

PROMOTING WOMEN'S RIGHTS THROUGH SHARIA IN NORTHERN NIGERIA



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Abbreviations

ABU	Ahmadu Bello University
ADR	alternative dispute resolution
CILS	Centre for Islamic Legal Studies
DFID	Department for International Development
FGN	Federal Government of Nigeria
HIV/ AIDS	Human immunodeficiency virus/acquired immune deficiency syndrome
LFN	Laws of the Federation of Nigeria
NDHS	Nigerian Demographic and Health Survey
NWLR	Nigerian Weekly Law Reports
STDs	sexually transmitted diseases
SAW	Salla Llahu Alaihi Wasallam (SAW) (May the blessings and peace of Allah be upon him)
UNICEF	United Nation Children's Fund
VVF	vesico-vaginal fistula



Glossary

<i>Bid'ah</i>	new deviations introduced to religion
<i>Biki</i>	social networking convened or gift exchanges during marriages and naming ceremonies
<i>Gwoggo</i>	aunt (one's father's sister) or the elderly woman in the husband's family
<i>Hijab</i>	a form of dress covering most part of the body and worn by Muslim women
<i>Hadith</i>	the sayings of Prophet Muhammad (SAW)
<i>Iddah</i>	mandatory waiting period after divorce during which reconciliation is expected to take place
<i>Ijbar</i>	power of the biological father to marry off his young daughter
<i>Ila</i>	a vow of continence
<i>Islamiyy</i>	community-based elementary Islamic schools
<i>Jahiliyyah</i>	pre-Islamic Arabian era
<i>Jingina</i>	suspension of conjugal relationships
<i>Kayan daki</i>	room-decorating materials such as furniture, glass wares, etc. with which parents decorate their daughter's room to accompany her as a bride's dowry
<i>Khul'</i>	divorce at the instigation of the wife
<i>Kulle</i>	seclusion
<i>Li'an</i>	accusation by husband of wife's adultery without any witness
<i>Mijin hajiya</i>	literally, madam's husband, used in a derogatory way against men who are considerate to their wives, insinuating the husbands are at their wives' beck and call
<i>Mut'ah</i>	parting gift given to a divorced wife
<i>Sharia</i>	Islamic law
<i>Sunnah</i>	traditions of the Holy Prophet (SAW)
<i>Sulh</i>	non-formal settlement of disputes
<i>Tahlil</i>	making otherwise invalid marriage valid
<i>Talaq</i>	unilateral repudiation of marriage by the husband
<i>Ulama</i>	Islamic scholars
<i>Ummah</i>	the Muslim community
<i>Zihar</i>	injurious dissimulation
<i>Zina</i>	the offence of adultery

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Introduction

1.1 Background

Sometime in 2004, a group of us from diverse backgrounds, under the banner of the Centre for Islamic Legal Studies at ABU Zaria, felt the need to do something to improve the condition of Muslim women in Northern Nigeria. Although at the initial stage it was not clear to us what was to be done, we felt there was an urgent need to act, and our feelings were predicated on the following observations:

- 1 With the widespread conviction of many states in Northern Nigeria to reform society based on Sharia, an opportunity had presented itself to improve the position of women, and to improve their means to face the challenges confronting them in this global age and ever-changing Muslim society.
- 2 In our society there were good and positive practices relating to women, which, however, were either not publicised or were on the decline, hence the need to identify, encourage and promote such practices.
- 3 There was an obvious, biased, attack on Islam concerning the position of women, both within and outside Nigeria, which was heightened with the expansion of Sharia in Nigeria, and so there was a need to respond to that in a constructive way.
- 4 Muslim women in Northern Nigeria, like women in other societies across the world, have been subjected to practices that violate their rights. Some of these violations are carried out in the name of Islam in spite of the fact that such practices are against the teachings of Islam and that the Islamic prescriptions in respect of women, if practised, can serve as a model to other societies.

United on these facts, and faced with the financial condition of our universities, we wrote a proposal and sought funding on the issue. The Access to Justice programme, now the Security, Justice and Growth programme, of the UK Department for International Development (DFID), was approached for funding, which was subsequently granted.

1.2 The process followed

This report is part of a project that seeks to promote respect for the rights of Muslim women in Northern Nigeria through Sharia. Research and data collection for this report were carried out with the support of the Security, Justice and Growth Programme, one of whose objectives is to make justice accessible to the poor and vulnerable members of the society.

Muslim women in Northern Nigeria, like others across the world, have been subjected to practices that violate their rights. The expansion of Sharia in most states in Northern Nigeria provides the opportunity to question and address these practices by subjecting them to the scrutiny of Sharia. It also opens an avenue for concerned Muslims to embark on projects that seek to promote positive practices and challenge harmful and negative ones, relying on an authentic understanding of Sharia. Addressing these negative practices is important because they constitute barriers to women's rights and hinder Muslim women's ability to access justice in Nigeria. In addition, they have a generally negative impact on the religion.

The present report documents both exemplary and harmful practices affecting Muslim women in Northern Nigeria, and evaluates them according to Sharia. The team of research consultants has relevant expertise in Islamic law, human rights and sociology.

The first stage of the project was a desk review which formed the basis of this report. Three consultations with various stakeholders by means of workshops constituted the second stage. The third stage involved a national conference of stakeholders and experts to critically assess the findings of the research and produce an implementation strategy. The final stage will be the implementation of the strategy developed.

This report is based on Northern Nigeria, which spans a wide area and consists of diverse ethnic groups, most of whom are Muslims. The major Muslim societies or groups upon which this report focuses are the Hausa-Fulani, Kanuri, Nupe, Epira and Ilorin Yorubas. The methodology adopted in the study involves a review of existing related literature. Methods used to document the practices include secondary data, our expertise on the issues, our experiences as members of the society and our knowledge of Islam. Identified practices were described, their prevalence determined, and their position under the Sharia evaluated.

