



COUNTRY PROFILE

Family law in Nigeria is governed primarily by statute, influenced by English law, and customary law, which includes Islamic law.²¹² Nigeria is a federal system and hence, even though there might be some progressive amendments at the federal level, these need to be adopted by States, where there are often outdated laws that are deeply patriarchal, leading to uneven protection in different States.

Treaty	Date of ratification	Reservations/Declarations
CEDAW	13 June 1985	None
African Charter	22 June 1983	None
Maputo Protocol	16 December 2003	None

MAIN TRENDS ON FAMILY LAW

A key area of progress has been in relation to inheritance. While the Constitution of Nigeria guarantees rights to property and equal protection without discrimination on grounds of sex, most of Nigeria's customary legal systems do not allow women to inherit from their deceased husbands or fathers.²¹³ For some time, the courts enforced this position, however, a string of case law has in recent years confirmed that it is unconstitutional to discriminate against women on the issue of land, housing, property, and inheritance.²¹⁴ These cases have allowed widows, daughters, and children born out of wedlock to inherit and should be celebrated. Unfortunately, in practice women continue to be deprived of the right to inherit and manage property.²¹⁵ Nigeria must ensure that this position is applied and enforced consistently.

Nigeria has also made some progress towards eradicating child marriage.. In 2003 Nigeria adopted the Child's Rights Act, which has been assented by 35²¹⁶ out of 36 States,²¹⁷ which prohibits child marriage²¹⁸ and makes those who marry or promote the marriage of a child liable to a fine, imprisonment for five years or both a fine and imprisonment.²¹⁹ While these are positive steps, Nigeria's rates of child marriage remain among the highest on the continent.²²⁰ Notably, harmful traditional practices still exist where puberty is used in some cultures as a marker of suitable maturity.²²¹

Finally, in 2015 Nigeria adopted the Violence Against Persons (Prohibition) Act 2015²²², which is an important step towards combating gender-based violence, including violence within the home. In particular, the Act should be applauded for prohibiting female genital mutilation.

213 JN Ezeilo "Rethinking women and customary inheritance in Nigeria" (2020) *Commonwealth law Bulletin* at 2-4. Available at <https://www.tandfonline.com/doi/abs/10.1080/03050718.2020.1818596> (accessed 17 April 2024)

214 See for example *Mojekwu vs Mojekwu* (1997) 7 NWLR 283; *Uke vs Iro* (2001) 11 NWLR (Pt.723) 196; *Mojekwu vs Ejikeme* (2000) 5 NWLR 402; *Onyibor Ane-kwe and Anor vs Maria Nweke* (2014) 9 NWLR (Pt.1412) 393; and *Ukeje vs Ukeje* (2014) 11 NWLR (Pt.1418) 384

215 *Report of the Africa Family Law Campaign Consultative Outreach Meeting by Equality Now & partners* (2020)

216 Adamawa and Bauchi states assented to the Child's Rights Act in November 2022 and December 2023 respectively although this has not been officially updated in the child rights law tracker. Available at https://factchecknews.com.ng/2022/11/03/breaking-fintiri-signs-adamawa-state-child-protection-law-2022/#google_vignette and <https://guardian.ng/news/bauchi-domesticates-child-right-act-signs-2024-budget-int-o-law/> (Accessed 16 April 2024)

217 <https://www.partnersnigeria.org/childs-rights-law-tracker/> (25 May 2023)

218 Section 21 Child's Rights Act 2003. Available at <https://placng.org/laws/nigeria/laws/C50.pdf> (accessed 17 April 2024)

219 Section 21 Child's Rights Act 2003

220 The United Nations Development Fund states that 43 percent of women ages 20 to 24 had been married by the age of 18 in Nigeria

221 "Prepubescent" marriage is very common in Nigeria. A girl is first married, and the man is expected not to touch her until she reaches puberty. Available at <https://www.aucecma.org/nigeria-country-profile-on-child-marriages/> (accessed 16 April 2024)

222 VIOLENCE AGAINST PERSONS (PROHIBITION) ACT, 2015 – Laws Available at <https://laws.lawnigeria.com/2018/04/18/lfn-violence-against-persons-prohibition-act-2015/> (accessed 17 January 2024)

KEY GAPS AND CONTESTATIONS

(i) Discriminatory inheritance laws and practices:

Customary law is deeply patriarchal and consists of a number of practices which amount to unfair discrimination against women, such as those relating to inheritance and child marriage. In addition, women in Nigeria fall victim to harmful traditional practices such as widow inheritance and surrogate marriage.²²³ These practices treat women as property, to be handed over or inherited, rather than as full human beings. Steps must be taken to combat and prohibit these practices as well as the mindsets that give rise to them.

