

PARALEGAL TRAINING MANUAL on  
Improving Women's Access to Justice in Northern Nigeria



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**NIGERIA**

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## **About Global Rights**

Founded in 1978, Global Rights is an International Human Rights Capacity-Building Organization that works side by side with local activists in Africa, Asia, and Latin America to promote and protect the rights of marginalized populations. Through broad-based technical assistance and training, we strengthen partners to document and expose human rights abuses, conduct community outreach and mobilization, advocate for legal and policy reform, and provide legal and paralegal services. Over our 30 year history, we have worked in scores of countries to help local leaders and organizations to address human rights abuses and to lift their struggles out of isolation and onto regional and international stages, where institutions such as the United Nations and Organization of American states develop and enforce human rights standards.

At the core of our programming is a deep commitment to increase access to justice for poor and marginalized groups, promote women's rights and gender equality, and advance racial and ethnic equality. In addition to this, we have two special initiatives-lesbian, Gay, Bisexual, Transgender, and Intersex rights and Natural Resources and Human Rights that allow us to explore new program areas while targeting populations that fit our core programming.





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## **Preface**

The community-based paralegal movement came about in response to the need to promote and protect human rights and to provide greater access to justice in grass root communities, particularly for marginalized, less privileged, and poor residents. Paralegal services also promote greater accountability of the justice system. Through the services of community-based paralegals, legal aid and legal advice are made more widely available, especially to women living in rural communities.

After completing a training course, paralegals are expected to provide legal aid and legal advice and are monitored by legal practitioners, lawyers and human rights experts in the performance of their work. A paralegal is expected to attain a certain educational level or work experience level in order to be able to do this job effectively. For effectiveness, a paralegal usually resides in the area in which s/he is working. This encourages acceptability by the people within the community and assists the paralegal to have a good understanding of the problems of the local people and their environment.

Although the concept and role of paralegals are gradually being recognized and understood in Nigeria, the process is still very slow. Paralegals have had some difficulties in the past because they are not widely known and accepted within the country. However, there are steps presently in progress to institutionalize paralegal services, since about 27 of Nigeria's 36 states already have paralegals movements in grass root communities. Greater recognition of paralegals will bring more respect and attention to their work in communities throughout the country.

## **BRIEF ABOUT THIS PARALEGAL HANDOUT**

This manual is specifically tailored to respond to the gaps identified in the 2009 study by Global Rights entitled “Assessment of women's priority legal needs in Northern Nigeria” and is designed for community-based organizations, activists and opinion leaders in grass root communities. It includes detailed information that can facilitate learning and increase the knowledge base of community activists on women's access to justice, human rights and the rule of law. The aim of the manual is to support women's rights and access to justice for women in Northern Nigeria. The manual represents one of the efforts of Global Rights to support legal and human rights and greater access to justice in grass root communities of Nigeria.

The materials in this manual are designed for use by paralegal trainers and persons learning to become paralegals. The accompanying facilitator's manual includes a range of participatory education techniques, such as group work, role plays, drama, case studies, brainstorming and discussion exercises.

The manual encourages participants to do the following:

- To think about legal and human rights issues
- To understand women's rights and how it can be protected in grass root communities
- To understand gender roles and dynamics
- To understand the usefulness of law and human rights to everyday life
- To bring law nearer to reality
- To understand women's access to justice issues
- To understand the available methods of redressing violations
- To identify ways of incorporating acquired knowledge into daily lives.

This manual is designed for a five-day workshop, which would draw on

experiences of the participants and create an interactive dialogue of knowledge, ideas and experiences. There are seven chapters in the manual and each chapter has a corresponding module in the facilitator's manual.

The workshop is designed for 20- 25 participants and it is advised that the organizers take into consideration gender balance in the selection of participants.

Rommy Mom  
Nigeria Country Director  
Global Rights  
May 2010

## **ABBREVIATIONS**

**AU- African Union**

**AG-Attorney General**

**ADR-Alternative Dispute Resolution**

**CA- Court of Appeal**

**CC- Criminal Code**

**CEDAW-Convention on the Elimination of All Forms of Discrimination Against Women**

**CRL-Child's Rights Law**

**CFRN-Constitution of the Federal Republic of Nigeria**

**CSOs-Civil Society Organisations**

**FHR- Fundamental Human Rights**

**HR-Human Rights**

**HRC-Human Rights Commission**

**ICCPR-International Convention on Civil and Political Rights**

**ICESCR-International Convention on Economic, Social and Cultural Rights**

**LAC-Legal Aid Council**

**MCA-Matrimonial Causes Act**

**NA-National Assembly**

**NHRC- National Human Rights Commission**

**PC-Penal Code**

**SC-Supreme Court**

**UK-United Kingdom**

**UN- United Nations**

## List of Authorities

The Constitution of the Federal Republic of Nigeria 1999  
The Criminal Code Capp 77, Laws of the Federation  
The Criminal Procedure Act CAP 80, Laws of the Federation  
The Convention on the Elimination of all forms of Discrimination Against Women  
The African Charter on Human and People's Rights  
The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa  
The Matrimonial Causes Act 1970  
The Wills Act -1837  
The Wills Amendment Act 1852  
The Holy Qur'an



## Chapter 1:

### UNDERSTANDING THE ROLE OF A PARALEGAL

*It is important that the legal system itself be made affordable, accessible and efficient. The most elegantly drafted Human Rights are worth nothing if only the wealthy can enforce them or if remedies are subject to inordinate delays*

*Nelson Mandela, 1994*

#### Introduction

Access to justice is a human right that should be available to all. Its denial can lead to a further abuse of one's rights and injustice. Access to legal services has remained difficult in most parts of the country particularly in rural areas; the Northern states of Nigeria are no exception. The majority of women in Northern Nigeria are unable to access justice when necessary. Their inability to access basic legal advice is often due to several reasons:

- Legal services by lawyers are expensive and often unaffordable to indigent women who have very little financial means to live on and support their children.
- Most lawyers are situated in the urban areas, not rural areas.
- The government's Legal Aid Council that is set up to assist poor people to access justice is not adequately supported with money and enough lawyers and staff to enable it to meet the needs of the people in these states. Their offices are usually located at the state capitals, leaving other regions, particularly rural areas without desired support.
- Where women do get the opportunity to appear before courts, they are often intimidated by court personnel, who are majorly men, and by the unfriendly language of the court.
- Women are also prevented from accessing justice and seeking legal advice because of some cultural practices in their communities.

For the reasons above, conditions prevail where violence and other human rights violations against women occur on a regular basis and are unaddressed by the legal system. It is important to respond to these challenges by improving access to justice through the provision legal aid to the most vulnerable set of people, which in most cases are indigent women.



## **Who is a paralegal?**

A paralegal is a person who provides legal first aid to persons in need of legal advice. A paralegal is not a lawyer and does not assume the status or practices of a lawyer. A paralegal is one who provides basic advice and assistance to parties, to assist them as first and immediate steps in resolving their legal problems. With the appropriate training, anyone who can read and write in any language can be a paralegal.

## **What do paralegals do?**

Paralegals perform the following functions, amongst others:

- Educate people about their legal rights and how to get them enforced by the justice system.
- Provide basic advice and counselling to individuals and groups on how to resolve their problems.
- Provide guidance on how to institute a legal matter in court or how to respond to one.
- Make referrals to appropriate persons, lawyers and government offices to assist parties with their challenges.
- Assist parties to write complaints, petitions, agreements and affidavits to resolve their problems.
- Act as mediators or conciliators (in limited cases and only where appropriate) to assist parties in amicably resolving their problems.
- Accompany parties to court to offer moral support, assist and direct them as regards language of the court and court procedures.

Often paralegals work with lawyers especially pro-bono lawyers; (these are lawyers who provide free legal services) to assist indigent persons to resolve more complex legal matters. Lawyers also provide occasional guidance to paralegals on how best to approach a complex issue.

## **Qualities of a good Paralegal**

- a. A good paralegal must be familiar with both the substantive and procedural aspects of the law
- b. A good paralegal must be a person of good character that is respected within her/his community
- c. A good paralegal must be committed to providing support to persons seeking justice
- d. A good paralegal must have excellent communication skills
- E. A good paralegal must be compassionate
- f. A good paralegal must be a person of integrity, who is able to keep confidential the issues divulged to her/him.

## **Essential skills for paralegal work:**

- **Interviewing skills**

A paralegal needs excellent interviewing skills in order to be effective; this will assist to get an accurate picture of a person's problems and the facts surrounding them. When interviewing a person seeking paralegal advice, it is important to make them feel at home and comfortable to talk. A person who comes to you needs help, so make sure she is not in anyway intimidated. Ensure that the person seeking advice understands your role as a paralegal. The following ideas will assist you when conducting interviews:

- Be respectful courteous to your interviewee
- Ensure that the atmosphere is conducive and that your interviewee is at ease
- Remain calm and attentive throughout the course of the interview
- Practice active listening throughout to ensure the interviewee feels heard and that what she had to say is important
- Explain the importance and purpose of the interview session to your interviewee
- Encourage the interviewee to tell the story in his/her own words
- Avoid appearing judgmental, disbelieving or disapproving of the interviewee's conduct
- Follow up their statement with specific questions
- Ask open ended questions and avoid using leading questions
- Try to summarize back to the interviewee what you think (s)he stated to ensure accuracy of facts.

- **Counselling and mediation skills**

As a paralegal, you must be able to provide counselling and, sometimes, mediate matters brought before to you. Mediation should only be pursued in appropriate matters where a woman's rights will not be sacrificed or compromised through the process. (Please see the guidelines on when not to mediate that are provided in a later chapter of this manual.) As a matter of fact, most of the cases you will encounter as paralegal will never get to court, given the length of time it takes to resolve matters in court and the adversarial nature of litigation. Most parties want quick, timely, cost effective and amicable resolution of their matters. Therefore many people will approach you to provide counselling and perhaps to mediate their disputes.

Counselling and mediation skills are discussed in greater detail in the next chapter.

- **Client referral**

As a paralegal, you will not be able to handle every case from the beginning to the end all by yourself. Often you will need to refer your clients to lawyers or others who will be able to offer expert legal solutions to their challenges. In addition to lawyers, you might need to refer them to the Human Rights Commission, human rights organizations, government officials/offices, appropriate authorities etc. You therefore need to familiarize yourself with the services they offer and the procedure for accessing their services. You will need to keep their contact details and, where possible, maintain some form of relationship with these persons/organisations to facilitate approaching them on issues. You may need to write referral letters to these persons/agencies and you should ensure that you follow up on the actions of the agency.

- **Letter writing**

Paralegals need to develop good writing skills in order to be effective. They will often be required to write complaint letters or petitions to facilitate their cases.

When writing letters, remember to bear in mind the following:

- You should keep your letter simple and as brief as possible
- Ensure that your letter is correctly addressed to the person to whom you are writing
- Ensure the capacity in which you are writing is clear from the letter
- State clearly what you want from the recipient of the letter
- Remember to date your letter
- Remember to sign at the end of your letter. In certain instances, the party/parties may also need to sign. You will have to decide this on a case by case basis
- Send copies of your letter to stakeholders and relevant parties to keep them officially informed
- Request a response from the person receiving the letter
- Ensure the letter is delivered quickly and, as much as possible, obtain proof of delivery (e.g. receiver's signature).

Sample letter formats are provided at the end of this manual.

- **Record keeping and reporting**

Paralegals must be able to take and keep accurate records of clients' cases. They must be able to articulate who the party is, what her/his issues were, date and times of meetings, advice given, steps taken, and referrals made

if any. A paralegal must monitor and document the entire process of the case for future reference. Records kept should be brief and easy to read. Sample forms that may be adapted are provided at the end of this manual.