The practices covered in the report relate to the following:

The girl-child	Inheritance
Marriage and marital relationships	Property ownership
Divorce	Access to health and reproductive health services
Custody of children	Political participation
Economic rights	Access to justice
	Criminal justice

The report has identified and focused more on harmful practices than exemplary ones. While this might be a reflection of the reality, it could also be merely a reflection of the fact that it is these negative practices that have often attracted research interest and have therefore been documented. Neither the list of positive practices nor that of negative ones in this report should however be taken as exhaustive.

1.3 Women's rights within the Islamic context

The approach to protection of women's rights in Islam is best demonstrated by reference to the web of family relationships, which encompasses a range of reciprocal rights and obligations.

Reciprocity is the key to understanding how the system is framed and, we are convinced, is also the key to formulating a robust framework for protecting women's rights in Muslim society. From this perspective women's rights should not be seen as stand-alone claims made by women, but as claims arising from a system of mutual rights and obligations guaranteed by both religion and law. Women's rights in general are not unreciprocated burdens placed on society, or gratuitous favours done to them, but compensatory gestures arising from an equitable distribution of claims and burdens within the society. An example which clearly highlights this principle of reciprocity is the husband-wife relationship, the underlying principles of which are described in the Qur'an in terms of mutual respect, security, and compassion, all demonstrative of Allah's signs understood only by *'those who reflect'* (Qur'an, 30:21; 2:184). Islamic law assigns rights and duties to both the husband and the wife: that is to say the rights of the wife are the husband's duties, and her corresponding obligations are his rights in relation to her. The Qur'an says women have rights even as they have obligations according to what is equitable (Qur'an, 2:228). Among the obligations of the wife the Qur'an mentions devout obedience, and conscientious guarding of her chastity (Quran 4: 32). Her main obligation is to contribute to the success of the marriage, taking care of the comfort and well-being of the husband, avoiding conduct that may offend him. The husband is required to discharge the reciprocal obligations of loving and caring for his wife, treating her well and providing for her needs such as food, clothing and shelter.

It should be noted that the mutual rights and obligations of the husband and wife in particular, and of the family members in general, are not mere private concerns of the individual marriage partners or individual members of the family. They are also the concern of society as a whole, because the protection of the family relationship, which in turn ensures the sustenance of human progeny, is identified by Muslim scholars as one of the fundamental goals of Islamic law. The progress, well-being and continuity of human society depend on how far the rights and duties relating to the family relationship are respected and protected. Consequently the mutual expectations of family members, in terms of rights and obligations, which pertain to a variety of issues such as lineal identity, maintenance, succession, affection and socialisation of the young, security for the aged and maximisation of effort to ensure the family's continuity and well-being, are reinforced and complemented by the values and norms of the larger Muslim community. This in essence means that striving to protect the rights accorded to women, while they in turn discharge their duties, is one of the obligations imposed by God on all members of Muslim society.

It is useful to understand this context of family relationships in the form of reciprocal and mutual rights and obligations, and the ennobling of these relationships in Islam through law, morality and a sense of social responsibility as we proceed to examine in detail the various practices which relate to the rights of women.

Practices relating to the girl-child

Scholars have documented the practices that endanger the survival and development of the girl-child. For example, UNICEF and the Federal Government publications on children's and women's rights in Nigeria, 2001, provide disaggregated statistics on the bases of gender and geopolitical zones. Some practices highlighted in the available literature in relation to Northern Nigeria are: preventing girls from attending school; withdrawing girl-children from school; using children for street hawking; forced and early marriage; lack of adequate provision; abuse of the girl-child; and unequal treatment of children by the parent.

2.1 Education of the girl-child

According to the literature, the right of a girl to education has often been violated in the North. Either parents completely refuse to send their daughters to school or, by sending them into the streets to hawk, they prevent them from attending classes. Responsibility for sending a child to school lies with the parents, either biological or foster, but mothers are generally blamed for their daughters' absenteeism from schools. Because some mothers are dependent on their daughters to hawk, they sometimes sabotage the schooling of these daughters by disrupting or withdrawing them from school. A study by Schildkrout in Kano notes that mothers support girls in going out hawking because of the benefit they receive from the proceeds. The proceeds can be used to buy *kayan daki* (marriage trousseau) for the girl and other preparations for the girl's marriage. While hawking, the girls can fall prey to men and are often sexually harassed. This continues despite the recent declaration of Sharia criminal law in some Northern States.

What Sharia says

In Islam, parents are responsible for providing education and training to their children. Denying this is against Sharia, which expects both men and women to be equally educated. The West African Jihad leaders of the 19th century condemned the hypocritical practice of some of the *Ulama* (scholars) of that time, who spent most of their time teaching other people, while at the same time leaving their wives and female children in ignorance. When parents today deny their female children the opportunity for education they are repeating the practice that Sheikh bin Fudi and his learned lieutenants fought against.

Preventing the girl-child from going to school is against the principle of the Sharia, which 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) used to hold special classes for women at their request. Removing the girl-child from school to marry is in itself not contrary to Sharia provided she is given the opportunity to continue her schooling from the husband's house.

2.2 Exploitation of the girl-child

Exploitation of the girl-child can take many different forms, the major one being child labour. Child labour is different from child work. Child work refers to learning or training. As such, the work schedule is flexible and responsive to the ability of the child. The work the child does is meant to encourage the child's participation and learning. However, by child labour we mean work that is exploitative and injurious to the physical, social, and moral development of the child. Child labour exposes a child to long hours of work in a dangerous environment and at the expense of their schooling. For the girls this frequently involves hawking their mothers' products. Many women push their children into hawking for economic reasons, to supplement the family income. This problem cannot be resolved without economic improvement following appropriate government policies of poverty alleviation.

What Sharia says

Sharia rejects the practice of sending girls to hawk in the street on the grounds that it exposes them to the dangers of sexual exploitation by paedophiles and other morally bankrupt members of society. The Qur'an says,

'... But force not your maids to prostitution when they desire chastity, in order that you may make a gain in the goods of this life.' (Qur'an 24:33)

Tackling this problem requires the introduction of policies that will improve the welfare of the people, which 19th-century Muslim reformers Sheikh Uthman Ibn Fudi and his brother Abdullah Ibn Fudi identified as a major responsibility of Muslim governments (Ibn Fudi's *Kitab al-Farq*, and Abdullah's *Diya' al-Hukkam*).

