah* based Penal Codes.

Nigeria does not have codified laws relating to Muslim marriages and family relations. These areas are governed by a combination of *Shari'ah* principles, Nigerian customary practices and judicial precedents.⁶ With Sunni Muslims of the *Maliki* School being the majority of Muslims in Nigeria, generally, the rules of *Maliki* jurisprudence (*fiqh*) apply in Muslim personal status matters.⁷

¹ The 19 Northern states are Adamawa, Bauchi, Benue, Boru, Gornbe, Jigawa, Kadanu, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara. The 17 Southern states are Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers.

² PEW FORUM – Religious Demography of Sub-Saharan Africa <http://www.pewforum.org/files/2010/04/sub-saharan-africa-appendix-b.pdf>

³ Who are Sunnis and Shias – The Nigerian Voice <https://www.thenigerianvoice.com/news/108270/who-are-the-sunnis-and-the-shiites.html>

⁴ Philip Ostien and Albert Dekker, "Shari'ah and National Law in Nigeria", in *Shari'ah Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 578, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

⁵ Penal Code of Northern Nigeria <https://www.equalitynow.org/content/penal-code-northern-nigeria>

⁶ Philip Ostien and Albert Dekker, "Sharia and National Law in Nigeria", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 585-586, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Information obtained from Nigerian advocate, February 2017

⁷ E.I. Nwogugu, "Family law in Nigeria", (HEBN Studies in Nigerian Law, Third Edition, 2014), p. 76; Philip Ostien and Albert Dekker, "Sharia and National Law in Nigeria", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 585, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Baobab, "Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report", 2002, p.3, <http://gsdrc.ids.ac.uk/docs/open/ssaj33.pdf> Eighteen of the 19 Northern states have *Shari'ah* Courts of Appeal. Benue shares a *Shari'ah* Court of Appeal with Plateau.

Discriminatory family laws and practices

According to the 2016 State party report⁸ to the CEDAW Committee, the Nigerian Law Reform Commission (NLRC) has been tasked with harmonizing the laws regarding marriage and family relations and to redress existing “offensive” legal provisions. An example of one such provision is in the Shari’ah Penal Code of Northern Nigeria which does not criminalize domestic violence under Section 55(1)(d): *“Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done [...] by a husband for the purpose of correcting his wife”*.

Also according to the State report, the NLRC has drafted a model Customary Law and Islamic Law Marriage/Divorce Registration law “which seeks to provide for the mandatory registration of all marriages contracted within the state has been developed and placed before the National Assembly for the passage into law.” The report also states that as per law reforms undertaken by the NLRC, “Divorce under customary and Islamic laws will now follow due process and besides return of dowry, divorce paper will now be obtainable”. It is unclear at this time the exact contents of the ‘model’ law nor the process undertaken by the government in formulating the model law - whether further consultations and engagement will be conducted with women’s groups and affected individuals.

Non-domestication of Federal Laws

The federal government has passed legislation to address several of the main concerns we highlight, such as the Child Rights Act (CRA), which sets the minimum age of marriage as 18 years for males and females. Currently, however, the CRA as well as the Violence Against Persons Prohibition (VAPP) Act being national level laws, require formal adoption by each individual states for them to apply at state level.⁹ These laws are yet to be adopted by the Northern states with predominantly Muslim population.

In recent years, the State party introduced the Gender and Equal Opportunities Bill,¹⁰ which seeks to domesticate CEDAW principles, including requirements of proactive laws to ensure gender equality in both public and private spheres. The measure, however, failed in the Senate, largely because of opposition on religious grounds, particularly from Senators representing the country’s predominantly Muslim northern states. They claimed that the requirements of the bill were in conflict with the Constitution, which enshrines freedom of religion.¹¹

It is clear that these critical progressive laws in Nigeria are being held back from advancing equality and protecting rights of women and girls on the basis of a patriarchal understanding of Islam and Shari’ah laws and practices.

⁸ Nigeria State Report, October 2015, p. 63 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/004/06/PDF/N1600406.pdf?OpenElement>

⁹ Section 4, Part II of Second Schedule of Nigeria’s Constitution (1999), https://www.constituteproject.org/constitution/Nigeria_1999.pdf?lang=en; UNICEF, “Child rights Legislation in Nigeria”, Fact Sheet, 2011, p. 2, https://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf

¹⁰ *Gender and Equal Opportunities Bill 2011*, http://www.aacoalition.org/images/Gender_and_Equal_Opportunities_Bill_National.pdf ; “Facts about the Gender and Equal Opportunities Bill,” Fed. Ministry of Women Affairs and Social Development, <http://www.womenaffairs.gov.ng/index.php/cedaw/publications/178-facts-about-the-gender-and-equal-opportunities-bill>.

¹¹ “Nigeria: Gender Equality Bill Fails in the Senate,” Global Legal Monitor, Library of Congress, Mar. 28, 2016, <http://www.loc.gov/law/foreign-news/article/nigeria-gender-equality-bill-fails-in-the-senate/>

III. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE, & REFORM

This section identifies critical issues of discrimination against women within the Nigerian Muslim family law, provides justification for reform based on arguments that affirm the possibility and necessity of change within Muslim contexts, lists recommendations and better practices in member countries of the OIC to illustrate that reform is possible. It is hoped that this report will assist the CEDAW Committee's Constructive Engagement process with the State party.

A. EQUAL RIGHTS & RESPONSIBILITIES

1. CRITICAL INFORMATION

- ❖ **Constitutional provisions.** Section 15(2) of the Constitution prohibits discrimination on several grounds including sex, and section 42 of the Constitution provides for the right to freedom from discrimination in law or any executive and administrative actions on several bases including sex.¹²
- ❖ However, section 262 of the Constitution grants the *Shari'ah Court of Appeal* the right to decide questions of personal law for Muslims, including marriage, guardianship, inheritance, and succession. This leaves Muslim women open to discriminatory laws that restrict their rights to marry and divorce or inherit and hold property, and effectively denies them the promise of equal protection spelled out in sections 15(2) and 42.
- ❖ **Personal status laws.** The uncodified Muslim personal laws provide for a marital legal framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses. In return for maintenance and protection from her husband, a wife is expected to obey him.¹³
- ❖ While the State Party reports that the equal rights granted to women in the Constitution should not be exempted under *Shari'ah* law, it also acknowledges that in practice, women living under the jurisdiction of Islamic law are not granted equal rights.¹⁴
- ❖ **Cultural norms and practices.** Cultural norms and expectations restrict women's freedom of movement; men are generally expected to be the heads of household.
- ❖ A 2008 study found that 40% of women in Nigeria believe that it is acceptable for a husband to beat his wife for leaving the house without permission.¹⁵ In northern Nigeria in particular, women often require the permission of their husbands to leave the home, or must be accompanied by him in public.¹⁶
- ❖ Cultural norms similarly limit women's financial freedom. A poll in 2008 reported that 62% of women said that men made most or all decisions about major household purchases. 90% of land in Nigeria is owned in men's names.¹⁷ Additionally, while a woman can own property (including landed property)

¹² Constitution of Nigeria, 1999, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

¹³ Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112, <http://amsterdamlawfo-rum.org/article/viewFile/213/405>;

¹⁴ Nigeria State Party Report to CEDAW, 2017, p. 61, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/004/06/PDF/N1600406.pdf?OpenElement>.