## Chapter 2:

### Counselling and Negotiation skills

#### Counselling clients

As earlier discussed, counselling is an essential part of your work as a paralegal and you must develop the appropriate skill set to do this effectively. Clients will come to you basically to receive advice on what they ought to do with the problem and to seek your assistance in doing this. Your primary duty in counselling, therefore, is helping the client understand her/his legal situation and the redress options available.

Before you can advise clients or proffer solutions to their problems, you need to accurately understand the facts of their case and what steps have been taken so far.

To effectively counsel, you should have:

A basic idea of the laws applicable to the client's situation and the avenues available for seeking redress.

The ability to analyze situations and relate it to your knowledge of law, explore options for resolution and advise clients accordingly.

- Good feelings for the client and the ability to offer moral support
- The ability to deal with matters in a confidential and professional manner
- Excellent communication skills: active listening skills, understand body language and be able to communicate effectively in a language the client understands.

While counselling, bear in mind that it is important not to make promises you cannot keep or to give advice that you are not sure about. Where you are unable to deal effectively with a matter you should refer the matter to a lawyer or other appropriate personnel or authority.

#### Steps in counselling

The scenario below is meant to give you a basic idea of how your counselling session is likely to go:

- A client approaches you for legal advice
- You fill a form recording the details of the client
- The client states her matter to you in her own words
- You ask open ended questions to clarify issues and probe further to discover any other detail that might be helpful
- You inform your client of the legal position of her matter. (If you are not sure what the law has to say about it, you could ask for your client to return at a later period while you investigate by consulting a lawyer )
- You then inform your client about the possible next steps to

When to mediate	When not to mediate
	<i>Where the fundamental rights of a party will be violated</i>
If it is important to maintain the relationship between the parties	Where the parties are not willing to negotiate a solution to their dispute collaboratively
When a client cannot afford the time and cost of litigation	Where a crime has been committed for example: rape, murder, assault, violence against women or children, sexual or gender based violence, etc
Where it is in the best interest of the parties (or of a party) to keep the facts of the case confidential	Where the life of a party is in danger
	Where the matter is purely a matter of interpreting the law

### Skills essential for mediation

- A mediator must have excellent communication skills.
- A mediator must have excellent human relation skills
- A mediator needs to have a basic understanding of the way people think.

### ***Mediation's rule of thumb***

- i. Remember, mediation it is not a process of determining legal right or wrong, but of negotiating common ground
- ii. Your responsibility in mediation is not to proffer a solution to the parties' dispute but to facilitate communication between them to enhance their negotiation.
- iii. Remember to be respectful of the parties and to treat them with equality, devoting equal attention to each of them.
- iv. You must begin and remain impartial and neutral throughout the course of the negotiation
- v. Actively listen for what the parties really want. Sometimes, parties who are in fear of losing stick to hard-line positions when, all the while, they have underlying interests and motivations that may be served outside of their positions. Listen to both parties with equal attention, giving both an equal amount of time to state their side of the story and their concerns
- vi. If you caucus with one side (i.e., hold a private meeting) to explore issues, you should do the same with the other party.
- vii. Take a break when necessary for instance where parties have come to a deadlock; to allow parties to regain their composure or prevent a faceoff; to allow you or the parties to reflect on what has been said.

### **The cycle of mediation**

While mediation is a flexible process, it has definite stages in its progression. These stages are not cast in stone and parties in a mediation may find themselves alternating from one phase to the next.





## Phases of mediation

### ***Preparation***

At the preparation phase, you prepare for the mediation as the mediator by taking steps to ensure that the parties have agreed to mediate. Where possible, obtain consent in writing and establish that you are in consultation with the parties as per a certain date, at a specified venue. Specify also who should attend the mediation session, what documents are relevant, and determine amongst other considerations if there is a need for a co mediator.

### ***Opening***

At the mediation, welcome the parties warmly and let each person introduce her/himself and in what capacity they are present at the meeting.

Introduce yourself (and where present, your co-mediator). Explain your role as mediator to the parties. For instance “My name is Amina Mohammed and I am a mediator. “

Clarify the process and inform them of the phases you are likely to encounter in the course of the mediation: *“I am not a judge or an arbitrator and my basic duty is to facilitate communication between both parties to enable you both to reach a mutually agreeable solution to your dispute. To start with, I would like for us to agree on some ground rules that will guide this process. Thereafter, we will start the mediation by each party making a statement for their representation of the matter. Thereafter, I may decide to have private meetings with each of you or a joint meeting to explore how best this dispute may be resolved. Thereafter, we will review the terms we have been able to agree on and reduce it to writing. Is this acceptable to you?”*

### ***Establish ground rules***

Disputes can bring out disturbing emotional reactions which can escalate rather than reduce, and they can break-down communication between

parties. In order to avoid this and to ensure that the mediation is conducted in a conducive and amicable environment, it is important to lay down ground rules at the start of the mediation. The ground rules may vary from one particular case to another. Common ground rules usually include no interruption when talking, no name calling, no insults, etc

### ***Establish confidentiality:***

Assure the parties that the process and content of the mediation, will remain confidential and cannot be used against them in a court of law. Parties must also actively declare that they abide by this rule. Establishing confidentiality will enhance the process by enabling parties to talk more freely about their matter without fear that their disclosures will be used against them.

### **Establish parties' authority to settle**

Your efforts at mediation will be a complete waste of your time if the parties present do not have the authority to settle the dispute. This is particularly important where one or more of the parties at the mediation are representing the government, a corporation, an authority, a group, or another person. For instance, if a bank were to send an office assistant to represent it in a debt recovery case, it is unlikely it would give full and complete authority to him to settle. It will still be important for you to check that the representative has express authority to settle even if he were a bank manager.

### ***Story telling***

Invite the parties to present their side of the story and give them equal time to do so. Listen actively to them and encourage them to tell their story in their own words. Ask open ended questions to encourage them to clarify ambiguities and to provide more information (avoid interrupting them though).

At the end of each party's presentation, thank them, summarize their statements, and ask if the summary is an accurate representation of what they intended to communicate. Ask if there are any additions they wish to add to their statement. This will enable you get an accurate picture of the story from their perspective.

Repeat the same sequence for each party's presentation.

### ***Understanding the problem***

This stage allows for the exploration of possible options for the resolution of the dispute. You must continually bear in mind that parties' real interests and needs, as opposed to the positions they articulate, are often quite different. You must, therefore, identify and consider what their real interests and needs are. To meet these needs you need to encourage them

to generate and examine creative options for settlement.

### ***Solution exploration***

Group together similar ideas offered by the parties. The terms of settlement for each dispute will be created by the parties themselves. Evaluate and clarify each idea weighing their advantages and disadvantages. Encourage them to negotiate modifications to the ideas proffered to suit their particular need.

Ensure that their solutions are comprehensive taking into account all the facets of their dispute. They should also be clear and unambiguous. They must of course be practical and workable. You may adopt the acronym **REAL** to evaluate their solutions: **R**ealistic, **E**ffective, **A**ceptable, **L**asting

### ***Resolution***

Once the parties have come to a definite conclusion, reduce their terms of settlement to writing as a binding agreement to be signed by the parties to the dispute.

**What happens in the event that not all of the issues in a dispute are resolved? Does that scuttle the entire process?** No, the parties may agree to resolve such remaining issues through litigation or arbitration or any other means they may wish.

## Chapter 3:

### The Nigerian Legal System

Law is a system of rules made to regulate our interactions with one another within the context of society, and also to govern our relationship with society itself. The system of rules is **binding upon citizens; failure to obey the rules may lead to confusion and chaos in the society**. Laws are enforced through a set of institutions empowered to do so by government.

Over time, each society develops a legal system by which its citizens are directed and function. The system of law is very important to the existence of any society. It is used to enforce order and peace. It is also important so that violators will not go unpunished. In most society the law is used as one tool for achieving development in the society.

In order to be effective as a paralegal, you need to familiarize yourself with the Nigerian legal system, particularly, the legal system operational in Northern Nigeria. In this way, you will be able to offer informed advice to your clients on what the position of the law is to their case and how to best to deal with it. We will, therefore, be addressing within this context the three systems of law operational in Northern Nigeria; the sources of law in Northern Nigeria; how to institute actions in court and how to respond; and how to deal with law enforcement issues, especially the police.

#### Private law and Public law

To understand law better we need to view it from the lens of public and private law. Public law refers to the system of laws regulating the relationship between individuals and the government. Private law is that portion of the law that regulates relationship between individuals. For instance, it regulates contracts between individuals, labour law, family law, marriage, inheritance, etc.

#### Criminal law

Criminal law is the branch of public law that relates to crime and punishment. Investigating, arresting, charging, and trying suspected offenders are regulated by criminal law. There is a difference between a moral violation and a crime. A person cannot be guilty of a crime which was not a crime recognised by law at the time the offence was committed. The burden of proof that the suspect committed the crime is on the prosecution and it must be proven beyond reasonable doubt. Punishments are used to promote obedience to laws. Punishments take several forms, the most common ones being fines, imprisonment, etc. **The criminal code is used in the south and the Penal code is used in the North.**

#### Civil law

This is a branch of public law that relates to wrongs done in the course of

relationships between individuals. The kind of wrongs in civil cases are remedied by way of compensation, damages, etc. Civil proceedings are instituted mainly to help individuals to enforce their legal rights and to receive compensation for damages or losses caused to them by others.

In light of the above, individuals wanting compensation for wrongs done can institute a civil case. An example of this may occur when there is a breach of contract, a non payment of salaries, a land dispute, etc. For a person assaulted, beaten, raped or subjected to armed robbery, the state will institute a criminal case to protect individuals and punish offenders.

### **The tripartite legal system**

Nigeria runs a federal form of government. As a result, we have both federal and state laws. In effect, Nigeria has both federal and state legal systems running simultaneously. Virtually all the states in Northern Nigeria concurrently run three legal systems:

- The Common law
- The Customary law system
- The Sharia law system

Each of these systems has its own court system and sources of law.

### **Sources of law in Northern Nigeria**

#### ***The Common law***

The common law in this instance refers to the received English law. Nigeria as a former colony of England adopted the English common law system and in effect derived a large proportion of its current laws from the laws operational in the United Kingdom before October 1960.

#### ***Judicial precedents***

An important part of the received English common law is the adoption of a system whereby the judgments of superior courts become binding on themselves and on lower courts, thereby creating a new set of laws from these judgments.

#### ***The Constitution***

The Nigerian Constitution (1999) is the highest law in Nigeria. Any law that is contrary to the constitution immediately becomes void. It is a set of rules that regulates government. It establishes the structure, procedures, powers and duties of government. As a paralegal, the portion of the Nigerian Constitution that you are likely to find most interesting is Chapter 4, which provides for government's duty to protect fundamental human

rights and punish their violation. We will talk more about this later in this manual.

### ***Legislation***

Nigerian legislation or statutes are laws, ordinances, Acts, decrees and edicts passed by legislatures. As directed by the constitution of Nigeria, legislation may be made by the National Assembly and the State Assembly of each state of the Federation. The National Assembly creates laws for the Federation, while the House of Assembly makes law for each State of the Federation. By inference, therefore, we can deduce that we have both Federal laws and state laws. The state laws of a state apply particularly to that state, while federal laws are applicable throughout the country. Legislative laws are usually enforced in formal courts.

### ***Customary law***

Customary law or indigenous law refers to a set of customs accepted by members of a community as being binding on them. Usually they are laws applicable to a particular ethnic group or sub-group, governing their way of life and derivative of their culture. Customary law in Nigeria is unwritten, flexible and may change over time as the culture of the community evolves. Customary laws are enforced in customary courts and informal community courts. The most utilized customary laws are known as personal laws inheritance, customary marriage, divorce, and land use.