2.3 Early and forced marriage

Girls are frequently married at an early age when they are not mature enough to take up the responsibility of being wives or effective mothers. In most cases they are not physically, psychologically or morally matured enough to shoulder such responsibilities. Although the number of early marriages is declining in the cities because of factors such as education and the increased income people are able to make in urban environments, it is sad to note that the practice is still common in rural areas. Related to this is the practice of forced marriage, perpetuated by adult members of the family. In many cases and for financial or social benefits for the parents, a girl is forcibly married to a man old enough to be her father. A similar practice is that of marrying off boys at an early age before they have acquired the means to maintain a family. This has an impact on the girl-child too, since she will also have been married at an early age and the husband will have little or no means to support her practically or financially. Early and forced marriages are in decline, but they are still practised in many rural areas.

What Sharia says

It is true that some parents force their children to marry husbands of their parents' choice. This practice still persists in some parts of Northern Nigeria. Parents who do this rely on the jurisprudential ruling of Imam Malik to the effect that a father may compel his previously unmarried daughter to marry a man he chooses for her. The right of compulsion, where it exists, can only be exercised by the father, who is also qualified to be a guardian on the assumption that his care and compassion for his daughter are ordinarily taken for granted. This fatherly power is known as *ijbar*. Public morality and the individual's own integrity take priority over personal freedom when they come into conflict.

All the Jurists agree though that it is recommended and always necessary to seek the consent of the girl before she is given in marriage. Nowhere does the Qur'an or the Prophet (SAW) speak with approval of coercive authority. There are authentic reports in the traditions of the Prophet (SAW) where some parents gave their daughters in marriage without the daughter's consent, but when the women concerned objected to them before the Prophet (SAW), the daughters were given the option to revoke the marriage. The following are examples of some of these traditions.

Ibn Abbas reported that the Prophet (SAW) said '*A matron (i.e. a woman previously married) has more right regarding herself than her guardian, and a virgin's consent should be sought and her silence is her consent.*'

Hassana bint Khaddan was married by her father against her wish. She complained to the Prophet, who repudiated the marriage.

It was narrated by Ahmad, Abu Dawud, Ibn Majah and Dar al Qutni on the authority of Ibn Abbas that a young virgin came to the Prophet and told him that her father had given her in marriage to a man against her wish and the Prophet gave her the option to ratify or repudiate the marriage.

Owing to the high moral standard expected by every Muslim, it is generally agreed that early marriage is an insurance against sexual and moral degeneration. Using the precedence of the Prophet's marriage to A'isha when she was about 12 years old, it is unanimously agreed by all four Sunni schools that there is no limit to the number of years that a girl must reach before she is married. However, consummation of the marriage is not allowed until the girl is capable mentally and physically. (See *Nayl al-Awtar* and *Fath al-Barī*)

2.4 Abuse and violence against the girl-child

Abuse and violence against the girl-child can take place both within and outside the home. The practice is more common among children at the hands of foster parents. Abuse and violence might take several forms: psychological abuse, sexual exploitation, excessive beatings or the showing of preferential treatment for male children or between the children of co-wives. Two categories of girl-child are particularly vulnerable: the daughter of a non-favourite wife who might be maltreated by either her stepmother or her father and the foster daughter. Fostered children are likely to receive less affection, care and support (UNICEF/FGN, 2001). This is common and widespread behaviour, documented by several serious studies.

What Sharia says

First, Sharia rejects any form of injustice. Even the practice of showing preference among co-wives is highly condemned. It is unlawful under Sharia to mistreat and abuse one's children, who are seen not only as gifts but also as a trust from Allah. Any kind of abuse is prohibited. Beating one's child lightly as a means of correction once he or she has reached the age of discernment may be tolerated provided there is no physical harm to the child. The only instance reported from the Prophet (SAW) in which he sanctioned beating children lightly for the purposes of correction is where he said

'Command your children to pray at the age of seven and beat them (to compel them to do it) at the age of ten.'

2.5 Lack of provision and care

Another important practice affecting the rights of a girl-child relates to her entitlement to nutritious food and decent clothing. Because of the economic situation in the country parents find it increasingly difficult to cater for the basic needs of their children. National data indicates a higher level of malnutrition among children of the North-west zone compared with their counterparts in the South. For instance, the NDHS (2003) reports that children living in the North are disadvantaged in terms of nutritional status. For example, there is a 55 per cent prevalence of stunting in the North-west zone and 43 per cent in the North-east zone, compared with 18 per cent in the South-east and 25 per cent in the South-west. One of the most important factors in stunting is poor feeding caused by poverty.

What Sharia says

The refusal by some parents to make necessary provision for the proper development of their children is against the teachings of the Sharia. The Qur'an categorically and in the clearest expression possible commands that:

'... but he [the father] shall bear the cost of their feeding and clothing on equitable terms ...'
(Qur'an 2:233)

When a lady, Hind, complained to the Prophet (SAW) that her husband was a miser and did not provide adequately for her and the children, the Prophet (SAW) instructed her to *'take from his wealth what you need for your upkeep and that of the children in an equitable manner.'*

2.6 Preference for the male child

In many places and cultures of the world, there seems to be a preference for the male child. This preference is still largely the case in Muslim Northern Nigeria. A woman who is unable to bear a male child has diminished status. This has been one of the factors that lead some men into a polygamous marriage. In Hausa parlance, the common phrase dictating the general attitude toward birth of a girl-child is *'ba ayi komai ba, macce ta haifi mace'*, meaning that 'nothing is gained by a female giving birth to a female'. The preference for the male child is also ostensibly linked to competition over inheritance as the male child's share of inheritance is double that of a female's.