¹⁵ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), pp. 15-16, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

¹⁶ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), pp. 21, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

¹⁷ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), pp. 20-21, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

without the consent of her husband,¹⁸ she however cannot legally dispose of it without his consent.¹⁹

2. MUSAWAH JUSTIFICATION FOR REFORM

- ❖ **Challenging the husband's right to authority.**²⁰ The concept of male authority (*qiwamah*) over women plays a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts. In the context of Nigeria, it justifies and perpetuates numerous discriminatory laws and practices, including key critical issues examined in this report.
- ❖ Musawah believes that several verses in the Qur'an that dwell on the values of love, compassion, closeness, and protection between men and women and the general principles of equality and justice should form the basis of marriage and family in Islam²¹.
- ❖ These values are compatible with the equitable provisions in the Civil Code, which recognize equality and non-discrimination. Thus, the use of religion and tradition to justify women's subordinate role in the family must be challenged.
- ❖ **Challenging the maintenance-obedience legal framework.**²² In Muslim legal tradition, the husband's duty to maintain his wife and children comes with a corollary condition—that the wife is required to be obedient to him. Her failure to obey (*nushuz*) could lead to her losing her right to maintenance. In reality today, many men fail to fulfill their duty to provide, and yet do not lose their right to demand obedience from their wives. This idea of 'complementarity' does not in practice lead to equity in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.
- ❖ Musawah argues that the logic of such a law, maintenance in return for obedience, is discriminatory in practice. The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own, inherit and dispose property. This was the beginning of a trajectory of reform which, if carried forward 1400 years later to reflect changing times and circumstances, should lead to the elimination of the legal logic of maintenance in exchange for obedience, and to the introduction of equality between men and women in all areas, including financial matters. The idea that 'complementarity' or 'reciprocity' of rights and obligations do not constitute discrimination in Muslim Personal Status laws must be challenged.

¹⁸ BAOBAB, Women's Rights in Muslim Laws (2005),

[http://www.weldd.org/sites/default/files/Women%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

¹⁹ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 20, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

²⁰ IRIN, "Threats of violence greet new family code", August 11, 2009, p. 26-28: <http://www.irinnews.org/report/85676/mali-threats-of-violence-greet-new-family-code>

²¹ Musawah Knowledge Building Brief 2 – What makes reforms possible?

http://www.musawah.org/sites/default/files/Musawah%20Paper_Issue%20_English_FA.pdf

²² Musawah, *CEDAW and Muslim Family Laws: In Search of Common Ground* (2011), http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws_0.pdf.

3. RECOMMENDATIONS

- ❖ Take steps during the current process of Constitutional review to ensure that Muslim women living under the jurisdiction of Islamic laws must equally benefit from the Constitutional provisions of sections 15(2) and 42 on equality and non-discrimination.
- ❖ Take immediate steps to ensure that the Child Rights Act and the Violence Against Persons Prohibition Act apply in the Northern states of Nigeria.
- ❖ Accord men and women equal rights and responsibilities in marriage, within a legal framework that recognizes marriage as a partnership of equals.
- ❖ Promote a rights-based understanding of Islam to build support for the possibility and necessity of reform towards equality and justice for women living in Muslim contexts.
- ❖ Initiate awareness-raising campaigns through the media to eliminate gender-role stereotypes, and encourage partnerships based on equal—not complementary—rights and responsibilities.
- ❖ Enhance the training of teaching staff with regard to gender equality issues and the revision of school curricula to eliminate gender-role stereotypes.

4. POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY²³

Family Matter	Muslim Family Laws Currently in Force
Equality of spouses in marriage <u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29	<p>Algeria: The Family Code requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of family affairs, including the spacing of births.</p> <p>Morocco: The Family Code (<i>Moudawana</i>) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.</p> <p>Turkey: Under the Constitution and the Civil Code, the family is based on equality between spouses.</p>

B. EARLY, CHILD, & FORCED MARRIAGE

1. CRITICAL INFORMATION

- ❖ **Data.** According to UNICEF, 43% of girls are married off before their 18th birthday. 17% are married before they turn 15 years²⁴.

²³ This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

24 Girls Not Brides - Nigeria <http://www.girlsnotbrides.org/child-marriage/nigeria/>

- ❖ In 2003, the State party passed the Child Rights Act (CRA), which prohibits marriage under the age of 18. The State party has expressed that child marriage is a serious issue that it intends to address. However, the CRA is federal law, and does not apply in states outside federal territory unless explicitly ratified.
- ❖ Only 23 of the 36 states have domesticated the CRA in their respective states. Of these 23 states, 16 are Southern states. Only seven of the 19 Muslim-majority Northern states have ratified the CRA.²⁵
- ❖ **Minimum age of marriage & consent.** In many states in the north, there is no minimum age for marriage for Muslims.²⁶
- ❖ No consent to marriage is required for girls or boys who are underage, and a father has the right to conclude a marriage on their behalf against their will (*ijbar*).²⁷
- ❖ Regardless of her age, a prospective bride requires the consent of a marital guardian (*wali*) to enter into marriage based on Maliki *fiqh*.²⁸ The *wali* must be her father or a male relative.²⁹
- ❖ Case law prohibits forced marriage of adults, though in practice, even adult women's consent is frequently not sought.³⁰
- ❖ Forced marriage is most prevalent among girls who have not been to school or reached puberty.³¹
- ❖ With the exception of those in Jigawa State, registration is not required for marriages and divorces under Islamic Law (though the State party has announced that it is in the process of reforming this matter).
- ❖ A 2016 announcement from Aisha Alhassan, Minister of Women Affairs and Social Development, said that nearly 65% of children below 18 years were forced into marriage in the Northern region.³²
- ❖ Federal Law also appears to implicitly acknowledge a difference in the age of marriage for men and women. While the Constitution provides that "full age" for both sexes is 18 (for the purpose of citizenship), it also considers any woman who is married to be of "full age."³³ This provision has been viewed by some as "covertly endorsing child marriage and implying that the age of adulthood for girls is different from that of boys."³⁴

25 Nigeria State party report, U.N. Doc. CEDAW/C/NGA/7-8 (2016), Table 2.1,
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Chineme Okafor, "Failings of Child Rights Law", March 2017, <https://www.pressreader.com/nigeria/thisday/20170310/282080571636307>

26 Nwogugu, E.I., Family Law in Nigeria: third edition, p.76 (2014); see also Pascale Fournier et al, Endangering legal reforms: Islamic law in Africa and East Asia (2011), p. 112,
<http://amsterdamlawforum.org/article/viewFile/213/405>.

27 Nwogugu, E.I., Family Law in Nigeria: Third Edition p. 77 (2014); see also Islamic Law Marriage of Nigeria, <http://www.onlinenigeria.com/marriages-in-nigeria/Islamic-Law-Marriage/>; see also Dekker, Shari'ah and National Law in Nigeria (2010), p. 587,
<https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1#page=554>; see also Immigration and Refugee Board of Canada: Forced marriage under Islamic law (2006), http://www.ecoi.net/local_link/44538/262352_de.html.

28 Absulrashid Lawan Haruna and Awwal Ilyas Magashi "Human Rights approach to reproductive health in Islam: Appraising Women's Rights to Husband and Family Planning", (Journal of Islamic Law Review, 11:1, 2015), pp. 6-7,
<http://www.serialsjournals.com/serialjournalmanager/pdf/1470648339.pdf>

29 E.I. Nwogugu, "Family law in Nigeria", (HEBN Studies in Nigerian Law, Third Edition, 2014), p. 76

30 Pascale Fournier et al, Endangering legal reforms: Islamic law in Africa and East Asia (2011), p. 112,
<http://amsterdamlawforum.org/article/viewFile/213/405>

31 <https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA100418.E.pdf>.

32 "Worried about prevalence of child marriage in Northern Nigeria, Government moves to stop practice," Premium Times Nigeria, Nov 29, 2016, <http://www.premiumtimesng.com/news/top-news/216659-worried-prevalence-child-marriage-northern-nigeria-government-moves-stop-practice.html>.