It is important to note that the courts will not enforce a customary law that is repugnant to equity, natural justice and good conscience.

### ***Islamic law***

Islamic law may also be called Muslim customary law and it governs the way of life of Muslims. Unlike indigenous customary law, Islamic law is written law. These laws are derived from the Holy Quran and the teachings of the Prophet Mohammed. In some communities, Islamic law has been adopted as their indigenous customary law. Virtually all states in northern Nigeria have Sharia courts that administer Islamic personal law. Under criminal law, 12 states in Northern Nigeria have adopted the Sharia Penal Code, thereby increasing the sources of criminal law to include Islamic law and expanding Islamic law from just the realm of private law to include criminal law.

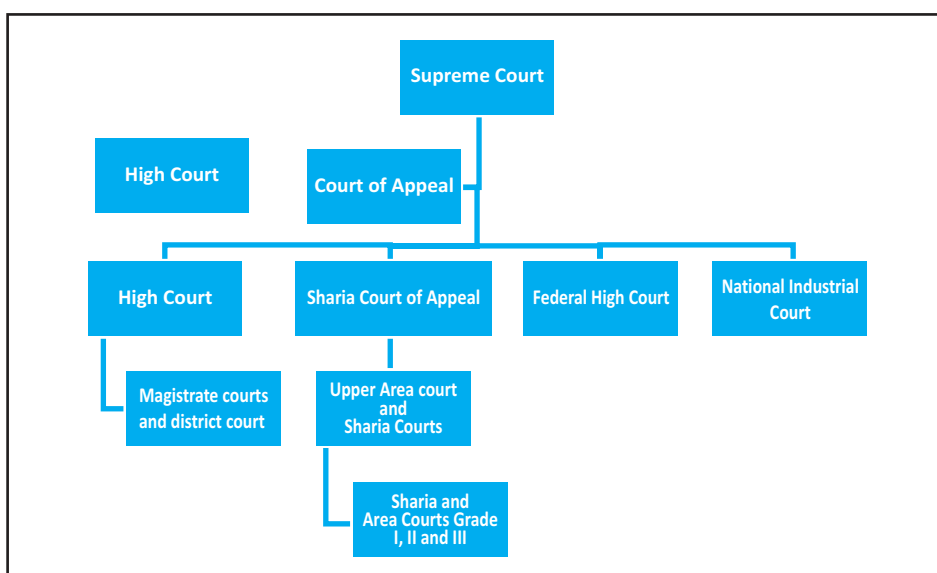
### ***International and regional treaties and law***

These are laws made by the United Nations, or regionally by the African Union or bodies of the Economic Community of West African States (ECOWAS), for example. International treaties are ratified and adopted by government and could become laws of the country after being signed and ratified. These laws can become laws in Nigeria when domesticated

(localized). Unfortunately most of the recent international treaties like the International Convention for the Elimination of All forms of Discrimination Against Women (CEDAW) and the Protocol to the Rights of Women in Africa are not yet localized. The African Charter on Human and People's Rights (ACHPR), however, is already localised as part of the laws of the federation.

### The Nigerian court system

The Court system in northern Nigeria may be divided into formal and informal courts. Formal courts are the courts instituted by governments, while informal courts are courts which organically grow in communities.



The formal court system is made up of courts instituted by government. Within this system, most of the cases that will come to you will be resolved at the lower courts within the hierarchy of courts. The courts within this system include:

**Area Court, Sharia Court and Customary Court:** Area courts in Nigeria are lower courts and the equivalent of lower magistrate courts. They have very limited jurisdiction and may handle matters relating to divorce under statutory law and customary law and custody of children under customary law. Where a state has no Sharia Courts, the Area Courts do also try Islamic Law cases relating to marriage, divorce, custody and inheritance. Customary courts may handle matters relating to customary law, while Sharia courts handle matters relating to Islamic personal law and to some

degree may have criminal jurisdiction over criminal law applicable only to Muslims. While these courts are not as formal as the higher courts, persons who have to appear before them have the option of being represented by legal counsel as in any court. This right is protected by the constitution. Most of the cases that go to these courts are cases relating to personal and private law, for instance customary or Islamic family law of divorce, post-divorce entitlements, and penal offences under Sharia law.

***Upper Area Court, Upper Sharia Court and Upper Customary Court***

These courts can try both criminal and civil matters within the limits of their jurisdiction. Appeals from the Area Courts, Sharia courts and customary courts also lie to these courts.

***The Magistrate Court*** - is a state court created by state law. It tries mainly criminal and civil matters. Its jurisdiction is unlike Sharia courts -- it deals with legislative laws and not Islamic law. The jurisdiction of the different Magistrate court grades are limited and are often dependent on, for instance, the amount of money involved.

***The Sharia Court of Appeal:*** The Sharia Court of Appeal has appellate and supervisory jurisdiction involving questions of Islamic personal law. It hears and determines appeals from the decisions of Upper Sharia Courts and Upper Area Courts, in both Civil and Criminal matters. It also supervises and controls the Sharia Courts. It has jurisdiction over any question where all the parties are Muslims and they have voluntarily elected to have the matter determined according to Islamic law. Legal practitioners also have rights of audience before the Sharia Court of Appeal.

***State High Courts*** have a wider originating jurisdiction and sit over all civil and criminal matters except those other courts have exclusive jurisdiction over. They are, therefore, the courts with the widest jurisdiction. They may also sit in appeal over Magistrate Court decisions. Representation before the High Court must be handled by a qualified lawyer.

***The Federal High Court:*** The Federal High Court is at the same level as state high courts, but has limited and exclusive jurisdiction in certain matters, for instance, matters relating to the revenue of the federal government, taxation of companies, customs and excise duties, disputes between banks, issues of citizenship and naturalization, amongst others.



***Court of Appeal:*** The Court of Appeal has appellate jurisdiction to hear appeals from decisions of the High Courts of the States, Federal High Court, the Sharia Courts of Appeal of the States, Customary Courts of Appeal as well as from decisions of a court martial or other tribunals as specified by an Act of the National Assembly. It also has original and exclusive jurisdiction over questions of whether a person has been validly elected to the Office of President or Vice President of the Federation or whether the term of office of such person has ceased or whether the office has become vacant.

***Supreme Court:*** The Supreme Court is the highest court in Nigeria and is the final court of appeal on decisions from lower courts. It also has limited exclusive jurisdiction over matters between states and the Federal Government and disputes between states. The decision of the Supreme Court on any matter is final and cannot be appealed further. All courts are bound by the decisions of the Supreme Court.

### **Informal courts**

Informal courts refer to those courts that are organically developed within communities and not instituted by government. They derive their legitimacy from the collective assent of the community which they serve. Often they are led by traditional and community leaders. Appearance before informal courts is voluntary and their decisions are not legally binding. Their decisions may carry the weight of force by the assent of the parties involved. A number of Masu anguwanni, Dagatai Hakima and other traditional rulers arbitrate matters in the interest of peace in their communities. It might be advisable to consult with these informal court systems in certain circumstances especially in local communities.

### **Instituting legal actions**

It is important to state that often instituting a legal action is the last resort for most of the cases advised by paralegals. Always begin by informing the parties of the options available to them and of the likely outcome of each of these options. You may, for example, recommend a visit or a letter of demand to an institution. You could also make a referral to other organisations which might better be able to assist your client. For instance, you could refer your client to the Human Rights Commission. Where legal action would be the best course of action, we recommend that you at this point contact FIDA, the NBA or the specific attorney to which you have been networked to discuss the best strategy for the case.

In the event of a crime or of violence, you may want to immediately report at the police station. Rape and sexual violence are to be treated promptly. In all other cases, file a complaint at the police station. The police would take your statement and then commence investigations. (Note that criminal prosecution is made by the police or the office of the Attorney General as criminal offences are assumed to be against the state and not against just an individual and, therefore, must be prosecuted in the public's interest in spite of the fact that the wrong must have been suffered by an individual. )

Once the Attorney General or the Police are convinced that an accused party has a charge to answer, the accused might be arraigned before the appropriate court and in some instances arrested. The court of arraignment will depend on the nature and gravity of the offence that (s)he has allegedly committed. Most cases will, however, go before the area/magistrate courts or the high court. But in certain criminal cases, if the parties are Muslims and consent to be tried under Sharia law, their trial will be at a Sharia Court.

Another manner by which criminal proceeding might be instituted against an individual is to bring a complaint before a magistrate a complaint is exactly as its name suggest, and in a written form.

### **Processes of Appearing in a Sharia/Customary Court**

The Sharia/Customary courts are open courts and do not require the appearance of a lawyer. When you do have a lawyer, however, the court will welcome his/her service. You can go to court to get a summon for the person who has violated your client's rights. The Sharia Court Registry may either issue a civil or criminal summons depending on the facts of each case. The court will then invite the person and set the case for trial. Just as in any other criminal action, your case is read and your plea will be taken and witness will be called, if applicable. Note that in the Sharia courts cases are prosecuted in the local language.



## Chapter 4:

### Family law

#### An introduction

In Northern Nigeria, as in most other parts of the world, women often seek legal advice related to family law marriage, divorce, child custody, and inheritance. As a paralegal, it is essential that you are knowledgeable about the law on these issues in order to be effective.

#### Marriage

Marriage may be described as a legal union. There are two recognised forms of marriage in Nigeria: monogamous marriage marriage between one man and one woman and polygamous marriage- marriage between a man and two or more wives. In Nigeria, there are three recognized ways by which people may enter a contract of marriage:

- Statutory marriage
- Customary marriage
- Islamic law marriage

We will examine the capacity to contract marriage and the validity of such contracted marriages and their dissolution under these three types.

#### Statutory marriage

A statutory marriage may be defined as a marriage contracted under the Matrimonial Causes Act of 1990.

A valid statutory marriage must possess the following elements

- Voluntary Both parties must, of their own free will, consent to the union.

The parties must be single both parties must be single at the time of the marriage. In other words, neither party can already be married at the time the marriage is conducted.

- Age- Both parties must be above 21 years of age to contract a valid marriage. Where either party is below 21 years of age, (s)he will require the consent of her/his parents or guardians .

***Before a valid statutory marriage can occur, the following steps must be taken:***

- *One of the parties makes an affidavit attesting that at least one*

*of the parties to the intended marriage has been resident in that state for at least 15 days preceding the marriage and that they have met the other requirements for marriage.*

- *The law obligates that one of the parties to the marriage must sign a notice of marriage as provided by the marriage registrar at any government marriage registry, and submit it at the registry. Where their intention is not challenged after 21 days and up to 3 months, the registrar will issue the applicant with the marriage certificate. But where it is challenged, the person challenging the marriage will enter her/his objection with the registrar and the matter will be brought before a judge who will hear the merits of the objection and decide if it is valid or not. This can be done summarily in a judge's chambers and does not require a full court sitting.*

A marriage notice can be challenged for a number of reasons:

- One of the parties to the marriage could be married and, therefore, precluded from contracting a valid statutory marriage
- One or both of the parties is are under-aged and do not have parental consent to contract the marriage
- One of the parties does not have the mental capacity required to independently consent to marriage.
- One of the parties is not who he claims to be (false identity).
- Any other reason why it may be deemed necessary to prevent the marriage from occurring.

