

# Immigration and Refugee Board of Canada

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## Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

7 November 2012

### NGA104210.E

Nigeria: Divorce law and practices among Muslims, including grounds, procedures, length of process, property dispositions, child custody and consequences for the woman and her family  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### 1. Background

According to sources, Nigeria has an almost equal number of Muslims and Christians (Freedom House 2012; US 30 July 2012, 2). According to the US Department of State *International Religious Freedom Report for 2011* for Nigeria, it is estimated that Muslims represent 50 percent of the population, Christians 45 percent, and practitioners of indigenous religious beliefs 5 percent (ibid.). The majority of Muslims are Sunni, although there are growing Shia and Izala minorities (ibid.). Northern Nigeria is mainly Muslim, but Christians have resided and intermarried with Muslims for more than half a century (ibid.). Sharia courts exist in the northern states of Sokoto, Kebbi, Niger, Kano, Katsina, Kaduna, Jigawa, Yobe, Bauchi, Borno, Zamfara, and Gombe (ibid., 3). In the Niger Delta Region, Muslims constitute only one percent of the population, and in Lagos and Abuja, there is a "small presence" with "no apparent discrimination" (ibid.). P.O. Oviasuyi and Jim Uwadiae, both in the Department of Public Administration at Ambrose Alli University in Edo State, writing in the *Journal of Peace, Conflict and Development*, indicate that the Niger Delta Region is made up of the states of Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers (Nov. 2010, 1). In the "Middle Belt" and the southwest of the country, Christians and Muslims are equally represented (US 30 July 2012, 2). Yorubas, who predominate in the southwest, practice either Christianity or Islam alongside Yoruba traditions (ibid.).

According to BAOBAB for Women's Human Rights (BAOBAB), a non-profit NGO that works for the human and legal rights of women in religious, common and customary laws (n.d.), marriages take place in Nigeria under three legal systems: common law (statutory law), customary law, and Muslim personal law (BAOBAB 2007, 40). Abdulmumini Oba, a lecturer on the Faculty of Law at Nigeria's University of Ilorin, writing in the *Emory International Law Review*, while not specifically mentioning marriage practice, similarly notes the coexistence of the three legal systems (2011, 881). BAOBAB indicates, in its Legal Literacy Leaflet No. 2, *Divorce - The Dissolution of a Marriage in Muslim Personal Laws in Nigeria*, that Muslim personal laws are often referred to as Sharia (n.d.). The BAOBAB leaflet also says that Muslim laws for divorce apply to Muslim couples and to non-Muslim couples that agree on Muslim laws being applied to them (n.d.). According to the US *International Religious Freedom Report for 2011*, the Nigerian constitution allows states to establish either common-law or customary courts in their jurisdictions (US 30 July 2012, 3). The US Department of State Nigeria Reciprocity Schedule, accessed on 24 October 2012, indicates that only Islamic courts have jurisdiction in the dissolution of Islamic marriages (ibid. n.d.).

#### 2. Initiating Divorce

The BAOBAB leaflet indicates that couples that want a divorce are encouraged to make "serious efforts at reconciliation" (BAOBAB n.d.). Reconciliation may involve "arbitration, whether formal or informal since Muslim law prefers reconciliation to adjudication" (ibid.). Arbitration efforts to make peace are usually conducted by relatives designated on each side or by persons appointed as their waliyis (guardians) (ibid.).

An October 2008 joint report by the UK Border Agency and the Danish Immigration Service indicates that in Muslim marriages it is easier for women to initiate divorce than in "traditional marriages, which are common in the southern part of Nigeria" (Denmark Oct. 2008, para. 1.78). According to the report, divorces on the request of women are more common in the Muslim north than anywhere else in the country (ibid.). In correspondence with the Research

Directorate, Ayesha Imam, an independent consultant on women's rights, NGO development and sustainable development, and former head of the Department of Culture, Gender and Human Rights of the UN Population Fund, indicated that, under Muslim laws, women have more difficulty in obtaining divorce than men (20 Oct. 2012).

Often, if a husband mistreats his wife, her father may demand her divorce and her return home (Denmark Oct. 2008, para. 1.78). However, fathers are under constant pressure to arrange quick re-marriage for their daughters (ibid.).