³³Constitution of Nigeria, Chapter 3, 29(4),
http://www.nigeria.law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm#Chapter_3

³⁴Vocies for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 11
<http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>

- ❖ The differential treatment in the ages of women and men is also seen in the Criminal Code, which states that “a male person under the age of twelve years is presumed to be incapable of having carnal knowledge,” but makes no similar provision for girls.³⁵
- ❖ We recognize that the government as well as non-government groups have resolved to address child marriage in Nigeria, and that they take the matter seriously. For example, a Technical Working Group for Ending Child Marriage was formed at the end of 2015. The Working Group is spearheaded by the Ministry of Women Affairs and Social Development. It aims to develop a comprehensive strategy for ending child marriage in Nigeria, as well as to raise awareness, encourage behavior change, and ensure the monitoring and evaluation of laws and policies.³⁶ Hajiya Zainab Yari, daughter of the governor of Zamfara, established an NGO called “Himma Community Health Circle Initiative,” and very recently announced a program to decrease forced and child marriage through sponsoring and encouraging girls’ education.³⁷

Case Studies

- ❖ In a much-publicized incident, a former governor of Zamfara married a 13/14-year-old girl. While many claimed that he had violated the Child Rights Act, he claimed that the CRA did not apply in Zamfara. He was not prosecuted.³⁸
- ❖ In 2010, the High Court of Sokoto threw out a case in which a 26-year-old woman claimed that her father had forced her to marry Zamfara State Senator Sahabi when he knew she was engaged to another man. The court stated that it could not intervene and that it was a matter for an Islamic court.³⁹
- ❖ In *Karimatu Yakubu v. Alhaji Paiko*, a 19-year-old woman applied for an annulment on the grounds that her father had given her in marriage without her consent. Initially the *Shari'ah* Court of Appeal upheld the marriage, claiming that under the Maliki school, her father had power over her marriage because she had been a virgin. (i.e., not previously married). However when the case was appealed, the decision was reversed on the grounds that, because the father had dissuaded her from marrying one suitor and asked her to pick between two others, he had given her independence to choose and had therefore not exercised his power of *ijbar*.⁴⁰

2. MUSAWAH JUSTIFICATION FOR REFORM

- ❖ **Challenging arguments for early marriage.**⁴¹ Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is ‘un-Islamic.’ For example, Zamfara’s Senator Yerima, who himself

³⁵ Criminal Code, Section 30, <http://www.nigeria-law.org/Criminal%20Code%20Act-PartI-II.htm#Chapter%201>.

³⁶ Child marriages around the world: Nigeria, <http://www.girlsnotbrides.org/child-marriage/nigeria/>.

³⁷ “Child Marriage: Zamfara Gov’s Daughter to Check Trend.” Punch Newspapers, Dec. 3, 2016, <http://punchng.com/zamfara-govs-daughter-check-child-marriage/>.

³⁸ Nigeria: Prevalence of Forced Marriage, Refworld, 2016, <http://www.refworld.org/docid/50b4ab202.html>; see also “Former Governor of Zamfara State Married a 13-year-old girl,” <http://www.gistmania.com/talk/topic,35988.0.html>.

³⁹ Court Rejects ‘Forced Marriage’ Case Against Zamfara Senator, October 2010, http://www.angop.ao/angola/en_us/noticias/africa/2010/9/42/Court-Rejects-Forced-Marriage-Case-Against-Zamfara-Senator,d26213f3-81ae-4f00-80d6-b33418707057.html.

⁴⁰ Ladan, Dr. Muhammed Tawfiq, A HANDBOOK ON SHARI’AH IMPLEMENTATION IN NORTHERN NIGERIA: WOMEN AND CHILDREN’S RIGHTS Focus 17 (2005), http://leads-nigeria.org/uploads/2479_File_SHARI'AH%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf.

⁴¹ IRIN, “Mali: Child marriage a neglected problem”, August 30, 2007, p. 30-31: <http://www.irinnews.org/report/74027/mali-child-marriage-a-neglected-problem>.

- has married a minor, lobbied heavily and convinced the Senate not to remove a provision of the Constitution that many see as covertly endorsing child marriage.⁴²
- ❖ Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. Reportedly, Aishah was six years old when she was betrothed, and nine when the marriage was consummated. However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage.⁴³ More importantly, the question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices. The justification for child marriage quoting the precedent of Aishah's marriage to the Prophet must be challenged.
 - ❖ **Puberty does not equate maturity for marriage.** While the Qur'an does not provide any specification for the age of marriage, *Surah an-Nisa'* 4:6 requires that orphans should be of sound judgment before they marry. This indicates that a person must have sufficient judgment and maturity to marry. Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, fixes adulthood on children under 18, even onto those who start menstruating at the age of nine or ten. The onset of puberty is no indication of sufficient maturity for marriage.
 - ❖ It is well understood that universal human rights standards guard against marriage for children under the age of 18. States have a duty to protect children, defined by the Convention on the Rights of Children (CRC) as persons below the age of 18. Several international documents recognize 18 as a minimum age of marriage, and this should apply to both boys and girls. Children have a right to education, and early marriage can be a major impediment to this. The Beijing Platform for Action (BPFA) and CEDAW General Recommendation number 21 outline the negative consequences in terms of education, employment, and health that early marriage can have on women, their families, and their communities.⁴⁴
 - ❖ Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood at too young an age. The concepts of adulthood, maturity, and the roles of husband or wife are dramatically different today than they were during the classical era when the rules of *fiqh* were solidified. Hundreds of years ago, it was usual for boys and girls to marry young because life spans were shorter, education was not as necessary, and family production units as opposed to nuclear families predominated in order to ensure enough workers. Socially, the role of wife/ mother/parent/adult was vastly different to what it is today, what with changes in education, careers, the structure of the family, etc. as well as the psychological, economic, social and biological functions of being a wife and mother. Household structures are changing, with a gradual increase in nuclear families and decline of extended families living together. This translates into a decrease in family support for young brides as they try to cope with the challenges of married life. In addition, the onset of puberty is no indication of sufficient maturity for marriage.
 - ❖ Girls who marry later are more easily able and expected to complete a high school education and pursue higher education, which accords with the fundamental right to education and the idea that seeking knowledge is a right and a responsibility of every Muslim. This also translates into a better-educated society and gives women a better chance to pursue professional goals and contribute to a nation's economy and family well-being. When girls marry young, they often decide to leave school, leading to poorer employment opportunities, thus affecting their financial independence and

⁴² One Senator Kept Child Marriage alive in Nigeria Last Month, August 2013, <http://www.vice.com/read/child-marriage-was-nearly-made-illegal-in-nigeria-last-month>.

⁴³ Muhammad Khalid Masud (trans), 'Prophet Muhammad's wife A'isha: How Old was she at the Time of her Marriage?', <http://www.sistersinislam.org.my/news.php?item.997.41>.

⁴⁴ CEDAW and Muslim Family Law: In Search of Common Ground, p. 30, http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf.

freedom of movement. Because they are not able to secure well-paying jobs, they are often more vulnerable to economic dependence and have weaker bargaining powers within marriage.

- ❖ **Challenging forced marriage (*ijbar*)⁴⁵:** There is no authority in the Qur'an or the *Sunnah* of the Prophet for the doctrine of *ijbar*. As the renowned legal scholar, Mohammad Hashim Kamali states in his book, *Islamic Law in Malaysia*, 'A perusal of the relevant evidence suggests that the power of constraint in marriage, known as *wilāyat al-ijbār*, has little support in the Qur'an and Sunna and it is most likely to be rooted in social customs of the Arab society that survived and were eventually adopted by the [classical] jurists'. In other words, it is a pre-Islamic custom that was incorporated into *fiqh* by humans.