### **Celebration of the Marriage**

After the marriage certificate has been obtained, the intending couple may then celebrate the marriage in any of the following manners:

1. Marriage Registry: the marriage may be celebrated at the marriage registry in the presence of at least 2 witnesses between 10am and 4pm and the doors of the registry must be open at the time.
2. They may then celebrate it at the registered place of worship with the ceremony conducted by a recognized minister and attended by at least two witnesses. The ceremony must occur between 8am and 6pm and the doors of the place must be open. *(Where the place of worship is not licensed to conduct marriage ceremonies, the marriage cannot be recognized as a valid statutory marriage).*

3. Any other place for which special license has been obtained to perform the ceremony.

### **Dissolution of Statutory Marriage**

*Void marriage:* Under the Act, a marriage becomes void (that is the law will assume that it was not a legally recognizable marriage from the onset) when:

- Either party is at the time of contracting the marriage, married to another person
- The parties are within the prohibited degrees of consanguinity or affinity
- Where they do not comply with the laws governing the form of marriage of the place where the marriage was contracted
- Where either or both parties did not consent to the marriage or if the consent given was given under duress or fraud
- Where there was a mistake about the identity of the other party or the nature of the ceremony being performed or when one of the parties was incapable of understanding the nature of the marriage contract.
- Either or both parties are not of a marriageable age.
- When one or both parties do not have the mental capacity to consent to marriage

*Voidable marriage:* A marriage is considered voidable (that is, a party to the marriage can request that it not be recognized as a binding legal marriage) when at the time of the marriage either party is:

1. Incapable of consummating the marriage
2. Of an unsound mind or mentally defective or suffers recurrent attacks of insanity or epilepsy
3. Is suffering from a communicable venereal disease
4. The wife is pregnant by another person other than the husband

### **Divorce under statutory marriage**

Before a party or both parties to a marriage can apply for a divorce, they must have been married for at least 2 years and the marriage must be shown to have broken down irretrievably. The law would consider a marriage irretrievably broken down in the following circumstances:

- a. The respondent has wilfully and persistently refused to consummate the marriage
- b. The respondent has committed adultery since the marriage occurred and the petitioner finds it intolerable to live with the respondent
- c. The respondent has behaved in such a way that the petitioner cannot

be reasonably expected to live with the respondent

- d. That the respondent has deserted the petitioner for a continuous period of over a year at the time the dissolution petition is being made
- e. That the parties to the marriage have lived apart for a continuous period of over 2 years
- f. That the parties to the marriage have lived apart for a continuous period of over 2 years and do not object to the petition being granted
- g. Where the respondent fails to obey a decree of restitution of conjugal rights
- h. That the respondent has been absent from the petitioner for such a length of time that it could be reckoned that the respondent is dead.

To commence divorce proceedings, your client will need a lawyer, who will file the divorce petition. If the judge finds grounds for the divorce, (s)he would initially grant what is known as a '*Decree Nisi*', which would last for a period of three months. It is hoped that the parties would reconcile their differences within that period, but where this does not happen the judge would after that period grant a '*Decree Absolute*'. While filing the petition, the lawyer may also include petition for orders such as custody of children, sharing of property, maintenance and alimony.

### Customary Marriage

Customary forms of marriage are recognized under the law in Nigeria. These forms differ from place to place, but in essence there are some basic elements that must be present before customary marriage can be valid:

#### Capacity to contract a valid marriage

- Age- Under customary law, age of marriage is not prescribed. It is often based on puberty, however such practices have been criticized as violating human rights. Section 21 in the Child's Rights law says that 'No person under the age of 18 years is capable of contracting a valid marriage and accordingly, a marriage so contracted is null and void and of no effect whatsoever'.
- Consent- Two types of consent are relevant under customary law marriage: consent of the parties and consent of the parents. The consent of the parties must be obtained before marriage. Parental consent is necessary and, in some cases, mandatory for the celebration of a valid marriage.
- There is a statutory prohibition against marriage for a person who is already in an existing statutory marriage with someone else.
- The marriage must be voluntary and be intended for life.

- The parties must not be blood relations and the consent of parents or guardian is essential to validate the marriage.
- The law does not permit parents to force their child to marry.

#### Payment of Bride Price

The payment of bride price is an ingredient of a valid customary marriage. Bride price in Nigeria is also known as dowry.

#### Celebration of marriage

What constitutes celebration varies from community to community. In some communities, this occurs when the bride is led to the house of the bridegroom and the marriage is celebrated yet in some other communities, it is the ceremony at which the groom's family pays the dowry to the bride's family.

Customary marriages, unlike statutory marriages, allow a man to be married to more than one wife at a time.

#### Dissolution of Marriage under Customary Law

In most communities, dissolution of a subsisting customary marriage is reckoned to have occurred where the wife leaves the matrimonial home. Her family is in some instances required to pay back a portion of the dowry paid by her husband. In others, they might be required to make a petition to the local customary court for the formal dissolution of the union.

#### Marriage under Islamic law

Marriage under Islamic law possesses most of the features of the customary law. For instance, the man is expected to pay dowry or *mahar* on the woman he intends to marry. However, under Islamic law, *mahar* is given to the woman and not to her parents.

The elements of a valid Islamic law marriage are:

- A. Offer and Acceptance-Here the guardian/parent of the husband will request the hand of the bride in marriage on behalf of the bridegroom from the bride's guardian or parents. If accepted, then the Imam or religious leader, in the presence of other people or witnesses, will make the wedding *Fatiha* or prayers.
- B. Parties and their consent- Under this rule the party can freely consent to marriage. However, under the Maliki School of law,



which is applicable in Nigeria, a father has a right to conclude marriage on behalf of his infant sons and virgin daughters (Ijbar). Even though some Islamic schools of thought like the maliki have in certain circumstances allowed a father to give out his virgin daughter to marriage without her consent, this is not the position of the majority of the Sunni Schools of thought. They are of the view that, Islamic law does not allow a father to force his daughter into marriage with anyone. An example to support this assertion is the practice of the Holy Prophet Mohammed who when Ali Ibn Talib asked for the hand of his daughter Fatima in marriage, told him he would first seek the girl's consent as she had rejected offers of marriage from other men in the past. In addition to this, a girl had complained to the Prophet that her father had given her in marriage without consulting her. The Prophet had advised her to comply with her father's wishes. However, when the girl complained that she could not marry someone she did not love, the Prophet told her she did not have to go into that marriage and that she could marry whomsoever she pleased. Therefore, it is clear that the right of the father to choose for his daughter is not absolute.

- C. Dower or *sadaqt*- This is the dowry received by the parent of the bride to be. Sharia prescribes only a minimum dowry but not a maximum.
- D. Marriage Guardian (or Waliy) of the wife and the husband.
- E. Witnesses.
- F. Islamic law marriage prohibits marriage between certain persons on the basis of blood relations, marital relations, etc.
- G. Marriage ceremony-The Muslim marriage is celebrated in a mosque or at home or in the presence of a Muslim cleric and in the presence of at least two Muslim witnesses.

*As in customary marriage, in Islam, a man is allowed to marry more one wife. However, he is under an obligation to deal with each of them justly and equally.*

*'Marry women of your choice, two or three or four, but if you fear that you shall not be able to deal justly with them, then only one . . .'* (Qur'an 4:3)

Marital exploitation and abuse

The Qur'an emphatically demands that husbands treat their wives with equity and provide for them.

*"... and live with them [your wives] honourably. If you dislike them it may be that you dislike a thing and Allah brings through it a great deal of good."* (Qur'an 4: 19).

Seclusion: A practice prevalent in Northern Nigeria is that of keeping married women in seclusion. This is known as *Kulle* (purdah) and according to some Islamic jurist it has no basis in Islamic law. This practice in the opinion of jurists who are against it prevents women from participating in social and political activities and very often from being able to be economically empowered. While Sharia frowns at the uninhibited interaction between men and women, it does not prevent women from actively participating in social and economic activities. The Qur'an demands instead that they properly conduct themselves in public and be decently dressed. In other words they should not violate Allah's injunctions.

*"... Be not so complaisant of speech, lest one in whose heart is a disease should be moved with desire; but speak ye a speech that is just. And stay quietly in your houses, and make not a dazzling display, like that of the former times of ignorant... O Prophet! Tell thy wives and daughters and the believing women that they should cast their outer garments over their persons when abroad. That is most convenient, that they should be known as such and molested. And God is Oft-forgiving, Most Merciful"* . (Qur'an 33:32, 33 and 59).

In addition to this, The Prophet (SAW) said to Saudat

*"You women are free to go out of your houses as long as there is a genuine cause to do so"*.

A major reason that takes women away from the home is to earn a living and Sharia provides that women may do so especially where their husbands failed to provide them with necessities of life like food, clothing and shelter. Abu Hanifa said that a woman could be a judge, which is a job that expressly necessitates working outside the home. In addition, *Umar* appointed a woman to oversee the market, again clearly work outside the home.

Dissolution of marriage under Islamic law

While Islam frowns at divorce, it makes provision for unavoidable circumstances in which the marriage needs to be annulled or divorce needs to occur.

Void marriages under Islamic law

Under Maliki School of law, a marriage is void if the parties are blood relations, for example father and daughter, or when a marriage is contracted for a specific period (*mutah*) or based on (wife) hire (*muwakkat*).

## Voidable marriage under Islamic law

- a. Where parental consent was not sought, the marriage becomes voidable
- b. Non-payment of sadaq/dowry renders the marriage voidable
- c. Child marriage- even where the consent of parent is sought, the child may void the marriage on the attainment of majority.

## Irregular Marriages (Fasid)

Under Maliki School of Islamic law, a Muslim cannot lawfully be married to more than four wives at the same time. If he marries the fifth during the life of the marriage, it is irregular but not void. An irregular marriage is unlawful and it may be regularized by the man divorcing the fifth wife.

## Divorce under Islamic law

Islam allows for divorce to occur through various means and has separate procedures depending on the circumstances of leading up to the divorce.

**Talaq:** This is a unilateral pronouncement of divorce by the husband. It is the most common method of divorce in Northern Nigeria. The talaq entails the husband pronouncing the talaq thrice in a manner prescribed by the Qur'an to finalise divorce. First, it is important to note that the husband cannot pronounce the talaq thrice at one sitting. The Qur'an says in chapter 2:129:

*Talaq is only permissible twice'. After the first and second talaq, the couple may be reconciled without needing to remarry. However, a third pronouncement of talaq means that remarriage between the parties is possible only after the wife has married another person who consummated the marriage and has then gotten divorced.*

Also each statement of the divorce may be made in the presence of at least 2 witnesses. Other forms of talaq include:

- **Talaq Ba'in Banuna Sugra-** This is a situation where husbands decide to reconcile before the end of the 3 month waiting period. In this circumstance they must go through another marriage contact.
- **Divorce Bid'i** is a pronouncement of divorce that does not fulfil certain conditions such as divorce thrice at one sitting.
- **Delegated Talaq-** This is where talaq can also be delegated to the wife by the husband. In circumstance, the dissolution is automatic.

There are certain times when a man must not pronounce the talaq:

1. While the wife is experiencing her menstrual period

2. While the wife is not in a state of fresh purity as prescribed by the Qur'an

During the pronouncement of the talaqs, he must not send her out of the house for a mandatory period of 90 days and, if she is pregnant, for 90 days after delivery.

Khul' : this is divorce at the bequest of the wife. The Qur'an allows her to divorce her husband for any reason she pleases. In this instance, the wife offers to pay back the dowry given to her by her husband. Qur'an 2:229 "... *there is no blame on either of them if she gives something for her freedom*". The Qur'an however does not obligate the husband of the woman seeking divorce in this instance to provide any form of maintenance for her after the divorce.

Judicial divorce by women: Apart from the Khul', a wife may seek divorce from her husband by judicially petitioning for a divorce at the Sharia court. She must however prove any of the following:

- Her husband ill treats her either physically or emotionally
- Her husband is impotent
- Her husband has deserted her
- Her husband has an incurable and communicable disease
- Her husband does not provide her with maintenance
- Li'an: Where a husband accuses his wife of adultery but has no witness except for himself, or claims she was impregnated by another man.
- Ila: where the husband has made a vow of abstinence for a specific period, the Qur'an allows this. However, where he does not return to normal marital relations after a maximum period of four months, he should consider the marriage terminated.
- Zihar: When a man humiliates his wife by comparing her to his mother, he must make restitution by either feeding sixty needy people or fasting for two consecutive months, otherwise the wife is entitled to demand divorce.