What Sharia says

The Prophet Muhammed (SAW) not only praised the parents who successfully raise a daughter to puberty, but categorically stated that 'any person who raised and catered for three girls will be admitted to Paradise'. A lady asked *'what about two?'* He replied *'even two'*. Another lady asked *'what about one?'* He replied *'even one.'*

The Qur'an condemns the behaviour of those parents who show preference for a male child over a female child. It also prohibits the ugly and barbaric practice of the Jahiliyya Arabs of burying alive a female child in the name of saving the family honour. The Qur'an says,

'When news is brought to one of them of the birth of a female child, his face darkens, and he is filled with inward grief with shame does he hide himself from his people, because of the bad news he has had. Shall he retain it on sufferance and contempt or bury it in the dust? Ah! What an evil choice they decide on?' (Qur'an 16:58-9)

The Prophet (SAW) said *'Do justice among your children'* by not preferring one over the other. He also said *'fear Allah and treat your children with equality and justice.'* A Muslim is required to believe in line with the Qur'anic provision that children are gifts from Allah and it is He who decides whether to give one a male or a female child. The Qur'an states:

'To Allah belongs the kingdom of the heavens and the earth. He creates what He wills, He bestows female (offspring) upon whom He wills and bestows male (offspring) upon whom He wills. Or He bestows both males and females and He renders barren whom He wills. Verily He is the All-knower and He is able to do all things.' (Qur'an 42: 49–50)

2.7 Care for orphans and the children of the poor

An exemplary custom that needs to be sustained in our society is one where the extended family system provides security for the abandoned girl-child from a broken marriage and orphaned children. Under the extended family system family members are expected to share each other's burden. Thus, children of the poorer members of the family, or orphaned and abandoned children, have often had their education, feeding and general care financed by other family members. However, this kind of support is in decline and there are no alternatives.

What Sharia says

One of the most meritorious acts in Islam is the feeding and care of orphans and the needy. The Qur'an is full of exhortation to care for orphans and the needy. It is also full of warnings against misappropriating orphans' property. (See Qur'an 4:3–10). A whole chapter is dedicated to calling the Muslim community to hasten towards serving orphans and the needy. The Qur'an says: *'Have you seen he who denies religion? He is the one who repulses the orphans and encourages not the feeding of the needy.'* (Qur'an 107:1–3)

One of the most frequently repeated prayers of the Prophet (SAW) is: *'I beg you Allah to instill in my heart love of the needy.'*

2.8 Equality in feeding boys and girls

Studies have documented evidence of bias for boys in feeding children in Asian societies. But the picture is different in Northern Nigeria where, as a positive practice, boys and girls are treated equally when it comes to food and clothing. In fact, girls are more likely to get preferential treatment over boys and more money spent on them than boys in matters of feeding and other needs.

What Sharia says

In Islam, more value is attached to the upbringing and care of daughters to the extent that the Prophet (SAW) expressly guaranteed paradise for successfully bringing up daughters.

Marriage and marital relationships

Marriage is an important institution in Islam. The religion clearly spells out how husband and wife should relate well to one another, by creating both rights and obligations for the couple. It insists that the yardstick in a marital relationship is living together in equitable terms or separating on equitable terms without harming each other (Qur'an 2: 229). Some couples obey these guidelines. For example, many husbands in Northern Nigeria do take care of their wives and provide for their well-being by providing not only their necessities like food, clothing and shelter, but also other generousities such as capital for business or support for the wife's relations. However, as many husbands fail to discharge their marital obligations many women are adversely affected.

3.1 Exploitation and abuse of wives

Abuse of wives by their husbands occurs in both urban and rural families. However, physical abuse is not as widespread as psychological abuse, because of the intervention of the wife's families, which offer protection and refuge for their daughter. Psychological abuse is more widespread, especially in polygynous relationships. For example, a husband might unilaterally suspend conjugal relationships with one of his wives (*jingina*), though this practice may not be a problem where the wife freely initiated and negotiated it for her own benefit.

Similarly, wives may experience both mental and physical abuse from their husbands. Available data shows that this is prevalent in some communities. A related practice is where husbands who are unable to provide for their present wives, still go on to marry another wife, abusing the Islamic permission for polygyny. However, the extended family structure may also act as an alleviating factor by providing support, redress and refuge for the woman abused.

Another area of abuse is the relationship between wives and mothers-in-law. Using the influence they have over their sons, some mothers-in-law make the life of their daughters-in-law difficult. In fact, a woman living happily with her husband may be accused of using charms against him and the man may be branded *mijin hajija* in the community. So, in order not to be branded as such, the man treats his wife as a near servant, rather than a partner to be consulted and treated with respect as Uthman Ibn Fudi noted. Consequently, in the Northern Nigerian Muslim community there is frequently a general lack of close relationship between husband and wife as prescribed in the holy Qur'an.

What Sharia says

Sharia prohibits all kinds of abuse and exploitation. The Prophet (SAW) is reported to have said *'You should not harm anybody, nor should you be harmed.'* *'You are not a true believer until you love for your brother (Muslim) what you love for yourself.'*

Islam not only condemns maltreatment of wives but goes further to require the husband to be loving and compassionate to his wife, to the extent that the Prophet (SAW) says *'the best among you in the sight of Allah is the best to his family.'*

... '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)

On the issue of abuse arising from polygyny, Sharia has laid down conditions and specific rules to ensure justice is done to all wives. These conditions include the ability to provide for wives adequately and to treat them equally. Sharia gives as a condition for the permission to marry more than one wife the ability and willingness to do justice between co-wives. The Qur'an says,

'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)

Dealing justly with co-wives means not showing any preference for one over the other, sharing your time equally between them and providing for them equally. Non-provision of amenities or conjugal desertion are grounds for divorce because they constitute cruelty and ill-treatment. The Prophet (SAW) is reported to have said that anybody who openly shows preferential treatment of a wife over another will be raised on the day of judgement with half of his body paralysed.