3. RECOMMENDATIONS

- ❖ Establish 18 years as the minimum age of marriage to all citizens regardless of ethnicity, region or religion. No exception to the minimum age should be allowed.
- ❖ Encourage ratification and enforcement of the Child Rights Act by all states, or amend the Constitution to enforce it federally.
- ❖ Enforce mandatory secondary schooling for boys and girls through age 18 to discourage early marriage.
- ❖ Strengthen support services (eg: a special unit in the police, legal, psycho-social, emergency support) to ensure that early marriage cases are prevented and girls who are vulnerable to early marriage are able to obtain swift and effective support;
- ❖ Exercise due diligence to prevent, investigate, and punish acts that are aimed at coercing children into early marriage.
- ❖ Provide reparations to victims and survivors of early marriage, including allowing girls and women forced into marriage the retroacting right to invalidate the marriage, or the right to divorce.
- ❖ Mandatory and enforced registration of marriage for all, including those under the jurisdiction of *Shari'ah* law.

4. POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW⁴⁶

Family Matter	Muslim Family Laws Currently in Force
Minimum and equal age of marriage	<u>Minimum age for marriage is 18 with no exceptions:</u> Egypt: The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalized. Kenya: The minimum age for marriage is 18 for both females and males. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits

⁴⁵ CEDAW and Muslim Family Law, In Search of Common Ground, p. 32,
http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf.

⁴⁶ This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

<u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21	<p>an offence and will be liable to a penalty (imprisonment, fine or both).</p> <p>Pakistan (Sindh Province): The minimum age for marriage is 18 for both females and males. The law criminalizes and penalizes the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnized or negligently fail to prevent it from being solemnized.</p> <p><u>Minimum age for marriage is 18 with judicial exceptions and with an absolute minimum age:</u></p> <p>Iraq: The minimum age for marriage is 18 for both females and males. A judge may authorize the marriage of females and males below 18 if convinced that the person is physically capable of being married and the marriage is of urgent necessity. A marriage cannot be authorized for persons below 15.</p> <p>Jordan: The minimum age for marriage is 18 for both females and males. A judge may authorize the marriage of females and males below 18 if it is deemed to be in their interest. A marriage cannot be authorized for persons below 15.</p>
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D. POLYGAMY

1. CRITICAL INFORMATION

- ❖ The Penal Code of the Northern States of Nigeria bans polygamy (section 370).⁴⁷ However (despite the supremacy of federal law over state law), several individual northern Nigerian states have adopted their own *Shari'ah* based penal codes which do not have this provision;
- ❖ In states under Islamic law, Muslim men are permitted to have as many as four wives at one time without conditions or consent of wives/wives to be.⁴⁸
- ❖ A Muslim man may marry up to four wives at one time. There is no legal requirement for him to seek the permission of the court or his existing wife or wives to enter into a polygamous marriage nor does he need to demonstrate financial capacity to maintain multiple wives and families.⁴⁹
- ❖ According to a report from BAOBAB, in some Muslim communities, polygamy is 'mandated'.⁵⁰
- ❖ According to Nigeria's 2013 Demographic and Health Survey, 33% of marriages in Nigeria are polygamous. The survey also found that:⁵¹ Women in the Northern states were more likely to report having co-wives than women in the Southern states;
- ❖ According to civil society reports and academic research⁵²:

⁴⁷ Penal Code (Northern States) Federal Provisions Act, section 370, <http://www.refworld.org/pdfid/49997ade1a.pdf>.

⁴⁸ Derrek, *Shari'ah*, at 587,
<https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1#page=554>;

See also Pascale Fournier et al, Endangering legal reforms: Islamic law in Africa and East Asia (2011), p. 112,
<http://amsterdamlawforum.org/article/viewFile/213/405>.

⁴⁹ Ikenga K.E. Oraegbunam, "Shari'ah Criminal Law, Islam and Democracy in Nigeria Today", (New Journal of African Studies, 8, 2011), p. 105, <https://www.ajol.info/index.php/og/article/viewFile/71768/60724>; Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 112,
<http://amsterdamlawforum.org/article/viewFile/213/405>; Ayesha M. Imam, Mufuliat Fijabi and Hurera Akilu-Atta, "Women's Rights in Muslim Laws: A Resource Document", BAOBAB, 2005, p.42,
[http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

⁵⁰ Women's Rights in Muslim Laws, BAOBAB, p. 12,
[http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf).

⁵¹ National Population Commission of Nigeria and ICF International, "Nigeria Demographic and Health Survey 2013", Tables 4.2.1, p. 55, <http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>

- Some Muslim communities encourage polygamy, almost to the point of mandating the practice;
- The unequal treatment of wives is the prevailing norm in a polygamous marriage.

2. MUSAWAH JUSTIFICATION FOR REFORM

- ❖ **Challenging polygamy⁵³.** Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa' 4:3* states: '*If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly [with your wives] then marry only one.... That will be more suitable, to prevent you from doing injustice*'. When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy. The verse in *Surah an-Nisa'* that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans who were exploited and uncared for. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.
- ❖ Even in that post-war situation, the Qur'an discontinued the then-existing practice of unlimited polygamy and mandated that monogamy be the norm unless the man could deal justly with all of his wives. In the present day, it is extremely difficult if not impossible for one person to treat multiple wives equally and justly. In fact, Tunisia has forbidden polygamy altogether on the ground that it is impossible for a man to be able to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the context of revelation.
- ❖ Although the Prophet had multiple wives, he was monogamous for more than 25 years— i.e. throughout the lifetime of his first wife, Khadijah. This practice could be used as a source to emulate. There is also an authentic Tradition that the Prophet forbade his son-in- law, Ali ibn Abi Talib, from marrying another woman, unless Ali first divorced the Prophet's daughter, Fatimah, his existing wife. A great-granddaughter of the Prophet, Sakinah binti Hussayn, the granddaughter of Ali and Fatimah, included the condition in her marriage contract that her husband would have no right to take another wife during their marriage.
- ❖ Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe. In fact, it was an institution that existed in various civilizations, religions, and cultures in many parts of the world, including among Jews, Chinese, Indians, and Mormon Christians, until it was abolished by law as governments acknowledged the injustices it inflicted on women. Polygamous cultural practices have been reformed through legislation in many times and situations, including in the time of the Prophet and in recent decades, in Muslim countries around the world.

3. RECOMMENDATIONS

- ❖ Ensure that Islamic law on marriage and divorce prohibits polygamy.
- ❖ Alternatively, introduce conditions in the law to restrict the practice of polygamy to minimize harm and injustice done to the existing wife and children by ensure conditions for polygamy (such as mandatory consent of wives) and procedures in place to verify documents and evidence to justify the necessity of polygamy and to adjudicate if justice can indeed be ensured.
- ❖ Provide a model, standard marriage contract with options for the couple to prohibit polygamy within the marriage.

4. POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS⁵⁴

Family Matter	Muslim Family Laws Currently in Force
<u>Polygamous marriage Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29	<p><u>Prohibition of polygamy by law:</u> Kyrgyzstan, Tajikistan, Tunisia, Turkey, Uzbekistan: Polygamy is prohibited.</p> <p><u>Requirement for court authorization and agreement of existing wives to enter into a polygamous marriage:</u></p> <p>Algeria: Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives. Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.</p> <p>Indonesia: Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives. Court permission is only granted if the husband's existing wife: (i) is unable to perform her conjugal duties; (ii) suffers from a physical infirmity or an incurable disease; or (iii) cannot bear children.</p> <p>Iraq (Kurdistan region): Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives. Court permission is only granted if certain conditions are met: (i) the first wife has to agree before the court to her husband marrying a second wife; (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile; (iii) the man has the financial capacity to support more than one wife; (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations; (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife. A man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.</p> <p><u>Requirement for official (court, etc.) authorization to enter into a polygamous marriage:</u></p> <p>Bangladesh, Pakistan: Polygamous marriages are only permitted with the written permission of an Arbitration Council consisting of a Chairman and one representative each of the husband and wife or wives. The Arbitration Council may only permit a new marriage if it is satisfied that the proposed marriage is necessary and just, subject to such conditions (if any) as may be deemed fit.</p> <p>Iraq: Unless the prospective bride is a widow, polygamous marriages must be authorized by a judge (<i>qadi</i>). A judge may only authorize a polygamous marriage if: (i) the husband has financial capacity; (ii) there is a legitimate interest for multiple marriages; and (iii) there is no fear of injustice between wives.</p>

⁵⁴ This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

	<p>Jordan: Polygamous marriages must be authorized by a judge. A judge may only authorize a polygamous marriage if the man can afford paying a dower (<i>mahr</i>) and is capable of financially supporting all those for whom he is responsible.</p> <p>Morocco: Polygamous marriages must be authorized by the court. A court may only authorise a polygamous marriage if an exceptional and objective justification for entering into multiple marriages is proven and the man is able to prove that he is financially capable of supporting multiple wives. The first wife must be present before the judge and be consulted before authorization is granted.</p> <p>Singapore: Polygamous marriages must be authorized by a state appointed official (<i>kadi</i>). The <i>kadi</i> may only authorize a polygamous marriage if he is satisfied that: (i) the husband has the capacity to provide a life that is balanced in regard to the financial, physical and emotional well-being of his wives; (ii) the husband currently has a good marriage and is not seeking to take on additional wives because his existing marriage is not going well; and (iii) the new marriage will be beneficial to all parties.</p>
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D. DIVORCE, MAINTENANCE & CUSTODY OF CHILDREN

1. CRITICAL INFORMATION

- ❖ **Types of Divorce.** There are four types of divorce provided under *Maliki* jurisprudence used in Northern Nigeria: *talaq*, *mubarah*, *khul'*, and *tafriq* or *faskh*.
- ❖ Unilateral *talaq* divorce by the husband is the most common form of Muslim divorce in Nigeria.⁵⁵
- ❖ In practice, whether by their own choice or not, women generally do not remain in their husband's home after the divorce and forfeit any support.⁵⁶
- ❖ When a wife divorces by *khul'*, she does not need to give a justification, and she does not need to return more than the initial *mahr* (*dower*) given to her by her husband.
- ❖ Women often resort to *khul'* divorce even where they may have good grounds to seek for a court-decided divorce. This could be due to their lack of awareness that in the case of a court-decided divorce, they do not have to pay compensation to their husband, or because of delays in the judicial system or proceedings, in which case a wife would rather pay her husband than wait.⁵⁷ The lengthy process and costly procedure of seeking divorce can place women in vulnerable positions.⁵⁸

⁵⁵ Immigration and Refugee Board of Canada, Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁵⁶ Immigration and Refugee Board of Canada: Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁵⁷ BAOBAB, Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria, p. 5, <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGERIA.pdf>. See also Immigration and Refugee Board of Canada, Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁵⁸ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 13, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

- ❖ **Wife maintenance.** Upon divorce, the wife is only entitled to maintenance during the three-month waiting period (*iddah*) following divorce, unless she is pregnant, in which case she is entitled to maintenance only until the baby is born.⁵⁹
- ❖ **Custody of Children.** While women are generally granted priority of their children in a divorce⁶⁰, in practice they frequently must give them up to the father because they cannot afford to raise them and the father will not pay maintenance.⁶¹
- ❖ In principle, the father of the children is responsible for their maintenance and education.⁶² In practice, whether the father pays child maintenance depends very much on the disposition of the father.⁶³ It is possible, but difficult, to bring fathers to court to demand child maintenance payment.⁶⁴
- ❖ If the mother remarries, she may lose her right to custody.⁶⁵
- ❖ **Guardianship of children.** In principle, fathers have guardianship of children (decision-making powers over the child).⁶⁶ Increasingly, but very rarely, a mother will fight for custody and guardianship and has been known to get it.⁶⁷

2. MUSAWAH JUSTIFICATION FOR REFORM

- ❖ **On equal right to divorce.** The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (*ma'ruf*), or separate with kindness (*ihsan*)' (*Surah al-Baqarah* 2:229). The proceedings for arbitration and mediation in *Surah an-Nisa'* 4:35 place both spouses on an equal footing: '*If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.*'
- ❖ The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness and doing what is commonly known to be good or right (*bil ma'ruf*).

⁵⁹ BAOBAB, Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria, p.7, <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGRIA.pdf>. See also Immigration and Refugee Board of Canada: Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁶⁰ According to the Maliki school of law, the mother (and then other women relatives on the mother's side, followed by other women relatives on the father's side) has priority in the right to custody of the child or children. The custody (physical care) of a male child remains with the mother until he reaches the age of puberty, and a female child remains with the mother until she is married and the marriage is consummated. In practice, most women are forced to give up custody of their children immediately upon divorce because the father will not pay maintenance.

⁶¹ BAOBAB, Women's Rights in Muslim Laws (2005), p. 72, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf).

⁶² BAOBAB, Divorce: The Dissolution of a Marriage in Muslim Personal Law in Nigeria, p.7, <http://www.nigerianlawguru.com/articles/family%20law/DIVORCE%20%20THE%20DISSOLUTION%20OF%20A%20MARRIAGE%20IN%20MUSLIM%20PERSONAL%20LAWS%20IN%20NIGRIA.pdf>.

⁶³ Immigration and Refugee Board of Canada: Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁶⁴ Women's Rights in Muslim Laws, BAOBAB, p. 72-73, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf).

⁶⁵ Immigration and Refugee Board of Canada: Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁶⁶ Immigration and Refugee Board of Canada: Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

⁶⁷ Immigration and Refugee Board of Canada: Nigeria: Divorce Laws and Practices among Muslims (2012), https://www.ecoi.net/local_link/232040/340619_en.html.

- ❖ Various fiqh schools have provided for more egalitarian rights to divorce, and several Muslim countries provide equal right to divorce between men and women.
- ❖ **On paying court-ordered maintenance to women and children.** There are many good practices in several countries that could be followed to enforce maintenance orders. This may include setting up of a Child Support Agency, setting up a specialised Maintenance Court to expedite claims and ensure immediate enforcement, and effective punishments of ex-husbands and fathers who repeatedly fail to pay maintenance through imprisonment, or preventing them from renewing official documents, including passports, business licences and drivers' licences.
- ❖ **On equal right to custody and guardianship of children:** The Qur'an does not distinguish between fathers and mothers where the upbringing of children is concerned. Even parents who are divorced should still exercise 'mutual consent and due consultation' (*Surah al-Baqarah 2:233*) with each other regarding the upbringing of their children: '[...] No mother shall be treated unfairly on account of her child. No father on account of his child.'
- ❖ The classical jurists generally divided the rights and responsibilities of adults over their children into *hadanah* (physical care and custody) and guardianship. It was regarded more suitable to confer *hadanah* to women over men. In practice, many Shari'ah courts in pre-modern times granted mothers the guardianship of their orphaned children. Loss of custody on the ground of the mother's remarriage is based on a Tradition of the Prophet, where he said to a divorced wife, 'You have the first right to look after [your child] unless you marry.' It is unfortunate that this Tradition has often been interpreted to mean that the mother loses the right to custody upon her remarriage, and that custody reverts to the father, regardless of whether this is in the child's best interest. However, it is possible to interpret this hadith as conferring upon the mother a prior right of custody over her young children before her remarriage, and if she remarries, then the mother and the father could have equal right to custody, and the case may be considered on its individual merits.