In the instance of judicial divorce, the court is likely to rule that the husband pays maintenance to the wife after the divorce.

Mubarah: This is a situation whereby both parties to the marriage mutually agree to divorce.

## Maintenance

*Nafaqa*: Under Sharia, a husband is obligated to provide maintenance for his wife both during the course of marriage and in most instances after divorce, with the exception of where the wife obtains a Khul' divorce. His responsibility includes providing her with food, shelter, clothing and

anything else she needs for her upkeep, as long as it is within his means. Islam, therefore, forbids a man marrying, when he knows he cannot maintain a wife.

*“Let those who find not the wherewithal for marriage keep themselves chaste, until God gives them means out of His grace”.* (Qur'an 24:33).

The Qur'an also states that:

*“let the women like in the same style as you live, according to your means. Annoy them not so as to restrict them... let the man of means spend according to his means...”* (Qur'an 2:233).

The Qur'an also clearly provides that a woman's wealth, as acquired pre-martially and within the course of her marriage, belongs to her and that she is free to dispose of it as she wills. Her husband may only interfere where she has given her express permission for him to do so.

#### Post divorce entitlements

Women married under statutory marriage do not have automatic entitlement to maintenance. However, in the course of the divorce, if she makes a plea for alimony in the divorce petition, the judge may mandate her husband to pay her alimony for a specific period or until she remarries. The judge may also order that part of the property accumulated by the couple be given to her.

Customary marriages also usually do not have post divorce entitlements. A woman is free to leave with the things she brought into the marriage, but it is very unlikely that her husband would give her any form of upkeep after the divorce except perhaps for child support.

Sharia demands that husbands continue to pay for the maintenance of their wives after divorce. The Qur'an also seeks to prevent the imposition of undue hardship on wives by insisting that in the event of a divorce, during the *iddah* (the waiting period before she can legally remarry or seek a relationship with another man), she cannot be asked to leave her marital home and her husband is to bear the cost of her feeding and clothing on equitable terms.

*“...[husbands] shall bear the cost of their feeding and clothing on equitable terms”* (Qur'an 2: 223).

Sharia also asks for a man to provide a befitting parting gift to his estranged wife known as *“mut'ah”*.

*“... bestow on them a suitable gift, the wealthy according to his means and the poor according to his means, a gift of reasonable amount is due from those who wish to do the right thing” (Qur'an 2:236)*

A wife is permitted to sue for her post-divorce entitlements under Sharia law. The best court to approach in this instance is, of course, the Sharia court. However, it might be wise to first attempt to mediate this between the woman and her husband or former husband as the case may be.

#### Children and custody issues

**Statutory Law Position:** For persons married under the category of statutory marriage, child custody is mutually agreed or decided by the judge in the divorce proceedings if it was one of the pleas made in the petition for divorce. Usually, the test for the judge in deciding who should have custody of the children of the union, is what would be in the best interest of the child or children in question. If custody is given to the mother, the father may be requested to pay child support to the mother for the upkeep of the children. The parents may also be given joint custody which might be an arrangement in which the children share portions of the time with both parents. For example, children may spend the school term with their mother and spend the holidays and weekends with their father. It is often better that the parents reach an amicable settlement that would be mutually beneficial to them both and to their children, rather than to allow the court to decide. As a matter of fact, the courts encourage this.

**Customary Law Position:** The practice differs from custom to custom, but in most customs, where there are contentions on custody, the children remain in the custody of their father but the mother has unfettered access to them. Where the children are infants, they are usually retained in the custody of their mother as their primary caretaker and may then be returned to their father when they become adolescents.

**Sharia Law Position:** It is the duty of the husband not only to provide maintenance for his wife, but also for his children. Where he fails to provide this, his wife or the mother of his children may sue him in court. In the event of divorce or separation, Sharia vests the custody of children with their mother at least until they reach puberty for boys and for girls, until they are married.

The Qur'an provides that a divorced mother should be paid an allowance for breast-feeding the child of the estranged union.

*“ ... and if they[divorced wives] suckle your offspring, give them recompense. And take mutual counsel together, according to what is just and reasonable. And if you find yourselves in difficulties, let another woman suckle the child on the father's behalf”. (Qur'an 65:6).*

*“The mothers shall give suck to their offspring for two whole years, for him who desires to complete the term. But he shall bear the cost of feeding and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child nor father on account of his child. An heir shall be chargeable in the same way. If they both decide on weaning by mutual consent, and after due consultation, there is no blame on them. If you decide on a foster-mother for your offspring, there is no blame on you, provided you pay the foster-mother what you offered on equitable terms. But fear Allah and know that Allah sees well what you do. (Qur'an 2:223)*

The father is expected to pay for the upkeep of his children (which includes, food, accommodation, health care, education) -- for girls until they are married, for boys until they attain manhood, and in both instances, where they can afford to financially maintain themselves, then their father is not obligated to do so.

## Chapter 5:

### Inheritance

Issues of inheritance can be problematic and traumatising particularly for widows, who very often have the extra burden of solely raising their children after their husband's death. Inheritance falls within the ambit of family law and often is determined according to whether the deceased wrote a will, the form of marriage contracted, and her/his customary law. Below, we will examine issues of women's inheritance rights from these perspectives.

- a. **Women's inheritance rights under Statutory Marriage:** Under this form of marriage, either the husband or wife can inherit from the other and they will be treated as having equal rights to one another's property even in the absence of a will and irrespective of the tradition of the man. It assumes that by choosing to contract a statutory marriage, a man has chosen for his affairs to be governed by statutory laws. However, it is better to make a will so the intent of the deceased can be expressed on the face of things. This saves time and the emotional trauma related to inheritance disputes, in which widows are often at a disadvantage.

**Intestacy:** The treatment of inheritance where a man dies without leaving a will can be complex and differs from one state to another.

- b. **Women's inheritance rights under Customary Law:** As earlier noted, customary law defers from culture to culture and is not static. However, a trend in most customs is that the wife does not inherit her husband's property after his death. However, if he wrote a will in which he expressly bequeathed property to his wife, his wish would be honoured. It is, therefore, important that you discuss the need to write a will with your clients as a safeguard.
- c. **Inheritance under Sharia Law:** Under Sharia, the wife of a man who dies without a will is entitled to one-quarter of his estate after all debts and expenses have been settled. If there are children or grandchildren, her share is reduced to one-eighth. Where there are two or more wives, they will all together share the one-quarter or the one-eighth. However, when a woman dies, her husband inherits one-half of her estate after all debts are settled.

A woman who changes from her Muslim religion may be disinherited. Islam does not readily welcome the making of wills. However, under Islamic law, a person making a will can only dispose of one-third of their



estate through the will to persons other than their heirs. It is important to note that where a person decides to dispose of his estate in a will as restricted in Islamic law, he is not obligated to follow the prescribed format for distribution but may distribute it as he pleases.

### *Inheritance in Islam*

- a) Father, one-sixth ( $\frac{1}{6}$ )
- b) Grand father, one-sixth ( $\frac{1}{6}$ )
- c) Mother, one-sixth ( $\frac{1}{6}$ ) with a child and one-third ( $\frac{1}{3}$ ) without a child.
- d) Grandmother, one-sixth ( $\frac{1}{6}$ ) with a child and one-third ( $\frac{1}{3}$ ) without a child.
- e) Husband, one-fourth ( $\frac{1}{4}$ ) with a child and one-half ( $\frac{1}{2}$ ) without a child.
- f) Wife or wives, one-eighth ( $\frac{1}{8}$ ) with a child and one-fourth ( $\frac{1}{4}$ ) without a child.
- g) Daughter, half ( $\frac{1}{2}$ ) when alone, and two-third ( $\frac{2}{3}$ ) if more than one son.
- h) Son's daughter, howsoever like above.
- i) Uterine brother or sister, one-sixth ( $\frac{1}{6}$ ) if one, one-third ( $\frac{1}{3}$ ) if more.
- j) Full sister, one-sixth ( $\frac{1}{6}$ ) when alone, and two-third ( $\frac{2}{3}$ ) if more.
- k) Consanguine sister, half ( $\frac{1}{2}$ ) if one and two third ( $\frac{2}{3}$ ) if more.

*'There is a share for men and a share for women from what is left by a parent and those nearest related, whether the property is small or large a legal share.'* (Qur'an 4:7)

### Deed of gift

As can be seen from the forgoing, a will can protect a woman's right to inheritance and so it is important for you to advocate that your clients encourage their spouses to write a will. Alternatively, a husband may bequeath property to a wife legally before his death through a deed of gift especially when it is landed property. It is important that when a gift of this nature is given to a wife at any point of the marriage, she should make sure to insist that an agreement is done between husband and wife in writing to transfer the property. Make sure the deed of transfer is registered or sealed in the court and at least 2 people sign as witnesses to the transfer testifying that the husband has given the property or the gift to the wife. Once it is registered, it is no longer the husband's and it is now belongs to the wife and cannot be seen as part of the husband's estate. Making sure it is written and

1. Qur'an Chap. 4 verse 14, see Professor Yakubu "Property Inheritance and Distribution of Estates under Customary Law" in *Towards A Restatement of Nigerian Customary Laws* op. cit. pp. 144 145.

signed gives the wife an advantage, at least she will have an evidence to show that it is no longer part of the husband's estate.

## **Wills**

A will takes effect at the death of the testator, but is revocable during the life time of the testator. It may be completely revoked or merely altered. However, a testator must also make a will with the intention that it is his or her last will and testament. This intention will be lacking if the testator is insane or was compelled to execute the will.

**Capacity to make a Will:** Every person has a capacity to make a will irrespective of whether or not such person is subject to customary law.

## **Exception to Will making**

- a. Infants
- b. Persons of unsound mind
- c. Blind or illiterate person- care must be taken to avoid fraud in the execution of the will
- d. Proof of fraud or coercion invalidates the will

## **Formal Requirement of a Will**

- a. It must be in writing
- b. It must be signed
- c. It must be signed in the presence of two or more witnesses
- d. Witnesses to the will shall attest and subscribe to the will in the presence of the testator

## **Validity of a Will**

- a. It must be intended to be the last will of the testator
- b. Testator must not be an infant
- c. Must be of sound mind
- d. Will must be written and duly signed and acknowledged by witnesses
- e. Each page of the will should be dated and signed

## **Contents of the Will**

- a. Your name, address and place of origin
- b. Names and description of the beneficiaries of the will
- c. Clear distribution of property left behind

- d. Clear name and description of executor of the will
- e. Shares in the company
- f. Debtors/creditors should be clearly stated
- g. Bank accounts
- h. Property description
- i. Any information you think is relevant

### **Custody of the Will**

The Will can be in the custody of the High Court, administrator, bank, law firm or a trusted friend.

### **OBTAINING LETTERS OF ADMINISTRATION**

Where the man or woman dies without a will, the wife or husband, or any blood relative who is interested in performing the wish of the dead person, can apply to the court for letters of administration.

The wife or husband must bring to the court, the death certificate, marriage certificate and other identification documents and make a formal application to the court to receive a letter of administration of the deceased estate.

An advertisement is then made by the court to the public asking if anybody is objecting to the application for probate. Where no objection is raised, the letter of administration is then issued after the court is convinced that the applicant is capable of executing the wish of the deceased.

## Chapter 6:

### Women's Rights, Human Rights

#### Human rights in Nigeria

##### What are human rights?

Human rights refer to the body of rights inherent to every human being irrespective of their race, nationality, ethnicity, gender age, religion or any other status. Each human being is entitled to each of these rights equally and without discrimination.