(ii) **Discriminatory statutory laws:** While customary law in Nigeria is riddled with flaws, the statutory marriage regime is also problematic. In particular, the approach of courts to dividing marital property after divorce has tended to privilege men.²²⁴ Courts use direct financial contribution as the basis for division of matrimonial property.²²⁵ Section 72 of the Matrimonial Causes Act²²⁶ gives courts the discretion to divide matrimonial

property in a just and equitable way. This power should be exercised to recognise non-financial contributions to the marriage so that economically weaker spouses (generally women) are not unfairly disadvantaged.

(iii) **Marital rape:** A further gap is that, in conformity with customary law, the Northern Nigeria Penal Code and Criminal Code do not recognise marital rape as rape.²²⁷ And the Penal Code of Northern Nigeria provides that an assault by a man on a woman is not an offense if they are married, if native law or custom recognises such “correction” as lawful, and if there is no grievous hurt.²²⁸ Nigerian law thus allows domestic violence and rape within marriage.

(iv) **Same-sex marriage:** Not only are same-sex marriages not recognised in Nigerian law, parliament has also passed the Same-Sex Marriage (Prohibition) Act criminalising and penalising those who solemnise and witness same-sex marriages.²²⁹

RECOMMENDATIONS

Judiciary:

- ▶ Nigeria must ensure that judicial precedent allowing women to inherit under customary law is consistently applied and enforced.
- ▶ Courts must use their discretion under Section 72 of the Matrimonial Causes Act to divide matrimonial property in a just and equitable way, recognising the non-financial contributions of women to the joint estate.

Sensitisation and awareness raising: Nigeria must take steps to eradicate harmful traditional practices such as widow inheritance and surrogate marriage.

Legal reforms:

- ▶ Provisions of the Penal Code allowing marital rape and “corrective” assault within marriage must be repealed.
- ▶ Nigeria must repeal the Same-Sex Marriage (Prohibition) Act and take steps to legalise same-sex marriage.

223 Widow inheritance occurs when a man dies and his brother or eldest son “inherits” his widow, entering as a substitute into the marriage without the need to perform additional marriage celebrations. Surrogate marriage occurs when a woman dies and her young sister is presented to the widower as her substitute, by her family, without the need to perform additional marriage celebrations. See LO Nwauzi and GO Akolokwu *General Principles of Nigerian Customary Law* 85

224 E Etomi and E Asia “Family Law in Nigeria: Overview” Thomson Reuters Foundation (2020). Available at: [https://uk.practicallaw.thomsonreuters.com/6-613-4665?transitionType=Default&contextData=\(sc.Default\)#co_anchor_a311247](https://uk.practicallaw.thomsonreuters.com/6-613-4665?transitionType=Default&contextData=(sc.Default)#co_anchor_a311247) (accessed 17 April 2024)

225 See for example *Essien vs Essien* (2009) 9 NWLR (Pt. 1146) 306, 331-332 and *Adaku Amadi vs Edward Nwosu* (1992) 6 SCNJ 59. Available at <https://www.lawglobalhub.com/adaku-amadi-v-edward-n-nwosu-1992-11jr-sc/> (accessed 17 April 2024)

226 Matrimonial Causes Act. Available at <https://lawsofnigeria.placng.org/laws/M7.pdf> (accessed 17 January 2024)

227 See Section 282 of the Northern Nigeria Penal Code 1959 Available at <https://ir.nilds.gov.ng/bitstream/handle/123456789/651/The%20Panel%20Code%20Law%2C%20Northern%20Region%20No.18%201959.pdf?sequence=1&isAllowed=y> and Section 357 of the Criminal Code 1990. Available at <https://www.refworld.org/legal/legislation/natlegbod/1916/en/65684> (accessed 17 April 2024)

228 Section 55(1)(d) of the Northern Nigeria Penal Code 1959

229 Same-Sex Marriage (Prohibition) Act 2013. Available at <https://laws.lawnigeria.com/2020/01/10/same-sex-marriage-prohibition-act-2014/> (accessed 17 January 2024)