3. RECOMMENDATIONS

- ❖ Registration for all marriages and divorces in the Northern States must be made compulsory so that due process can be ensured.
- ❖ Grant men and women the equal right to divorce, including the grounds for divorce and standards of proof. Abolish the husband's right to unilateral divorce (*talaq*).
- ❖ All divorces must take place in court, with both parties present.
- ❖ Ensure that legal limit to dowry at the time of marriage is enforced, enabling women to initiate *khul'* divorce more easily.
- ❖ Ensure that maintenance granted to women and children after divorce is sufficient and reviewable, based on her and her children's changing needs.
- ❖ Ensure adequate number of qualified and trained judges so that the divorce process can be more efficient and accessible.

4. POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS⁶⁸

Family Matter	Muslim Family Laws Currently in Force
Divorce rights <u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29	<p><u>Equal right to divorce:</u></p> <p>Turkey, Tunisia: All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (<i>talaq</i>) by the husband is not recognized.</p> <p>Singapore: A wife will inevitably get a divorce whether the husband agrees to the divorce or not and even in instances where the wife is unable to prove a breach of the marriage vows (<i>taklik</i>) or one of the grounds for judicial divorce. The reconciliation process (<i>hakam</i>) will end up with either: (i) the husband voluntarily pronouncing <i>talaq</i>; or (ii) the husband delegating the right to divorce to his wife (<i>talaq-e-tafwid</i> or '<i>esma</i>'); or (iii) if the husband refuses to do either (i) or (ii), the court will direct the husband's arbitrator during the reconciliation process to pronounce <i>talaq</i> on the husband's behalf.</p> <p><u>Judicial divorce due to irreconcilable differences:</u></p> <p>Jordan, Morocco: A wife may petition the court for a divorce on the ground of "irreconcilable differences" or irretrievable breakdown of the marriage (<i>shiqaq wa niza'</i>).</p> <p><u>Divorce through repudiation by the husband (<i>talaq</i>):</u></p> <p>Algeria, Mauritania: A divorce by way of repudiation by the husband can only be effectuated through the court.</p> <p>Bangladesh, Pakistan: The standard marriage form includes a provision on the curtailment of a husband's right to divorce.</p> <p>Bahrain (Shia): A divorce by way of the repudiation by the husband cannot be finalized unless both parties appear before the court to register the divorce.</p> <p>Brunei, Malaysia: <i>Talaq</i> must be pronounced in court and it is an offence to pronounce <i>talaq</i> outside the court. If a husband pronounces <i>talaq</i> outside the court, he is required to report the pronouncement within seven days and will be subject to a penalty (imprisonment, fine or both).</p> <p>Indonesia: A divorce by way of repudiation by the husband (<i>cerai talak</i>) must be effectuated through the court. The husband must make a request to the court where his wife resides to hold a court proceeding to witness his pronouncement. His application must contain the reasons for his request.</p> <p>Morocco: Divorce by way of repudiation can only be effectuated under judicial supervision. The wife and children must have received all their vested rights before it is authorized.</p> <p>Palestine (West Bank): A husband must register a divorce by way of repudiation before a judge. In case he divorced his wife outside the court and did not register it, he must report to the religious court for the registration of the divorce within 15 days. Failure to register the repudiation is penalised. The court must notify the wife who is absent within one week from its registration.</p>

⁶⁸ This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

	<p>Singapore: Both the husband and wife must personally appear before the court within seven days of the pronouncement of <i>talaq</i> to apply for divorce. Failure to do so is an offence.</p> <p>Egypt: A husband must register his divorce by way of repudiation within 30 days of its pronouncement. If the wife is not present at the registry office, the civil registrar (<i>ma'dhun</i>) is tasked with the responsibility of notifying the wife of her divorce.</p>
<p>Women's financial rights after divorce</p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(c), 16(1)(h)</p> <p>Paras. 30-33 GR21</p> <p>Paras. 34-35, 43-48 GR29</p>	<p><u>Consolatory gift or compensation (mu'tah):</u></p> <p>Brunei, Egypt, Indonesia, Jordan, Kenya, Malaysia, Mauritania, Morocco, Oman, Qatar, Singapore, United Arab Emirates: The court has the power to order a man to pay his former wife a consolatory gift or compensation' (<i>mut'ah</i>) in addition to the financial maintenance he has to pay her during the waiting period after the divorce (<i>iddah</i>). The amount of compensation varies in each country and may be based on a multiple of the <i>iddah</i> maintenance or what the court deems as fair and just.</p> <p>Singapore: Wives will almost always receive <i>mut'ah</i> payment even if she is the party petitioning for the divorce or she has "misconduct" herself. Arguments that a wife is "disobedient" (<i>nusyuz</i>) have generally not been accepted by the court to disqualify a wife from being entitled to <i>mu'tah</i> payment.</p> <p><u>Compensation for unreasonable divorce:</u></p> <p>Algeria, Iraq, Kenya, Palestine (West Bank), Syria: If the court finds that a man has divorced his wife in an arbitrary, unfair or unreasonable manner, the court can order him to pay his former wife compensation for the divorce in addition to the financial maintenance he has to pay her during the <i>iddah</i> period.</p> <p><u>Compensation for harm suffered by the wife:</u></p> <p>Algeria: If a judge finds that a wife has suffered harm during her marriage, the judge can order her former husband to compensate her for the harm she suffered in addition to the financial maintenance he has to pay her during the <i>iddah</i> period.</p> <p>Tunisia: If the court finds that a wife has suffered harm during her marriage, it will proceed to determine the appropriate level of maintenance and compensation due to her upon the pronouncement of the divorce. The level of maintenance and compensation is determined based on the standard of living that the former wife was accustomed to during her marriage. The maintenance and compensation takes the form of regular monthly payments that continue until the former wife's remarriage, death or she no longer requires them.</p> <p>Turkey: A spouse who claims to have suffered material or moral damage can make a request to the court for an order that compensation be paid by the other party to him/her for the damage suffered.</p> <p><u>Enforcement of court-ordered maintenance:</u></p> <p>Singapore: The country has a number of mechanisms to effectively enforce court-ordered maintenance including:</p>

	<p>3. The establishment of a specialised court to solely handle maintenance concerns, thus expediting claims and enforcement;</p> <p>4. Empowering the court to impose a wide range of measures against defaulters, including: (i) imposing penalties such as fines or imprisonment; (ii) making garnishee orders against the defaulter's earnings; (iii) ordering the defaulter to post a banker's guarantee against future defaults, attend financial counselling and/or perform community service; and (iv) requesting access to the employment information of the defaulter from the Central Provident Fund in order to facilitate the direct deduction of maintenance payments from the defaulter's wages;</p> <p>5. Empowering the <i>Shari'ah</i> court to sign on behalf of a party who, without good reason, refuses to sign the necessary documents to sell or transfer ownership of a property to the other party despite a prior court order for the party to do so;</p> <p>6. Providing women with the ability to report the court-ordered maintenance amount owed to designated credit bureau(s). This measure is aimed at discouraging defaults in the payment of court-ordered maintenance as such defaults would affect the credit stranding of the defaulter; and</p> <p>7. Obligating men to declare to their prospective wives (prior to remarriage), their maintenance debts and obligations towards their former wives and/or children. This ensures that their prospective wives are aware of their prospective husband's maintenance before marrying them.</p> <p>Bahrain, Palestine, Tunisia: These countries have established a fund that assumes responsibility for payment of court-ordered maintenance if a former husband or father is delinquent in his maintenance payment.</p>
Guardianship of children	<u>Equal right to guardianship:</u> Indonesia, Kenya, Singapore, Turkey: Ultimately, guardianship of children is determined by the courts on the basis of the best interest of the child.
Applicable CEDAW Provision Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21	<u>Custodian's guardianship rights:</u> Algeria: Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child. Brunei: A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to what-ever conditions that the court thinks fit to impose. Morocco: A mother may manage urgent affairs of the children in the event the father is prevented from doing so. She may also assume guardianship of her children if: (i) she is over 18; and (ii) the father is not present due to his death, absence or incapacity.