The Prophet used to say, after distributing his time and provisions among his wives, *'God, this is what I can do over what I can control. As for that which I have no control over, I believe I will not be taken to task.'* The Jurists unanimously agree that the justice demanded by Sharia among co-wives is justice that is determinable and objective, rather than immeasurable things such as emotional feelings.

3.2 Exclusion and seclusion of women

Related to the above is the practice of women's exclusion in Northern Nigeria. Muslim women are generally excluded from decision-making at the family and community levels. Husbands do not generally consult their wives on matters that may concern them or their children. Similar practice applies at the community level. Women are rarely involved on matters that concern the community, nor are they nominated to represent the community. A woman is to be heard, not seen. Seclusion is the practice whereby husbands restrict their wives' movements.

What Sharia says

Free and unrestricted intermingling between men and women is prohibited in Islam. Women are, however, free to go out of their houses and pursue any legitimate business as long as they observe the code of modesty of Islam. This code relates to issues such as lowering their gaze in an encounter with a stranger of the opposite sex, covering the body properly in such a way as not to expose her beauty and adornments, speaking to strangers in a dignified and natural way and walking normally without intent to attract attention. The Qur'an puts these requirements on women while out of their houses with the sole aim of protecting their honour. By giving them a distinct appearance of modesty and dignity, as mothers, the moral tone of the society is preserved. The relevant Qur'anic verses are,

'And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what must ordinarily appear thereof, that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husband's fathers, their sons, their husband's sons, their brothers or their brother's sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! Turn ye all together towards God that ye may attain bliss.' (Qur'an 24:31)

Again Allah says,

' . . . 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 not molested. And God is Oft-forgiving, most Merciful.' (Qur'an 33:32, 33 and 59)

The Prophet (SAW) is reported to have said to Saudat, 'you [women] are free to go out of your houses as long as there is a genuine cause to do so.' The practice during the period of the Prophet and the later period of the Rightly Guided Caliphs was full of evidence of women's full participation in various aspects of the life of the Muslim community, including, for example, participation in battles.

The current practice among some communities in Northern Nigeria of secluding women by totally confining them to their homes, popularly called *kulle* (purdah), has no basis in Sharia. (On the issue of purdah in Islam, see Abul A'la Maududi, *Purdah and the Status of Women in Islam*). It might have been a convenient way for Northern Nigerian Muslim men who think the practice enables them to conform to required modesty expected in the Muslim society.

3.3 Heavy and discounted domestic chores

Women are burdened with domestic and other responsibilities, which are taken for granted both within and beyond the family. This over-burdening of women may increase in magnitude as more women work outside the family. Despite the increasing role of women in making provision for the family, some men rarely assist their wives with simple domestic chores – neither to relieve them of the work nor to represent appreciation. Some marriages may have problems because of, for example, the failure of a wife to finish cooking in time. The few men who attempt to assist their wives are often ridiculed.

What Sharia says

Under Sharia, both the husband and the wife have rights and duties. It is interesting to note that to most Jurists domestic chores are not part of the duties or obligations of a wife of an Islamic marriage. It is, however, recommended that she carries out her duties and tasks of her own volition in the interests of good companionship, and that the husband reciprocates by showing appreciation as a division of labour between them. It is also highly recommended in line with the practice of the Prophet (SAW) that husbands should assist their wives with domestic work. This corresponds with the report that the Prophet (SAW) used to assist his wives with their routine domestic tasks. Muslim Jurists are of the view that where the husband can afford it, he should supply domestic help for the wife. This is included as one of the rights of the wife in an ideal Islamic marriage.

3.4 Maintenance

In Islam it is the responsibility of husbands to provide maintenance for their wives. This includes things like food, clothing, medical expenses and accommodation. Muslim husbands should try as much as possible to meet the needs of their wives; this is considered a religious obligation. This division of responsibility is reinforced by the fact that it is legally appropriate for wives to seek divorce on the grounds of lack of support from their husbands. Money spent on household provisions by the wife is to be paid back by the husband and failure to do this may result in separation until he pays. However, the wives of the poor are expected to complement the efforts of their husbands. The role of Muslim women in providing for the household is at present on the increase because of the current economic hardship experienced by many Nigerians. Husbands are finding it increasingly difficult to provide for their wives because of the current economic situation in the country.

What Sharia says

It is against the basic principle of Islam to marry knowing full well that one cannot maintain a wife. The directive of the Prophet is to the effect that *'O young people! Whoever has the wherewithal should get married. Those who do not should fast because fasting suppresses sexual urge.'*

Maintenance under Islamic law includes not only basic necessities such as accommodation, food and clothing, but also the provision of all items required by a wife to live decently. The Qur'an says, *'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)

On the obligations of maintaining a wife the Qur'an says,

'Let the women live 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)

3.5 Women's control over wealth

Available literature documents the near-universal rights and practice of Muslim women's control over their wealth. Despite the practice of seclusion, Muslim women are active in income-generating activities and their earnings are individually held and spent on what they perceive as their private needs, such as engagement in social networking (*biki*), buying of *kayan daki* (room decoration) for themselves and their daughters and on their parents and other kin. Thus, decisions on what and when to contribute to family expenses are the responsibility of the woman. The independence of Muslim women to do what they want with their income is very much documented in the literature and it is widely practised by women. In fact, it is one of the remarkable features of Muslim women in the North.

What Sharia says

On marriage a woman's personality does not dissolve into that of the husband. She retains her personality and identity and is deemed to own privately and exclusively whatever she acquired before marriage or after it. The holy Qur'an says for men there is reward for what they have earned; (likewise) for women there is reward for what they have earned (4:32). The husband may participate in the use or control of her wealth only where the wife gives her express consent.

3.6 Retention of pre-marital identity

For Muslim women in general, the blood-related family is as important as the marital family. Consequently when a Muslim woman from Northern Nigeria says 'my family' she means her kin family with which she retains her relevance and status even after marriage. For instance, a Muslim woman has power over decisions that affect the children of her brother and over issues that affect the extended family. Here the role and power of *gwoggo* (the aunt) comes to mind. Hence, a married woman does not lose her first home identity because of marriage. She retains her status, her family and her overall personality as an individual in her own right.