As paralegals, it is very important that you are knowledgeable about human rights and how to enforce them in Nigeria. It is important that you know what the Nigerian constitution provides and how this affects the lives of women and other individuals. Women will not only approach you about the breach of their own rights, but also of their husbands' and children's rights.

During the military era in Nigeria, people were arbitrarily arrested, tortured and killed. These were the most common forms of human rights violations of that period and they are the rights most people are now conversant with. However, the Nigerian constitution (1999) makes provision to more than just rights to freedom from torture, the right to life and the right to a fair hearing. You therefore need to carefully study the protections offered by the Nigerian Constitution.

Historically, human rights can be traced to the early days when people started considering what is fair and just for their society. The impunities of World War II led world leaders together to begin to question what is just and fair for all. They traced the roots of human rights to most religions and traditional practices. Thus in 1948, the world came together to proclaim a set of universal human rights. These rights can be found in the Universal Declaration of Human Rights (UDHR). The human rights set forth in other international treaties, and the rights in the Nigerian Constitution, derive their validity from the UDHR. The UDHR led to the development of other human rights laws which focus on civil and political rights, economic, social and cultural rights, the rights of women and their right to be free from all forms of discrimination against them, and rights for people with disabilities, to mention only a few.

#### Fundamental Human Rights, Chapter 4 of the 1999 Constitution of Nigeria

Below is a summary of the fundamental rights guaranteed by the Nigerian Constitution. The full version of these rights is contained in the appendix to this manual.

- 1. Right To Life: (Section 33).** This right guarantees that the life of citizens should be protected and that no one has a right to take the life of another except in execution of the sentence of a court in respect of

a criminal offence, where such person is found guilty in a Nigerian court of law.

A person shall not be regarded as taking another's life if:

- S/he does so in self-defence and to protect his/her property.
- S/he does so in effecting lawful arrest or preventing the escape of a person lawfully detained.
- S/he does so for the purpose of suppressing riot, insurrection or mutiny.

**2. Right to Dignity of Human Persons (Section 34):** This right guarantees that:

- Citizens are entitled to decent treatment as human beings.
- No citizen should be subjected to slavery or servitude, torture or inhuman or degrading treatment and forced or compulsory labour.

This law forbids the treatment of a woman in an inhuman manner, like burying her alive for committing an offence, subjecting her to emotional and physical stress because she just lost her husband, forcing her to marry against her wish or subjecting her to harmful traditional practices as we often see in some of our communities. In some places women are being raped or killed on false accusations of witchcraft.

**3. Right to Freedom of Thought, Conscience and Religion (Section 38):**

- Individuals are free to belong to any religious organization.
- Individuals are free to change, their religion,
- Individuals are also free to propagate their religion or beliefs through teaching, practice and observance.
- No person attending any place of education shall be forced to take part in any religious activities other than that of his or her parents.
- No religious community shall be prevented from providing religious instruction for pupils of that community in any place of education maintained wholly by that community.
- Persons are prohibited from forming or joining secret societies.

- 4. Freedom of Expression and the Press (Section 39):** This right guarantees:
- Individuals' right to freely express themselves without restrictions.
  - Individuals' right to hold any opinion and to disseminate such information or opinion. Such information must be genuine or else such person may be sued for libel and or slander.
  - Individuals' right to own a newspaper or television organizations provided such persons have secured the approval from the appropriate authority.
- 5. The Right to Peaceful Assembly and Association (Section 40):** This right guarantees that:
- Every person may assemble or associate with anyone of his or her choice.
  - Individuals have the right to belong to any political party, trade union or any other association of his or her interest.
  - Political parties must be in accordance with Independent National Electoral Commission (INEC) regulations.
- 6. Right to Fair Hearing (Section 36):** This right guarantees that:
- Courts must be impartial and independent while deciding matters.
  - Trials must be held in public except when the person is under 18 years or to protect the public interest.
  - An accused person is innocent until proven guilty by a court of law
  - An accused person shall not be denied access to his/her lawyer.
  - No person shall be tried twice for the same offence
- 7. Right to Personal Liberty (Section 35):** This right guarantees the following:
- No person shall be deprived of his or her personal liberty except under the following circumstances:
- When an accused is found guilty of an offence by a competent court.

- To make a persons who fails to comply with a court order face trial.
  - To compel one under the age of eighteen for the purpose of their education or welfare.
  - One suffering from an infectious disease can be detained for the purpose of treating him/ her or for the safety of the community.
  - For the purpose of expulsion or extradition
- 8. Right to Private and Family Life (Section 37):** This right provides for:
- Protection of a citizen's privacy and privacy of their homes, correspondence, telephone conversations and telegraphic communications.
- 9. Right to Freedom of Movement (Section 41).** This right provides that every citizen is entitled to move freely throughout Nigeria and to reside in any part of the country. No citizen shall be expelled from Nigeria or refused entry to or exit from the country except under the following circumstances:
- To prevent a guilty person from leaving Nigeria,
  - For the purpose of extradition a person who is guilty
  - When a person is found guilty by a court and is to be under imprisonment outside of Nigeria.
- 10. Right to Freedom from Discrimination (Section 42):** This right guarantees that:
- No person belonging to a community, religion, ethnic group, place of origin, sex, or political opinion should be discriminated against by any government administration or action on the basis of sex, religion, politics, place of origin, etc.
  - No citizen shall be discriminated against or subjected to disability or deprivation only by reason of his/her birth (i.e., one born out of wedlock).
- 11. Right to Acquire and Own Movable Property (Section 43):** This right guarantees that every citizen has a right to own property anywhere in Nigeria.

**12) Prohibition of Compulsory Acquisition (Section 44):** This provision recognizes that the state and federal government can take over any property, but due process should be followed and compensation promptly paid to whoever loses his/her property.

## **OTHER HUMAN RIGHTS**

### **B. Social and Economic Rights**

Social rights have been described as those benefits and privileges, which individual citizens enjoy for consenting to be governed under a particular set of rules and by the agents of the national political community. These rights are referred to as security oriented rights because they provide social and economic security and are referred to as second generation rights. They include:

- Right to education
- Right to employment
- Right to health
- Right to shelter
- Right to equal work for equal pay.
- Right to an adequate standard of living
- Right to food
- Right social security
- Reasonable national minimum living wage
- Right to welfare for the disabled
- Right to old age care and pension

These rights are referred to in the 1999 Constitution as “Fundamental Objectives and Directive Principles of State Policy”. They are not enforceable in the Nigerian courts.



## **Women's Rights are Human Rights**

### **Women's rights issues**

One of the most important principles in human rights is the equality of all human beings. Both Islam and Christianity agree that everybody is equal in the sight of God and that both husband and wife should complement each other. (Qur'an 2:223) Both religions also condemn trafficking in persons or other forms of sexual exploitation, they also both allow women to own property.

The government, through its various arms is obligated to ensure that the rights of its citizens are protected. These rights are guaranteed to every citizen irrespective of their gender. Therefore women have as much access to the protection of these rights as do any other group of persons. There are, however, certain human rights that are particularly targeted to women. It is in recognition of this that Nigeria ratified the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is the most comprehensive international law on women's rights. While Nigeria is a party to this convention, it is unfortunate that it has yet to be adopted into the domestic laws of Nigeria. This step is necessary in order for CEDAW's provisions to be justiciable in the courts of Nigeria. We have included a copy of CEDAW in the appendix of this manual, for you to familiarise yourself with it, and to know the ambit of this treaty's protection of women's rights.

Three of the most common examples of women's rights violations in Nigeria are forced marriage, domestic violence, and violations of the right to education.

### **Forced marriage**

Forced marriage is not permissible under any circumstance, nor under any of the forms of marriages recognised in Nigeria, and will be a ground for the annulment of such a marriage. Forced marriage is a violation of the rights of a woman to: dignity, personal liberty, and freedom of thought and conscience. It has been equated in certain quarters as being a contemporary form of slavery and is, therefore, illegal.

Once a virgin girl came to the Holy Prophet {SAW} and said that her father had married her to a man against her wishes. The prophet gave her the right to repudiate the marriage.

A woman who has found herself in a situation where she is being forced to marry a man must take immediate action and can rely on the courts to protect her. The Sharia Court of Appeal has been known to annul marriages where the consent of the woman was not sought.

### **Domestic violence**

Domestic violence is a common phenomenon in Nigeria. It may be defined as physical violence, emotional abuse, or inordinate actions used by one person in a relationship to control the other within the parameter of domestic life. This relationship may be between intimate partners, a married couple, a parent and a child, or a domestic assistant and master/mistress. In most cases, it entails physical assault (hitting, pushing, shoving, etc.), and sexual abuse (unwanted or forced sexual activity). This abuse may occur once or be a recurrent problem.

The problem with this human rights violation is that domestic violence has yet to be identified under the law as a crime on its own cognisance. The police and other law enforcement personnel tend to treat it as a private matter in which they should not interfere.

Eighty-five percent of domestic violence cases happen to women and it has been identified as one of the major causes of death and permanent disability of women. It is, therefore, important for paralegals to treat this issue as a very significant one. When women or girl-children report domestic violence, it is a cry for help and we must be able to assist them appropriately. As a rights issue, it violates their right to dignity and may violate their right to life.

We will discuss sexual violence in detail in the next chapter and will concentrate more on other forms of physical violence within this chapter.

### ***Physical violence within the home***

In dealing with physical violence within the home, it is important that we educate our minds against the ideas that some promote within our society. For instance, some claim that victims of domestic violence must be 'stubborn' women or 'foolish' domestic assistants who will not learn any other way but through violence perpetrated against them. Another contention is that it is a normal part of family life and that it is simply a means of correction. While it might be acceptable, in some instances, to use a reasonable level of force on children, it is wholly unacceptable under Nigerian law to use force on adult women and it must be strongly advocated against.

How can you assist a survivor of domestic violence?

- You could organise an intervention between the abuser and the woman, in order to get the abuser to stop the particular form of abuse

- You could convene a meeting of kin-men or friends to mediate the matter between the couple and demand that the abuses stop. Family are very important and will sometimes provide shelter and support for the woman until the problem has been sorted.
- You could bring in the Mianguwa or district chief to intervene and warn the abuser
- You could invite respected religious leaders to intervene.
- You could lodge a complaint at the police station
- You could approach FIDA to assist

Approaching the police to report domestic violence is a dilemma that a number of paralegals face. However, it is essential that you realise you might just be saving a life and protecting another human being from further abuse.

### **Education of the girl-child**

The constitution of the federal republic of Nigeria prohibits discrimination in all forms and states that every citizen has a right to education. In the western and eastern parts of Nigeria discrimination that prevents the girl child from obtaining an education is minimal. In the north a girl child is largely discouraged from attending school, but the Quran frowns greatly at such acts and it provides that the parents are responsible for providing education and training to their children and that both boys and girls are to be equally educated. Sharia commands all Muslims, irrespective of their sex, to seek knowledge. It is a well-known fact in the history of Islam that the Prophet (SAW) held special classes for women at their request.

### **CHILDREN'S RIGHTS**

Children are a very essential part of the society. They also form the most vulnerable group of people, along with women, and particularly the girl child. The girl child is open to danger in the home and outside the home; they constitute the bulk of hawkers on the street and majority of children out of school.

Many documents, laws and policies exist that seek to improve the quality of life of children worldwide. Among these, is the UN Convention on the Rights of the Child (1989), which has been signed by over 190 countries including Nigeria. Regionally, these rights are found in the African Charter on the Rights and Welfare of the Child, which has been signed by many member states of the African Union (AU).