### 3. Types of Divorce and Grounds

Imam and BAOBAB agree on the existence of four main types of divorce under Muslim law: *talaq*, *mubarah*, *khul'u*, and *tafriq* or *faskh* (Imam 19 Oct. 2012; BAOBAB n.d.). The BAOBAB leaflet also makes reference to three other forms of divorce that are rarely found nowadays: *zihar*, *ila*, and *lia'n* (ibid.).

#### 3.1 Talaq

Imam indicated that talaq divorce consists of the unilateral repudiation of the marriage and is the most common one in Nigeria (Imam 19 Oct. 2012). She pointed out that repudiation is available only to men, unless the husband has delegated this right to his wife, something almost "unknown" in Nigeria (ibid. 20 Oct. 2012). The BAOBAB leaflet describes talaq sunni and delegated talaq with their respective conditions and effects as follows:

##### TALAQ SUNNI

A talaq that is given properly is known as [t]alaq [s]unni. This is dissolution of marriage in an orthodox manner ....

##### CONDITIONS FOR A VALID TALAQ

1. The husband must:
  - a. be an adult
  - b. be sane
  - c. not acting under any sort of coercion (external pressure).
2. The woman must be in a 'state of purity' (free from menstrual blood and the blood of child birth).
3. There should be no cohabitation between the two after being 'clean.'
4. He should not give it more than once; that is, it should be pronounced in a manner leaving room for reconciliation. This is known as [*talaq [r]aj'i*].
5. He should not give another divorce within the time of the three months awaiting period.
6. The intention to divorce must be clear. Intention can be shown by speaking, clear signs or writing.
7. Each statement of divorce must have at least two witnesses.
8. The divorce that is pronounced once or twice is a revocable divorce.
9. This is known as [*b]id'i*.
  - a. This means that if the husband and wife decide to reconcile before the end of the waiting period (*iddah*) they may do so.
  - b. But, if they mutually reconcile after the end of the waiting period, they must go through another marriage contract. This is known as *talaq ba'in bainuna sugra*.
10. A divorce that is given three times is irrevocable. This is known as *talaq ba'in kubra*. A talaq ba'in kubra means that the husband and wife cannot reconcile and be married again, after the wife has been married to and divorced from another man. This should not be a marriage done for the purpose of being able to remarry with the former husband.

A divorce [*b]id'i* is a pronouncement of divorce that does not fulfil the conditions mentioned above. This renders the divorce unorthodox but valid, i.e. legal but not morally correct.

A wife may challenge her divorce in court if the proper conditions for a divorce Sunni have not been carried out.

##### EFFECT OF TALAQ

The wife does not have to reimburse her *mahr* (dower) or any marriage expenses. (The mahr is the marriage gift that a groom makes to his bride on marriage. Muslim [m]arriage is not valid without mahr.)

##### DELEGATED TALAQ (TALAQ-TAFEEZ)

##### CONDITIONS

The husband can assign his right to [t]alaq (repudiation) to his wife. This is usually agreed upon at the time of the marriage contract, either in writing or with two witnesses present.

The husband cannot legally delegate his right of talaq to any person except the wife herself.

## EFFECTS

If the state condition occurs, then the divorce is automatic, unless the wife chooses not to exercise the right.

The wife does not have to reimburse her mahr (dower). (n.d.)

In 19 October 2012 correspondence with the Research Directorate, Imam provided the following information:

[Talaq] does not require a court proceeding. In principle, repudiation must be on three separate occasions, in front of witnesses and communicated to the wife. In practice, however, the talaq may consist of three verbal utterances on one occasion, and has been known to be not communicated to the wife at all, even by phone or text. In cases where the husband does not communicate it in writing, it can be extremely difficult for a woman to establish that she has been divorced (and is therefore free to re-marry ...). In talaq divorce, women are not required to return the mahr ( ... in principle paid to the woman herself, but oftenred or largely given to her family).

### 3.2 Mubarah

Sources indicate that mubarah is a divorce by mutual consent of the husband and the wife (BAOBAB n.d.; Imam 19 Oct. 2012). Since the easier talaq can be initiated only by men (ibid.), mubarah is usually initiated by the woman and decided by a court (ibid.; BAOBAB n.d.). If both husband and wife wish, they can agree to the divorce between themselves, or with their walis (ibid.). According to the BAOBAB leaflet, in a mubarah divorce, the wife does not have to pay to leave the relationship (ibid.). Imam, however, indicated that the return of the mahr depends on individual agreements (19 Oct. 2012).