What Sharia says

Marriage is a contract which the parties enter on equal footing. Each party retains his or her identity in all respects, including names. The wife is not required to change her maiden name or adopt the husband's family name. This is in line with the injunction of the Qur'an that each bears, and should be addressed by, his father's name unless the father's name is unknown.

Divorce

4.1 The misuse and abuse of *talaq*

Divorce normally signifies separation or termination of marriage; and it could emanate from either party to the marriage. *Talaq*, the universal repudiation of marriage by the husband, is the most prevalent form of divorce in Northern Nigeria, obviously due to its informal character, although women (and this includes those in the rural areas) also make extensive use of the court in securing divorce (Ahmad, *Resolution of Civil Disputes*, 2003). The manner in which *talaq* has been practised adversely affects the protected rights of the victims, in this case women and their young children. The most common abuses of the *talaq* process are:

- pronouncing the *talaq* at prohibited times
- threatening the wife with *talaq* for frivolous reasons, such as her insistence on her right of maintenance
- pronouncement of first, second and third *talaqs* in one sitting

What Sharia says

Islamic law, like other legal systems, recognises divorce as inevitable when there is a failure to achieve the objectives upon which the marriage is built. Despite its permissibility, the Prophet (SAW) described *talaq* as 'the most detestable of the permissible things in the sight of God.'

The Qur'an in Chapter 2: 129 states that '*Talaq is only permissible twice.*' A third pronouncement of *talaq* means that remarriage between the parties is possible only after the wife has married another person and got divorced from him. The first and second pronouncements of *talaq* are revocable and may allow the parties to resume marital relationship without the requirements of an intervening marriage.

To close the door of reconciliation, some men resort to using the unapproved (*bid'i*) method of pronouncing *talaq*. Pronouncing three *talaqs* at the same time in one sitting or pronouncing the *talaq* while the wife is observing her menses or when the woman is not in a state of fresh purity is contrary to Sharia. Sharia requires that *talaq*, if there is reason for it, be pronounced on separate occasions, and in each case only when the wife is in a state of fresh purity. These requirements have a number of benefits in that they allow time for reflection and intervention that may lead to reconciliation, in addition to shortening the waiting period (*iddah*) which the wife has to observe after divorce.

The Qur'an and the Prophet's statements present the problem of *talaq* in a highly moral context. The legal formalities are buried in a rich exhortation on piety, remembrance of God and kindness. Divorce is perceived as a moral, self-correcting and self-restricting act.

4.2 The denial of wives' post-*talaq* entitlements

The Sharia requirement that husbands continue to make automatic provision of maintenance for their divorced wives is followed more in the breach than in the observance. The invariable practice after *talaq* is that the wife is required or expected to leave the matrimonial home the moment divorce is pronounced. In practice also, the financial commitment of the husband comes to an abrupt end, leaving the wife and her infant children to fend for themselves. The divorced wife normally then stays with and depends on her parents or relatives until the husband recalls her or she is able to remarry. Sharia places most, but not all, of the post-*talaq* entitlements on the good conscience and sense of justice of the husband. But because *talaq* is accompanied by bitter separation, almost all divorcing men may have their sense of justice compromised and clouded. Apart from these unspecified entitlements, the Sharia-guaranteed entitlements, which are also almost always denied, are:

- preventing the wife from staying in the matrimonial home for the three-month period
- denying her, after forcing her out of the home, any provision for maintenance
- denying her maintenance for her infants or young children (which includes food, clothing and schooling expenses) – a right that extends beyond the three-month period
- denying her custody of her young children or denying her their maintenance allowance.

The practice of denying wives their post-*talaq* entitlements is extremely rampant, and this has a negative impact on the victims of the practice, that is women and their young children. In divorces other than *talaq*, the intervening authority, such as the court, specifies the entitlements of the divorced wife in taking into consideration each individual case on its merits.

What Sharia says

Sharia requires that following divorce, for a certain number of months in which the wife is serving the *iddah* (waiting period), the husband must continue to maintain her in all respects as if no divorce had taken place. It is unlawful to ask her to leave the matrimonial home during that period. God says in the Qur'an,

'O Prophet, when you do divorce women, divorce them at their prescribed periods . . . and fear Allah your Lord and turn them not out of their houses, nor shall they leave except in case they are guilty of some open lewdness . . . When they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms . . .' (Qur'an 65:1–2)

See also Qur'an 2:233 where God specifically instructs that the husbands *'shall bear the cost of their feeding and clothing on equitable terms . . .'*

The Sharia recommends that beside the legal entitlement of the wife, she should be given a parting gift known as *mut'ah*. God says, *' . . . bestow on them [divorced women] a suitable gift, the wealthy according to his means and the poor according to his means, a gift of a reasonable amount is due from those who wish to do the right thing.'* (Qur'an 2:236)

All the Jurists agree that a divorced wife can sue and successfully recover withheld entitlements from the divorcing husband.

4.3 The frequency and ease of divorce

The fact that divorce can be secured by either couple relatively easily may have been one of several factors responsible for the high rate of divorce in the northern part of the country. While this phenomenon could be advantageous to the cause of women's empowerment where necessary, it could also harm them. Women are divorced with ease, leaving them to fend for themselves without any preparation. This practice however is matched by the comparable ease of remarriage by divorcees.

What Sharia says

Divorce in Islam is relatively easy and formally simple. Its revocability is also easy and formally simple. There are also various grounds and mechanisms to dissolve a marriage and there are various alternatives for redeeming it. Contemporary Muslim scholars concentrate on the Sunna or orthodox method of divorce as the ideal moral solution for the Muslim community while they condemn the unapproved types (*bid'ah*) as deviations and unacceptable. It is also true that Islam recognises the right of each party to seek and acquire the dissolution of an unsuccessful marriage. The ease with which it can be done is also an avenue for frivolous people with questionable moral credentials to resort to misusing the right to divorce as a licence for engaging in multiple marriages and changing women as frequently as they wish. The Prophet condemned this practice when he said, 'God has cursed that man who divorces so often'. The State can always put restrictions on an individual's right to exercise his freedom of choice when harm is occasioned on others.