E. INHERITANCE

1. CRITICAL INFORMATION

- ❖ Traditional beliefs combined with provisions of *Shari'ah* law contribute to a situation in Nigeria in which women have some of the world's worst inheritance rights. While it is optional for Muslims to follow the federal Wills Act and therefore leave more equitable provisions to female family

- members, there is a strong belief that making a will is not permissible in Islam,⁶⁹ despite the provisions in Islamic law for outlining inheritance rights.
- ❖ Under the 1999 Constitution, since *Shari'ah* law is “personal law,” applicability of *Shari'ah* to a Muslim estate is optional, if the Muslim expressly chooses to make a will under the Wills Act and exclude Islamic law.⁷⁰
 - ❖ In practice, daughters and particularly wives, are frequently deprived of their inheritance rights, especially in terms of land and property.⁷¹
 - ❖ In 2007, the Chronic Poverty Research Center reported that in Nigeria only 27.8% of widows inherited majority of assets.⁷²
 - ❖ In some communities, including some Muslim communities, women are also considered part of a man’s property to be inherited by male relatives upon the death of their husbands.⁷³
 - ❖ The 2015 WEF Gender Gap Report ranked Nigeria a 1 out of 7 (7 being the best) for daughter inheritance rights.⁷⁴

Case Studies

- ❖ In *Yunusa v. Adesubokan*, a Muslim father chose to make a will under the Wills Act of 1873. One son (who was given much less than the others) sued, arguing that the will was contrary to Maliki jurisprudence. Ultimately the Supreme Court held that any person, Muslim or not, may make a will under the Wills Act of 1873 and dispose of their estate under that act in any manner they choose.⁷⁵

2. MUSAWAH JUSTIFICATION FOR REFORM

- ❖ Inheritance rights are crucial for Muslim women because distribution and control of property and assets significantly affect their ability to enjoy stable and fulfilling lives and to exercise other rights. Without assets derived from inheritance, women are disadvantaged, cannot lead independent lives, and cannot even ensure that they and their families can support themselves. Because inheritance distribution is closely tied up with many other provisions in Muslim family laws, the rules must be conceived from a just and equitable perspective in order to ensure there is fairness and justice in other aspects of family life.
- ❖ The traditional Muslim rules of inheritance, though derived from the basic structure set out in the Qur'an, were then embellished and systematized by the various schools of law through jurisprudential methods and interpretations. Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shi'ite schools of law, have combined rules from two or more different schools, or have created modern inheritance laws based loosely on traditional jurisprudence but suited for modern realities. Because human interpretations have played such a key

⁶⁹ Pascale Fournier et al, Endangering legal reforms: Islamic law in Africa and East Asia (2011), pp. 113-114, <http://amsterdamlawforum.org/article/viewFile/213/405>.

⁷⁰ Ladan, Dr. Muhammed Tawfiq, A HANDBOOK ON SHARI'AH IMPLEMENTATION IN NORTHERN NIGERIA: WOMEN AND CHILDREN'S RIGHTS Focus 12 (2005), http://leads-nigeria.org/uploads/2479_File_SHARI'AH%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf.

⁷¹ BAOBAB, Women's Rights in Muslim Laws (2005), p. 77,

[http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf)

⁷² Gender Equality in Nigeria, Social Institutions and Gender Index (SIGI), <http://www.genderindex.org/country/nigeria>.

⁷³ Pascale Fournier et al, Endangering legal reforms: Islamic law in Africa and East Asia (2011), pp. 113-114, <http://amsterdamlawforum.org/article/viewFile/213/405>. See also Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 16, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>; see also Women's Rights in Muslims Laws, BAOBAB, p. 77, [http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20\(2\).pdf](http://www.weldd.org/sites/default/files/Women's%20Rights%20in%20Muslim%20Laws%20English%20(2).pdf).

⁷⁴ World Economic Forum, Global Gender Gap Report 2015, <http://www3.weforum.org/docs/GGGR2015/NGA.pdf>.

⁷⁵ Ladan, Dr. Muhammed Tawfiq, A HANDBOOK ON SHARI'AH IMPLEMENTATION IN NORTHERN NIGERIA: WOMEN AND CHILDREN'S RIGHTS Focus 12 (2005), http://leads-nigeria.org/uploads/2479_File_SHARI'AH%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf.

- role in shaping both the traditional inheritance rules and the modern codifications of inheritance laws, the standard articulation of these rules cannot be considered divinely revealed *Shari'ah*, but rather man-made *fiqh*.
- ❖ Defenders of the traditional inheritance rules often state that the rules are much less discriminatory than those of the pre-Islamic era. It is true that revelations relating to inheritance improved the status of women, and that the Islamic position on inheritance was the most progressive and comprehensive in the world for hundreds of years. However, the trajectory of reform begun during the time of the Prophet has not continued, and these rules have not evolved over time. In addition, a number of aspects of the Sunni rules (e.g., the primacy of agnatic heirs) are actually derived from pre-Islamic inheritance rules, not the revelations as laid out in the Qur'an. These have not been reformed, just incorporated into the man-made system that was formalized by the classical jurists one thousand years ago based on the needs, customs, and expectations of the society in which they lived.
 - ❖ The Qur'an introduced numerous reforms to existing cultural practices relating to financial provisions for women, including allowing women to keep their own property and giving women shares of inheritance. This was the beginning of a trajectory of reform that, carried forward 1400 years later to match the time and context, should lead to the elimination of the legal logic of maintenance in exchange for obedience and to the introduction of equality between men and women in all areas, including financial matters.
 - ❖ The Prophet's first wife, Khadijah, was a successful, independent businesswoman. The Prophet supported his wife's business activities, showing respect for women who serve as equals in the financial aspects of a marriage.

3. RECOMMENDATIONS

- ❖ Ensure a redress mechanism whereby inequality or discrimination against daughters and wives in matters of inheritance can be reported and addressed;
- ❖ Take affirmative steps to address stereotypes that prevent women from inheriting property and having access to finances, such as education campaigns.

4. POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS⁷⁶

Family Matter	Muslim Family Laws Currently in Force
Inheritance rights <u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29	<u>Equal right to inheritance:</u> Turkey: Inheritance laws do not discriminate on the basis of gender. <u>Right of daughters to inherit:</u> Afghanistan, Kuwait: Sunni daughters and sons from the same mother inherit equally from their mother's estate.