### 3.3 Khul'u

Khul'u is a negotiation initiated by the Sharia court (BAOBAB n.d.). In this type of divorce, the wife pays the husband an agreed sum for her freedom and does not have to give a reason for wanting the divorce (Imam 19 Oct. 2012; BAOBAB n.d.). However, according to the BAOBAB leaflet, the husband often insists on a large sum of money (ibid.). Where there is a dispute over the "ransom", the case will be decided by the court, which would then set the amount to be paid (ibid.). BAOBAB takes note of Sharia court cases that have found that the khul'u payment should "not be more than the original value of the mahr received or promised at marriage" (ibid.). Imam indicated that the amount is normally equivalent to the mahr (Imam 19 Oct. 2012). She also indicated that, in cases of long-term marriages, the wife is required to pay only a "token amount," in addition to court fees she pays as the initiator of the divorce (ibid.).

### 3.4 Tafriq or Fashk

Sources indicate that this form of divorce is decided by the court (ibid.; BAOBAB n.d.; Okunola and Ojo 2012, 140). Cases of this sort are usually brought by women since men have the right to talaq (BAOBAB n.d.). The wife seeks a divorce on the grounds of violation of marriage terms (Imam 19 Oct. 2012). When a complaint is made, the court is obliged to conduct an independent investigation, by hearing witnesses or by accepting oaths sworn by husband and wife (BAOBAB n.d.). According to the BAOBAB leaflet, either the wife or husband brings an application, for one or more of the following reasons:

1. The failure of the husband to provide maintenance (shelter, food, medical expenses, clothing) ...
2. Defect on the part of the husband or wife-for example, if the husband or wife is insane, or impotent or frigid, this can be a reason for divorce. However, where the wife or husband knew about the defect in advance but remain silen[t] they cannot complain afterwards. If the complaint is one of impotence or insanity, the case may be adjourned for a year.
3. Prolonged absence ...
4. Injury or discord between the wife and husband ...
5. Failure to provide sexual satisfaction ...
6. Refusal of the husband to enable [the] wife to undertake her religious obligations. (ibid.)

Sources indicate that, if the court grants a divorce for any of these reasons, the wife does not have to make any payment to the husband or reimburse the mahr (ibid.; Imam 19 Oct. 2012; Okunola and Ojo 2012, 140). Imam also indicated that the court may require the husband to pay the court fees (19 Oct. 2012).

According to BAOBAB, women often have to resort to khul'u divorces and pay for their release, even when they have "good" cause for a court-decided divorce, possibly because women do not know that, in such cases, they do not

have to pay the husband, or because a wife would prefer to pay for her release rather than endure delays in the judicial system (n.d.).

### 3.5 Zihar, Ila, and Lia'n

The BAOBAB leaflet provided the information in this paragraph (n.d.). These types of divorce are rarely found nowadays. Zihar is divorce in which "a man compares his wife to his mother." Ila is a divorce in which "the husband has made an oath that he will abstain from sexual intercourse for four months or more and he carries it out." Lia'n is a divorce in which "a husband accuses his pregnant wife of committing adultery and therefore disowns paternity." The couple are asked to swear to the facts, and the wife does not have to pay the husband anything.

### 3.6 Waiting Period or Iddah

According to Imam, a waiting period must be observed in divorces, to allow reflection or to ensure clear paternity (Imam 19 Oct. 2012). During this period, women, and not men, may not remarry (ibid.; BAOBAB n.d.), and the husband is responsible for the wife's support when there is room for reconciliation (ibid.).

Sources indicate that the waiting period for divorce for menstruating women is three menstrual cycles, unless the woman is pregnant, in which case it is until after delivery (ibid.; Imam 19 Oct. 2012). A woman who has been abandoned by her husband or whose husband is missing must wait for four years and four months before the marriage is dissolved (ibid.).

In a talaq divorce, the iddah is instituted by the husband not uttering the third repudiation (Imam 19 Oct. 2012).