4.4 *Khul'* divorce at the instigation of women

Among the forms of divorce, one of the frequently used methods by which women do terminate marriage is *khul'*. This is a Sharia process where, if the woman desires a separation for any reason and the husband will not pronounce a *talaq*, the wife offers to pay back some property, mostly the dowry that the husband paid her during marriage. Thereafter, she becomes separated from him, irrespective of his wishes. Because the dowry is low in Muslim societies of Northern Nigeria, most women who want *khul'* can afford to pay for it. This form of divorce affords women an opportunity to terminate an unsatisfactory marriage without much difficulty. However, Sharia does not oblige the husband to provide any maintenance for the upkeep of the wife following this kind of divorce, but her rights to custody or to custody allowances are not affected.

This method of divorce is widely used by Muslim women. In comparison, due to its lack of formality *talaq* is been the most prevalent method of bringing a marital relationship to its end. However, *khul'* seems to be the most popular of all methods of divorce available to women, perhaps because the standard of proof is low.

What Sharia says

Khul' is one of the many channels open to the wife to seek and obtain the dissolution of an unsuccessful marriage. It can take the form of mutual consent or settlement. It is based on the saying of God,

'... There is no blame on either of them [the couple] if she gives something for her freedom ...'
(Qur'an 2:229)

Khul' also derives its authority from the Sunna (tradition) of the Prophet, whereby a woman agreed to return an orchard given to her by her husband as a dowry in order to obtain her freedom from marital obligations.

4.5 Other judicial divorce by women

Women's rights are also affected by the wide range of ways of terminating an unsatisfactory marriage. Unlike *khul'*, other judicial divorces do not require the wife to offer any sum to the husband. Similarly, she does not forfeit her post-divorce maintenance entitlements or any other post-divorce rights. The major difference between *khul'* and other forms of judicial divorce is that in *khul'* the standard of proof is low. In non-*khul'* judicial divorce, the wife must offer sufficient proof to support her underlying grounds for seeking divorce. Ill-treatment, abuse, or non-provision of maintenance are some of the usual grounds of divorce.

What Sharia says

There is a wide range of bases for judicial divorce.

The Sharia allows a wife to obtain divorce on the following grounds:

- ill-treatment and cruelty, both physical and psychological torture
- husband's impotence
- desertion or disappearance of the husband
- incurable and communicable diseases
- lack of maintenance

Other grounds on which the Qur'an has provided relief to women are:

- *Li'an* This is where a husband accuses his wife of adultery but he has no witness except himself. This can take the form of denying responsibility for her pregnancy.
- *Ila* (vow of continence) This is where the husband for reasons best known to himself vows not to approach his wife for an unspecified period. The Qur'an gives him up to a maximum of four months to go back to her or consider the marriage terminated.
- *Zihar* (injurious dissimulation) This is a customary Arab practice where, to humiliate the wife, the husband contrives to avoid her by comparing her to his mother. The Sharia requires that whoever after doing this wishes to go back to his wife must expiate by either freeing a slave, or fasting for two consecutive months or feeding 60 needy people. (Qur'an 58:3). His delay in doing the expiation entitles the wife to divorce.

The custody of children after divorce

5.1 Forceful denial of post-divorce custody

Whatever form of divorce occasions separation and dissolution of marriage, Sharia entitles the wife to custody of any young children of the marriage: female children until they are married and male children until they reach puberty. In practice however, wives are denied custody of their children by threat or actual use of force. Some women do not pursue their rights to custody for fear that their former husbands will not provide maintenance to support the children. Often, those fears are real. However, a few women do have recourse to courts where eventually they obtain custody and an order for maintenance of the children. The practice of denial of custody following divorce is widespread. Many men seek to further antagonise their former wives and use denial of custody for that purpose.

What Sharia says

Sharia categorically gives custody of minor children to the mother: girls until they marry and boys until they reach the age of puberty and discretion. This ruling is based on the case that was brought before Caliph Abubakar by a grandmother challenging the attempt of Umar to take his child away from her. Caliph Abubakar decided in her favour adding that, *'The hugs and kisses of that old woman to the child are more important and valuable than whatever material wealth you can offer the child'*. This provision of Sharia, besides granting rights to the wife, has the additional benefit of placing restraint on indiscriminate divorce. In effecting a divorce the husband has to consider the unpleasant prospect of losing custody of the children.

Muslim Jurists unanimously agree that custody of young children is rightly in the hands of the mother and her relatives. In the order of priority outlined in Sharia, the father is fifth in line of eligibility to custody. So far, from all the known cases, the courts have unhesitatingly given custody to the mothers.

5.2 Failure to provide maintenance for children in the custody of the mother

In almost all circumstances where the husband does not oppose the wife taking custody, he fails to provide the required maintenance for the upkeep of the child or children of the marriage. Sharia stipulates that the father must provide his children's maintenance, and this includes funds for their education. However, it has been observed that few men voluntarily provide such maintenance after divorce. In the rare cases where they decide to provide support, husbands give far less than what will adequately cater for the maintenance needs of the children.

What Sharia says

Sharia makes it the duty of the father to provide maintenance and education for his children. In fact Sharia insists that the father must pay for a nanny or domestic help to cater for his children where such services are needed.

According to the Law, the divorced mother is entitled to be paid specifically for suckling the child of a husband who divorces her. Allah says:

'... and if they [divorced wives] suckle your offspring, give them their 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)

God also says,

'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 2:233)

Economic rights

6.1 Preventing wives seeking career employment

Most of the known economic activities engaged in by women in the North take place within the home. Some husbands prevent their wives from taking employment outside the home, in a bid to protect the wife's chastity and his own family name. A further reason given is the need for them to take care of the children. This practice is in decline either because of economic factors, because of a better understanding of Islam, or because of the increase in the number of women with professional qualifications to contribute to the development of society.