The Child's Rights Act was adopted in Nigeria in 2003. Enshrined in this Act are many of the values and core principles of the UN Convention on the Rights of the Child, as well as Nigeria's domestic laws as it concerns children. It is an act designed to 'provide and protect' the rights of a Nigerian child and other related matters.

### **Who is a child?**

A child, according to the Child's Rights Act of 2003, is one who is below the age of 18.

### **What are children's right**

A child's right basically refers to a natural entitlement due, a moral claim or a legal entitlement. Therefore, it is safe to say that children's rights are the claims that all children have for no other reason but the fact that they are children.

### **These rights include:**

- Prohibition of: child marriage, child betrothal, the infliction of tattoos and skin marks, and exposure to the use, production, or trafficking of drugs,
- Prohibition of: the use of children in any criminal activity, abduction and unlawful removal and transfer of a child from lawful custody, forced, exploitative or hazardous child labour, including employment of children as domestic help outside their own home or family environment.
- The right to a name, nationality, and equality, as well as protection against sexual abuse and exploitation.
- Protection from abuse and neglect well as from work that threatens a child's health and life
- Protection of a child without a family and protection of privacy.

### **GIRL CHILD ABUSE**

Generally, child abuse refers to the physical, psychological, and/or emotional mistreatment of a child. It refers to an act or series of acts, by commission or omission, by parents or other caregivers that result in harm to a child. Other abuses of the girl child can occur in form of neglect, physical abuse, psychological/emotional abuse, and sexual abuse.

### **Girl Child Labour**

Child labour has been and remains one of the most prevalent ways

through which children are abused. It includes work by children under conditions harmful to their health, usually for long and strenuous hours, and for low wages. What further aggravates this form of abuse is the fact that the child in question is usually not aware of the dangers of such work, nor does he/she possess adequate knowledge of precautions that ought to be taken. One of the most common forms of child labour in Nigeria is the domestic servant. Indeed, many Nigerians, even well meaning ones, are guilty of this.

**Trafficking in the Girl Child** is also another prevalent form of child labour in Nigeria. It is the recruitment, transportation, transfer, harbouring or receipt of children for exploitative purposes. This may occur within a country or cut across international borders. The resultant effects are usually that girls are used for prostitution or domestic work. Boys, on the other hand, are often used as car washers, bus conductors, etc.

Also prevalent in Nigeria is **child begging and street hawking**. Child begging has to do with children being employed by adults, often family members, to beg. They can be noticed all over the streets of Nigeria. Street hawking refers to children selling goods on the road, mostly to support their families. Children that fall into any of the two categories have their safety endangered especially on Nigeria's busy roads and are vulnerable to other forms of abuse.

Another human rights violation is **the commercial sexual exploitation of children**. Here, children are coerced into being prostitutes or commercial sex workers. This exposes a child to the risks of contracting sexually transmitted diseases, unwanted pregnancies, and damage of sexual organs, among other disasters.

The Nigerian Child's Rights Act of 2003 strongly condemns all forms of child labour. Sections 21-40 of the act provide for the rights of the child through the prohibition of 'forced, exploitative, or hazardous child labour, including employment of children as domestic helpers outside their own home or family environment.'

**Sexual abuse is a situation** whereby an adult takes advantage of the young age and innocence of a child subjecting that child to engage in sexual behaviour, either through force, which the child has no control over, or through manipulation, where the child does not fully understand the activity and the risks.

**Forms of sexual abuse** include incest, which occurs among family members (e.g. father- daughter) and rape, which is the forcing of sexual intercourse on anyone either male or female. Rape is often traumatic for a child and may be accompanied by further physical or psychological abuse.

Sexual intercourse with a minor under any circumstance, even if the child willingly consents, is seen as sexual abuse since the child is often not mature enough to make an informed decision.

Prostitution is also a form of child sexual abuse that involves engaging children in sexual activities in exchange for money or other favours.

**Sexual harassment** is a form of sexual abuse that may take forms such as repeated teasing or embarrassment, unwelcome remarks about body parts, and constant verbal pressure that is sexual in nature, among others.

In part III of the Child Rights Act (CRA), children are protected against discriminatory, and harmful and exploitative practices. Specifically, Section 21 prohibits child marriage and provides punishment for those who violate this provision. There is liability on conviction for a fine of five hundred thousand naira or five years imprisonment or both. Also, sections 21-40 prohibit other forms of abuse such as child betrothal (that is a situation in which a child is engaged to marry someone), infliction of skin marks, forced abduction, exploitative child labour (as explained above), begging for alms, prostitution, unlawful sexual intercourse and other forms of sexual abuse (as outlined above),

The CRA recognizes the need for every child to grow within the context of a family so as to have a sense of identity and belonging; thus a child must not be taken away from his/her family contrary to his/her consent, except where it is in the best interest of that child. Furthermore, in order to prevent child abuse, sections 50-52 of the CRA provide for the protection of children in need of care and against physical or moral danger. It empowers *“a child development or police officer or any other authorized person to bring a child in need of care and protection before a court for a corrective order, if he has reasonable grounds for believing that the child is an orphan or is deserted by his relatives, neglected, ill-treated or battered by his parent or guardian or custodian, or found destitute, wandering, homeless or surviving parent undergoing imprisonment, mentally disordered, or otherwise severally handicapped; or found begging for alms, or in company of a reputed/or common thief or prostitute, or otherwise beyond parental control or exposed to moral or physical danger.”*

***What to do as a paralegal when a child is in need of help;***

- *Talk to the child to find out her problem*
- *Report to the nearest police station or welfare office*

- *Follow up the case to see that the parents or guardian or the abuser is invited*
- *Insist on justice for the child in accordance with child rights law or other applicable law of the land.*

### **Procedure for Enforcing One's Rights Under the constitution**

- Section 46 of the 1999 constitution provides that any individual who alleges that his or her fundamental right is or is likely to be infringed upon should apply to the State High Court or the Federal High Court for leave to enforce such rights.
- Individuals can also draw the attention of the relevant local government official(s) to the infringement.
- Individuals can also report to a civil society organization or the National Human Rights Commission (NHRC).

### **Under religious laws**

- Report to the head of your religious organization about the violation of your rights
- Report to the police
- Take the matter to sharia court
- Take the matter to other alternative dispute resolution institutions or other government institutions

**KNOWLEDGE IS IMPORTANT** It has been found that most women who go before the courts are not aware of their rights and risk further abuse of their rights. When going to a religious cleric, make sure that you have all the Qur'an or bible verses that support your claim and when going to sharia court or the statutory court make sure you know or ask your counsel about the law.

## Chapter 7:

### **Criminal Law -- WOMEN AND SEXUAL OFFENCES**

Dealing with law enforcement is strange territory to most people but an essential skill you must develop. Women will approach you with issues and will need for you to advise them on matters that relate to law enforcement, as both complainants and as persons answerable to the law. You therefore need to know the procedures for filing complaints, securing bail, summons, etc.

#### **Women and sexual offences**

#### **Types of sexual offences and redress available under the law**

#### ***Victims of rape and other forms of sexual violence***

**Rape is defined in** Section 282 of the Penal Code as:

*“A man is said to commit rape who, ..., has sexual intercourse with a woman in any of the following circumstances:*

*(a) against her will;*

*(b) without her consent;*

*(c) with her consent, when her consent has been obtained by putting her in fear of death or hurt;*

*(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;*

*(e) with or without her consent, when she is under fourteen years of age or of unsound mind.”*

The Penal Code applicable to Northern Nigeria punishes the crime of rape with 14 years imprisonment. However, under the Shari'ah Penal law of Kano State, rape is punishable by death where the perpetrator is married. Where the perpetrator is not married, it is punished by 100 lashes of the cane and up to life imprisonment.

Please note that even where the woman does not struggle with her attacker, it is still rape as long as she did not consent to sex with him. Sometimes women are unable to struggle with their abusers because they become afraid of being hurt or killed.



## **Procedure for dealing with rape/sexual defilement victims**

- Keep evidence as much as possible - this would include not washing up so the hospital can collect semen samples as evidence and also not washing off bruises before a doctor can observe them and write a report
- Immediately visit the hospital to obtain a medical report and receive preventive treatment
- Report the matter to the police as early as practicable
- The police will take down the statement of the victim and may ask questions.
- Ensure the victim has some support and is not left alone with the police who might not be gender sensitive
- The police will then investigate the matter and may arrest the abuser and charge him in court.
- The offence is not normally bailable.

## **Gross Indecency**

The law also seeks to protect children from indecent assault and so makes provision for acts that do not necessarily have the element of sexual penetration necessary to prosecute rape. This law also seeks to protect children from indecent assault by teachers, parents and other authority figures.

Section 285 provides that whoever commits an act of gross indecency upon the person of another without his consent or by the use of force or threats or compels a person to join him in the commission of such act, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine, provided that consent given by a person below the age of 16 years to such an act when done by his teacher, guardian or any other person entrusted with his care or education, shall not be deemed to be a consent within the meaning of this section.

## **Rights of Victims**

The first and most important right of a survivor of sexual violence is to get justice and as a paralegal you should, therefore, report ALL cases of sexual violence to the police and insist on them being brought before a competent court of law. The mistaken assumption is that it will cause the survivor great embarrassment and infringe on her honour. However, we must ensure the matter is prosecuted in the interest of protecting other potential victims and in the interest of justice for the survivor.

## **Charge of Adultery**

Under Sharia, unlawful sexual intercourse, premarital sex and adultery are criminal offences. Unlawful sexual intercourse (*zinâ*) is to be punished by death by stoning if the offender is married or has ever been married. In other cases, the penalty is one hundred lashes. However, there are very strict rules to proving adultery and where any of the elements are missing a woman cannot be charged with adultery or premarital sex. However, to be convicted, there must be 4 witnesses who directly observed the sexual activity at the same time, or a freely-given confession by the person involved in the act, or pregnancy outside of marriage. Please note that under Sharia the weight of the evidence of female witnesses is only half of that of men. This law on adultery particularly that which relates to zina has been criticised as targeting women, since women are more vulnerable to this form of abuse.

Note that the Nigerian constitution provides that any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that she understands) of the facts and grounds for his arrest or detention. In addition, she is entitled to free legal representation provided by the government, should she be unable to afford one to defend herself in court.



## Chapter 8

### Criminal Law -- Arrest and Bail

#### Arrest

It is a fundamental breach of the right of any individual to be arbitrarily arrested. The law provides that everyone is innocent until proven guilty.

The Nigerian Constitution and The International Covenant on Civil and Political Rights provide guidelines on the arrest or detention of persons and their associated rights. *(Kindly refer to the provisions in the index at the end of this manual)*

#### Detention vocabulary

1	<b>Arrest</b>	Act of apprehending a person for the alleged commission of an offence or by the action of an authority
2	<b>Detainee</b>	Any person deprived of personal liberty as a result of administrative detention, pre-trial detention or conviction for an offence; prisoners of war etc. The term detainee principally refers to persons held during the pre-trial and trial periods and not persons held after conviction, who are in most cases known as prisoners .
3	<b>Detention</b>	Includes pre-trial, administrative and , sometimes, post-conviction deprivation of liberty or any other condition in which a detainee is deprived of liberty.
4	<b>Prisoner</b>	Any person deprived of personal liberty as a result of conviction for an offence
5	<b>Prison</b>	Post-conviction imprisonment

#### Arrest and Detention

When a person is arrested, she must be notified at the point of arrest as to why she is being arrested and she must be given a written notice of the reason within 24 hours. (S)he has the right to remain silent until after (s)he may have conferred with a lawyer or any other person (s)he chooses. The constitution provides that the police cannot detain anyone without charging them for a crime for longer than 48 hours except in offences that are punishable by death.