## 4. Support and Property Disposition

According to Imam, upon divorce and after the three repudiations, the wife is permitted to spend her iddah period in her husband's house (Imam 19 Oct. 2012). She is entitled to support only if she is pregnant, and then only until the baby is born (ibid.). Sources say that, in practice, whether by their own choice or not, women do not remain after the divorce is pronounced (ibid.; BAOBAB 2005, 68) and forfeit any support (Imam 19 Oct. 2012).

In the Freedom House *Country at the Crossroads 2012* report for Nigeria, Carl LeVan and Patrick Ukata, both professors at the American University in Washington, DC, indicate that Sharia and customary laws give preference to men with respect to property rights (2012). In BAOBAB's 2005 *Women's Rights in Muslim Law*, the authors indicate that the wife can own property in Nigeria, even without the consent of her husband, but that different strategies are used to prevent the realization of this right, such as the argument that women cannot own land (BAOBAB 2005, 81-82). It also indicates that judges in lower courts are corrupt and do not uphold the law in this regard (ibid., 82). Imam indicated that women may keep property and goods owned before marriage (Imam 20 Oct. 2012). However, she explained that, since there is no concept of division of marital property, assets accumulated during the marriage belong to the husband, unless registered jointly or under the woman's name alone, both rare occurrences (ibid.). She added that such types of registration are considered hurtful to a husband's reputation and status (ibid.).

## 5. Child Custody

Imam indicated the following with regard to child custody, guardianship and support:

In principle, fathers always have guardianship of children (decision-making powers over the child). The custody (physical care) of a male child remains with the mother until he reaches the age of puberty, and a female child remain[s] with the mother until she is married and the marriage is consummated. If the mother remarries, she may lose her right to custody, and the next female relation on the mother's side (her mother, her sister, etc.) takes custody.

In practice, most women lose custody of their children immediately and the father decides where and with whom they will live. If the mother does have custody, but remarries, the father often takes the child from his or her mother regardless of age. Increasingly, but very rarely, a mother will fight for custody and guardianship and has been known to get it.

[With regard to child support, i]n principle, fathers are required to maintain their children (but not the mothers) until they are adult or marry. In practice, this depends solely on the disposition of the father - and is one reason why many mothers do not fight for custody, as they fear they will not be able to maintain their children. (19 Oct. 2012)

The 2005 report published by BAOBAB indicates that women are often forced to give up the custody of their children because fathers do not pay maintenance (72).

Imam indicated that losing their children may mean that women cannot rely on their offsprings' help when they become old or unwell (20 Oct. 2012). As well, access to children's labour, especially important in poor families, is lost to mothers and not to fathers (Imam 20 Oct. 2012).

## 6. Consequences for a Divorced Woman

Imam provided the information in the following paragraph with regard to the consequences of divorce (20 Oct. 2012). Women can divorce and re-marry several times without stigma but a woman who divorces more than three times will be regarded as "'difficult'," unlike a man. Nigerians believe that all women should be married, which causes problems for unmarried women, regardless of how they came to be unmarried, such as workforce discrimination and sexual harassment. As well, seeking a divorce can lead to or worsen domestic violence, which may come not only from the husband, but from his family who may consider the divorce an insult to their family. Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. For more information on treatment and situation of divorced women or women who head their own household in Nigeria, please see Response to Information Request NGA103907.E.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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## Additional Sources Consulted

**Oral sources:** Attempts to contact professors at the following universities were unsuccessful: University of Bristol School of Law; University of Lagos Faculty of Law; University of London – Centre for Gender Studies, School of Law.

Professors from the following universities could not provide information: University of Glasgow School of Law, University of Leicester.

**Internet sites, including:** African Journals Online; AllAfrica.com; Amnesty International; Asylum Aid; Austrian Centre for Country of Origin and Asylum Research and Documentation; Center for Reproductive Rights; *Christian Science Monitor*; ecoi.net; Encyclopedia of the Third World; Factiva; Freedom House; GERDDES-AFRICA; *The Guardian*; Human Rights Watch; Nigeria – Ministry of Interior, Police Force; *Nigerian Tribune*; *The Punch*; United Kingdom – Border Agency; United Nations – Integrated Regional Information Networks, Refworld, Reliefweb; United States – Central Intelligence Agency, Overseas Security Advisory Council; *Vanguard*.

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