⁷⁶ This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

	<p>Bahrain, Kuwait, Lebanon: Shia daughters can inherit the entire property in the absence of sons, thus excluding male agnates.</p> <p>Iraq, Tunisia: Sunni schools of law adopt the Shia practice where daughters can inherit an entire property in the absence of sons, thus excluding male agnates.</p> <p><u>Right of orphaned grandchildren to inherit:</u></p> <p>Algeria, Egypt, Morocco, Palestine (West Bank), Tunisia: The children of a parent who has predeceased their own parent (i.e. the children's grandparent) can inherit from their grandparent through an obligatory bequest.</p> <p>Pakistan: The children of a parent who has predeceased their own parent (i.e. the children's grandparent) receive the share of inheritance from the grandparent's estate which the predeceased parent would have received had they been alive at the time of the death of their own parent (i.e. the children's grandparent).</p> <p><u>Divisions of property through bequests, agreement, etc.:</u></p> <p>Jordan, Tunisia: Bequests can be made in favour of an heir and beyond the one-third limit if other heirs agree to it.</p> <p>Malaysia: Division of the deceased's property can be changed in whatever manner if all heirs agree to such division.</p>
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F. VIOLENCE AGAINST WOMEN AND GIRLS

1. CRITICAL INFORMATION

- ❖ As per the 2013 Nigerian Demographic Health Survey (DHS)⁷⁷ – ‘28 % of women aged 15 to 49 have experienced physical violence at least once since the age of 15’, while ‘7% of women have experienced sexual violence at least once in their lifetime’.
- ❖ Other reports state that 25% of married women have experienced violence; 44% of divorced, separated, or widowed women have experienced violence since age 15⁷⁸ and 33% of never-married women have experienced violence. Police generally dismiss domestic violence as a “family affair.”⁷⁹
- ❖ Under section 55(1)(c) of the Federal Capital Penal Code, a husband may beat his wife for the purposes of “correcting” her.⁸⁰
- ❖ Under both Penal Code of the Federal Capital Territory of Abuja section 282(2), the Northern Nigerian Penal Code section 357, and the Shari’ah Penal Codes, marital rape is **not** a crime.⁸¹ Under

⁷⁷ Demographic and Health Survey 2013 <http://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm>

⁷⁸ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 15, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

⁷⁹ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 15, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

⁸⁰ Penal Code, 55(1)(c), http://oceansbeyondpiracy.org/sites/default/files/Nigeria_Penal_Code_Act_1960.pdf.

- the *Shari'ah* Penal Code, the husband can withdraw maintenance if his wife refuses sexual intercourse.
- ❖ The Violence Against Persons Prohibition (VAPP) was passed into Federal Law in 2015 to “eliminate violence in private and public life; prohibit all forms of violence, including physical, sexual, psychological, domestic, harmful traditional practices, [and] discrimination against persons,” particularly women.⁸²
- ❖ However, it does not currently extend beyond the federal territory, (only the High Court of the Federal Capital Territory has jurisdiction to hear and grant applications, including restraining orders). For it to become a national law, the VAPP needs to be passed in 23 out of the 36 states of the Federation⁸³
- ❖ Under the *Shari'ah* Penal Code in most Northern states, rape must be proved with “strong corroborating evidence” or by the testimony of four males who witnessed the act of penetration.⁸⁴ Most *Shari'ah* penal code criminalize *Qadhf*, or the ‘false accusation of unlawful sexual intercourse,’ which leaves room for accused rapists to then charge this crime against victims.⁸⁵
- ❖ Women’s groups as well as victim-survivors have appealed cases of this nature, albeit with multiple challenges including significant delays in court processes⁸⁶
- ❖ **Female Genital Circumcision:** It is estimated that 1/3 of Nigerian women have experienced female genital circumcision.⁸⁷

2. MUSAWAH JUSTIFICATION FOR REFORM

- ❖ **Violence against women cannot be justified under any circumstance.** If a culture recognizes the family as a safe space that protects and grows the full human potential of its members, then it should also recognize the necessity of ending abuse and relationships that are harmful and cause unhappiness. Indeed, the sanctity of the family as a unit depends on the sanctity of the bodies and minds of all its members.
- ❖ **Cultural attitudes can and do change:** The heavy involvement of both government and civil society in social efforts to end violence against women illustrate the potential for meaningful cultural change through widespread education and mobilization.

⁸¹ Penal Code, 282(1-2), http://oceansbeyondpiracy.org/sites/default/files/Nigeria_Penal_Code_Act_1960.pdf; 81 Penal Code (Northern States) Federal Provisions Act, <http://www.refworld.org/pdfid/49997ade1a.pdf>.

⁸² Title to the Violence Against the Persons (Prohibition) Act 2015, <http://www.refworld.org/docid/556d5eb14.html>.

⁸³ Know Your Rights – VAPP Act <http://iampurple.ng/p/know-your-right-learn-more-about-the-vapp-act>

⁸⁴ Ladan, Dr. Muhammed Tawfiq, A HANDBOOK ON SHARI’AH IMPLEMENTATION IN NORTHERN NIGERIA: WOMEN AND CHILDREN’S RIGHTS Focus 152-53 (2005), http://leads-nigeria.org/uploads/2479_File_SHARI’AH%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf; see also Shari’ah in Africa, p. 203, http://www.Shari’ah-in-africa.net/media/publications/Shari’ah-implementation-in-northern-nigeria/vol_3_5_chapter_3_part_IV.pdf; Ladan, Dr. Muhammed Tawfiq, A HANDBOOK ON SHARI’AH IMPLEMENTATION IN NORTHERN NIGERIA: WOMEN AND CHILDREN’S RIGHTS Focus 152-53 (2005), http://leads-nigeria.org/uploads/2479_File_SHARI’AH%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf; see also Shari’ah in Africa, p. 203, http://www.Shari’ah-in-africa.net/media/publications/Shari’ah-implementation-in-northern-nigeria/vol_3_5_chapter_3_part_IV.pdf.

⁸⁵ Ladan, Dr. Muhammed Tawfiq, A HANDBOOK ON SHARI’AH IMPLEMENTATION IN NORTHERN NIGERIA: WOMEN AND CHILDREN’S RIGHTS Focus 148 (2005), http://leads-igeria.org/uploads/2479_File_SHARI’AH%20IMPLEMENTATION%20IN%20NORTHERN%20NIGERIA.pdf.

⁸⁶ BAOBAB 2003. [Sharia Implementation in Nigeria: The Journey So Far](http://iknowpolitics.org/sites/default/files/sharia_nigeria_baobab.pdf)

http://iknowpolitics.org/sites/default/files/sharia_nigeria_baobab.pdf

⁸⁷ Voices for Change, Analysis of the Structural and Systemic Causes of Gender Inequality in Nigeria (2014), p. 7, <http://www.v4c-nigeria.com/wp-content/uploads/2014/09/Study-3-Analysis-of-Structural-Systemic-Causes-of-Gender-inequality-in-Nig-.pdf>.

3. RECOMMENDATIONS

- ❖ Repeal section 55 of the Penal Code and similar provisions that sanction violence against women and which reinforce patriarchal violence. They moreover conflict with provisions under the Violence Against Persons Prohibition (VAPP) Act, 2015.
- ❖ Extend the jurisdiction of VAPP so that it applies to all territories , including those under *Shari'ah* law.
- ❖ Educate women about their rights under the law, and how to access the courts to uphold these rights.
- ❖ Amend the VAPP or penal codes to criminalize marital rape.
- ❖ Educate police officers and others that domestic violence is a criminal act, and not a family matter.
- ❖ Outlaw the practice of female genital mutilation and take affirmative action to build awareness of its consequences to the rights and well-being of girls and women.

4. POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS⁸⁸

Family Matter	Muslim Family Laws Currently in Force
Violence against women in the family <u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21	<p><u>Adoption of specific domestic violence legislation:</u></p> <p>Afghanistan, Bahrain, Bangladesh, Chad, Indonesia, Lebanon, Kenya, Kyrgyzstan, Malaysia, Saudi Arabia: Specific legislation that criminalises acts of domestic violence have been adopted.</p> <p><u>Marital rape:</u></p> <p>South Africa, Turkey: Marital rape is criminalised.</p>

⁸⁸ This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

ANNEX 1: MUSAWAH VISION

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do they fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances. Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

It is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam and Muslim communities, to:

- ❖ Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family laws today.
- ❖ Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- ❖ Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.
- ❖ Support civil society groups and individuals engaged in family law reform campaigns, moving the family towards relationships of equality, justice, dignity and mutual respect.