#### Bail

Bail may be defined as the temporary release from detention after arrest pending the completion of investigation and/or trial. In this procedure, the suspect and her/his sureties, make an undertaking to appear at a specified time and place to answer a criminal charge. Given that the law provides that a person is innocent until proven guilty, the purpose of bail is to protect suspects from wrongful detention pending investigations or trial in court. There is no set procedure for securing pending bail. Bail may be given with or without bond. A bond is a property or monetary guarantee set to

ensure that a bailed person does not flee. BAIL IS FREE and BOTH MEN AND WOMEN CAN STAND AS SURETIES. Sometimes the police can decline bail in spite of the fact that it is not a capital offence when:

- The detainee has no known address or his address is doubtful
- If they suspect that he might jump bail and flee
- If they suspect he will interfere with investigations
- If they suspect he might go on to commit another crime if released

Once the suspect is brought before a court, however, the bail granted by the police lapses and an application will have to be made to court for a court bail. Not all crimes areailable at the police station pending trial. For instance, murder or any offence that is punishable with the death penalty is notailable. For such offences, bail can only be granted by a judge once the charge is brought to court. The court has the discretion to grant bail or not.

The usual factors the court would look at in deciding to grant bail are:

- Whether there is a likelihood that the accused will jump bail and flee
- Whether the accused is likely to interfere with investigations if released on bail
- Whether the accused has a bad criminal record
- Whether the accused should be detained for his own safety

### **Jumping bail**

Where an accused person flees, or “jumps bail”, the judge or magistrate may issue a warrant for his arrest and order that he be brought before the judge or magistrate. In this case, the surety will lose the bond that was meant to ensure the accused's appearance before the court.

### **A wife in criminal proceedings**

A wife or husband cannot be compelled by a court to give evidence against their own spouse and (s)he cannot be criminally charged with helping their spouse avoid punishment. The same rule of privacy applies to their communications in the course of their marriage. A woman also cannot be criminally liable for an act she was compelled to do by her husband, to perform in his presence, except where it involves death or causes grievous bodily harm.

A wife cannot be arrested or charged in court for the offence of stealing her husband's property, except in instances where they are separated or divorced.

**Watching brief and court accompaniment.**

Watching brief and court accompaniment are similar terms but entail different participants. A watching brief is the attendance at (usually) a criminal procedure by a lawyer who is not actively representing a client in a case but is observing the process to ensure that justice is done and that a party's rights are protected. A court accompaniment on the other hand may be done by a paralegal or any person who is on hand to give moral support and advice to a party in a case. As a paralegal sometimes you might need to accompany your clients to court to guide them through the procedures, give moral support and also act as an observer to ensure justice is done. Particularly in criminal cases, it might be advisable to have representatives of FIDA present to watch brief on the process at all court levels.



## Chapter 9:

### Sundry issues that affect women

#### Landlord and tenant relationships

The fact that a landlord owns a house does not give him/her the right to arbitrarily recover the premises or increase the rent. In order to protect tenants from undue hardships and to ensure equity in this landlord-tenant relationship, and also so as not to allow tenants to illegally hold continued possession of the property or deal in an unfair manner, the law lays down procedures for recovering premises. An important premise to start with is that the relationship between a landlord and a tenant is a contractual one and must, therefore, obey the basic laws of contract.

When a landlord decides to take the premises back, he is obligated by law to give sufficient notice to the tenant in order prevent undue hardship on the tenant who may not have found alternative accommodation within a short time.

The length of Notice to Quit depends on the nature of the tenancy. By law:

- A landlord should give a tenant at will one week notice
- A landlord should give a monthly tenant one month notice
- A landlord should give a quarterly tenant one quarter notice
- A landlord should give a yearly tenant six months notice.

The landlord cannot claim to issue a notice to quit that will expire within the validity of the tenant's tenancy. For example, Hamida is a monthly tenant at Alhaji Yusuf's house. She pays rent on the 15<sup>th</sup> of each month. In May 2010, he then decided he wanted to recover his property because his son Aminu was graduating from the university and he wanted to give him a room of his own to live in. Alhaji Yusuf cannot issue Hamida a notice to quit on May 10, requiring her to have vacated the premises by June 10, the notice must coincide with the expiration of her current rent.

The notice to quit must contain the following elements:

1. That the tenant should quit and handover possession of the premises
2. The address of the premises the tenant is expected to vacate
3. The kind of tenancy enjoyed by the tenant



4. The date of commencement and the expiration of the current tenancy
5. The date the notice to quit is to expire
6. The signature of the person giving the notice the landlord or his lawyer or agent.

If at the expiration of the notice to quit the tenant still does not vacate the premises, the landlord may serve a written notice of the landlord's intention to recover the premises at a date not less than 7 clear days from the expiration of the notice. (This notice is known as "FORM E"). If the notice is served on the tenant on Monday of this week for instance, then 7 clear days will expire at midnight next Monday.

After the expiration of the 7 clear days and if the tenant still fails to move from the premises, the landlord will then serve the tenant a court writ known as "FORM F". The appropriate court for the issuance of this writ would be the court closest to the property. The tenant has a right to make a counter-claim against the landlord in court this counterclaim could also be in respect of unexhausted improvement to the property or for any expenses authorized by the landlord in respect of the premises in question.

### **Contracts**

A contract is an agreement between two or more persons which is "**binding**" and **enforceable** in law.

**Contracts are said to be 'Binding'** because parties are bound by law to honour or respect the terms of the contract

**Contracts are said to be 'Enforceable' - because** either party to the contract can sue in court when one of the parties fails to honour the term of the contract.

There are two types of contracts:

**Formal contract** - this is a type of contract that is documented (written), signed, sealed (optional), and delivered. The law requires that contracts transferring interest in land and company contracts should be under seal.

**Simple contract** a simple contract could be a written agreement or an agreement made by word of mouth

## ***Essentials of a Contract***

A valid Contract must contain the following:

1. **Offer** can be defined as a definite promise made by one party to another with the intention that it will become binding on the party making it as soon as it is accepted by the party to whom it is addressed. An offer must be **definite, clear and devoid of ambiguity**. One who makes the offer is referred to as an **offeror**.

**N.B: Counter Offer** when a party to whom an offer is made refuses to accept the offer but makes another proposal that is different from the original promise or undertaking, that offer is called 'a counter offer'. For example if 'A' offers to sell his car, a Hummer Jeep, for N350,000 and 'Z' indicates interest in the car but says he is prepared to pay only N250,000 and not N350,000, what 'b' is doing in effect is making a **counter offer**.

2. **Acceptance** After a definite offer has been made, there must be an acceptance in compliance with the terms of the offer in writing or orally (parole). One who accepts of the offer is referred to as the "**offeree**".

Acceptance must be - plain, devoid of doubt, timely communicated to the offeror, and must have direct relevance to the offer being made -- without varying terms of the offer and devoid of conditions and qualifications.

3. **Consideration** This element is very important in a contract. It means the benefit, detriment or deprivation suffered by the offeror in order to comply with the terms of the contract (e.g., money and services). The consideration need not be adequate, 'A' cannot complain that the money (N350, 000) paid by 'B' for the Hummer Jeep is not enough once he has accepted the offer.

**N.B.** The law states that consideration must have value in law. Contracts under seal do not necessarily need consideration. Other types of contracts without consideration are not enforceable in the courts.

4. **Intention to enter into a legal relationship** both parties must have the intention of being bound by their agreement (i.e., a binding legal relationship). Where Mr Audu offers to buy his wife Asabe a trinket upon her giving birth to a male son and he does not fulfil his promise, Asabe cannot have any remedy in law because there was no intention to create a legally binding relationship.

What makes a contract invalid:

- Mistake When the person who wants to make a contract makes it in error
- Misrepresentation misrepresenting or misstating a fact to the other party to the contract either before or at the material time of making the contract, which induces the other party to enter into the contract.
- Duress and undue influence - this happens where one party to a contract forces, coerces, threatens, or uses actual force, possibly because of his or her advantaged position over the other party.
  
- Relationships in which undue interest may be implied:
  - Parent and child
  - Guardian and ward
  - Solicitor and client
  - Doctor and patient
  - Student and teacher
  - Pupil and teacher
  - Religious adviser and Disciple
  - Master and servant
  
- Illegal and Void Contracts a contract is said to be illegal and void where such contract is prohibited by law. This type of contract is also referred to as void and it is of no effect whatsoever. An example of an illegal contract is an agreement to commit a crime, agreement to import contraband good, a contract to defraud government, or one to promote corruption in public life.

### **NB**

Generally, a contract ought to be enforceable in law. There are certain instances where a contract may not be binding (i.e., void or null and void from the beginning). A voidable contract is a contract capable of being void (e.g., a contract with an infant, drunk, lunatic or an illiterate.)

Where an illiterate or a blind person enters into a contract, the use of illiterate jurat is important. Jurat is a signed undertaking by a third party included in the written contract which provides that a third party has read the terms and conditions of the contract to the illiterate or the blind and that they have consented to having a good understanding of the contract.

## **Remedies**

In the event of breach of contract, a party to a contract (i.e., a plaintiff) may be entitled to the following upon proving his/her case:

- Damages to be paid for the wrong done to her/him
- Specific performance, in other words the court would order him/her to carry out the terms of the contract as agreed by both parties
- Injunction to restrain the other party from carrying out further acts of breach
- Quantum merit - that is to say that the court will order as much as the party doing or rendering the service deserves.



## Chapter 10:

### Appendix -- Relevant laws and related materials.

#### Fundamental Human Rights: Chapter IV 1999 Constitution of Nigeria

33.(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) for the defence of any person from unlawful violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.

34.(1) Every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subject to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

(2) for the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;

(c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;

(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or

(e) any labour or service that forms part of -

(i) normal communal or other civic obligations of the well-being of the community.

(ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

(iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

- (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;
- (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

(2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

(7) Nothing in this section shall be construed -

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

36.(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law

(a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and



(B) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

- (a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;
- (b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to

-

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

37. The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

38.(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

39.(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

- (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
- (B) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

**40.** Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

**41.** (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit there from.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to:-

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

**42.** (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

**43.** Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

**44.** (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law.

(a) for the imposition or enforcement of any tax, rate or duty;

(b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;

(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.

(d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;

(e) relating to the execution of judgments or orders of court;

(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;

(g) relating to enemy property;

(h) relating to trusts and trustees;

(i) relating to limitation of actions;

(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;

(l) providing for the carrying out of work on land for the purpose of soil-conservation; or

(m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

**45.** (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons

(2) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 36(8) of this Constitution.

(3) In this section, a " period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

**46.** (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.

(4) The National Assembly -

(a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provisions-

(i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and

(ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

## **ARREST AND DETENTION**

### **Applicable sections of The Nigerian Constitution of 1999**

**35.** (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law

Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.



36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

## **International Covenant on Civil and Political Rights (ICCPR)**

### **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### **Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
  1. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

2. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**Article 11**

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

**Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(G) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

**Article 15**

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

1. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

**CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION  
AGAINST WOMEN (CEDAW)**

***The States Parties to the present Convention,***

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,



Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

## **PART I**

### **Article I**

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or

nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

## **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

## **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

## **Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate

standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

#### **Article 5**

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

#### **Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### **PART II**

#### **Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

#### **Article 8**

States Parties shall take all appropriate measures to ensure to women, on

equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

#### **Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### **PART III**

#### **Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

### **Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### **Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### **Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## **PART IV**

### **Article 15**

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

## **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## **PART V**

### **Article 17**

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women



(hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

### **Article 18**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

### **Article 19**

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

### **Article 20**

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

### **Article 21**

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the

examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

#### **Article 22**

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

### **PART VI**

#### **Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

#### **Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

#### **Article 25**

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 26**

1. A request for the revision of the present Convention may be made at any

time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

#### **Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### **Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

#### **Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider

itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.