What Sharia says

Sharia allows a woman to earn a living by any legitimate means so long as it does not compromise her honour and moral integrity. Where the work she is doing compromises the moral values of the family or society, she must be advised to change to more acceptable employment. According to Sharia, economic independence is sought to safeguard honour and moral integrity.

6.2 Women's control over income

In Islam a wife has a right to own and control property and income independently of her husband. This Islamic stand is reinforced by the general West African tradition of the private purse of wives. There are no joint or collective household resources like land. A wife cannot make direct claim to the income or assets of her husband. In the same way, a husband cannot make claim to that of his wife. More importantly, the husband has no control over the labour of his wife, contrary to the practice in many African societies. For Muslim women, any contribution made by the wife towards the income activities of the husband usually attracts payment; for example, selling the wares of the husband within the home or contributing labour on her husband's farm. Hill (1972:29) writes: 'a woman who makes groundnut oil for sale is in business on her own account and there is nothing immodest about buying groundnuts from her husband at the market price, or buying oil from herself with her "housekeeping" money'. Similarly, Schildkrout (1985:114–115) writes: 'when women cook food for sale rather than for domestic consumption, or when they engage in other income-producing activities, all their income is their own. The entire activity is distinct from their obligation to prepare food for their families. . . Some women, in other words, as wives, buy food from themselves, as food-sellers, to feed their families.'

What Sharia says

See Women's control over wealth – 3.5.

Inheritance

7.1 Brothers' interference with sisters' inherited landed property

Interference with any share of inheritance is not common except in landed property. Problems arise, however, where the property to be inherited includes land and there is need for subdivision. For the simple reason that female inheritors are almost always married and living outside of the family house, co-inheritors who are male often take decisions on jointly inherited landed property that are contrary to the interests of the female. Some brothers deal with this class of joint property without the notification or permission of their sisters, and without sharing the proceeds in accordance with the already mandated share. Often, it is too late before the sisters realise the damage done to their interest, although some of these cases do end up in the court. Brothers are the perpetrators of this practice which results in denial of entitlement for their sisters.

What Sharia says

This practice is completely against the teachings of Sharia, which emphasises that Muslims must not devour each other's property except based on mutual consent and for beneficial reasons.

'Oh you who believe! Eat up not your property among yourselves unjustly except it be a trade among you by mutual consent.' (Qur'an 4:29)

7.2 Women obtaining their share in the distribution of the estate

The practice which in various circumstances entitles women to specific shares following the death of their relatives or husbands is an example of the economic empowerment efforts on behalf of women. When they inherit from their husbands, women may choose to stay or leave their husband's family, and remarry with no effect on their entitlements. Sharia does not require men and women to shoulder equal financial and social responsibilities, which might have informed the differential in the specific shares of men and women. Nonetheless, women are guaranteed specific shares from the estate. Non-contentious issues of distribution of the estate of the deceased are handled by imams and scholars in the area either alone or, in the case of influential or wealthy people, in conjunction with traditional leaders. Where there are internal disagreements with regard to the value of the estate or the entitled share, the court is always the final arbiter. However, very few cases of estate distribution go to the courts.

What Sharia says

Under Sharia, no one can deprive a woman of her share in the estate left by her parents or close relatives. *'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 be small or large – a legal share.'* (Qur'an 4:7)

Property ownership

8.1 Denying women direct access to the acquisition of land

The methods of acquisition, documentation and registration make land purchase one of the least attractive ventures to women. Women, like men, govern their dealings in land through custom and not through formal procedures. Women are not favoured in any land deals. It is considered inappropriate for a woman to aspire to own land. Accordingly, concern for specific women's issues in land matters is overlooked or deliberate obstacles are placed in their way to discourage them from directly aspiring to hold title to land. Women do not feel comfortable chasing up files from one office to another in front of all-male staff, or pursuing officers to get them do their work. Few women get land through the government allocations (Garba, 2003). Usually women who come to own land through inheritance or devolution have to delegate men to pursue documentation or engage in any transaction in the land.

What Sharia says

Sharia entitles everyone, both men and women, to own property, including land (Qur'an 4.7). Islam prescribes the same rights for both men and women in respect of ownership, acquisition, management, administration, enjoyment and disposition of lands. This explains why research carried out by Access to Justice in Jigawa State shows that the Sharia courts have no difficulty upholding the land rights of women in all cases that were filed (Garba, 2003).

Access to health and reproductive health services

9.1 The non-payment of medical bills

Women's right to maintenance is in practice taken to imply that wives are not responsible for their medical expenses. Women generally insist on their husbands bearing the cost of drugs, laboratory investigations and transport to the health centre (A. N. Adamu, 1996; Ejembi, 1997). This also includes children's medical bills. When husbands do refuse to pay the medical bills, wives are left without medical care. In circumstances where wives are financially able to make the payment, they often refuse to do so on the grounds that it is the responsibility of the husband. It is a common problem for health workers to persuade women to bear their medical expenses when their husbands cannot afford or refuse to pay.

What Sharia says

See Maintenance – 3.4.

9.2 The denial of wives' access to healthcare services

Where husbands do not have the means to pay for medical expenses, permission for the wife to visit a hospital may not be granted. Refusal by husbands to give permission to their wives to seek medical help may become more common with the current economic difficulties in the country. Hence, in order to prevent conflict with his wife, a husband may withhold his permission until he secures the means to pay the inevitable medical costs. However, a woman may not be operated upon without her husband's agreement. The lack of women's freedom to decide for themselves about their health is considered an important factor on women's health, particularly in seeking medical care.

Delay in seeking hospital care has far-reaching consequences on women's health in Northern Nigerian Muslim societies. It has been implicated as an important cause of high maternal mortality and morbidity rate (Shehu, 1992) and other gynaecological problems (A. N. Adamu, 1996). More recent statistics from NDHS (2003) indicate that half the mothers in the North do not receive ante-natal care (47 per cent of mothers in the North-east and 59 per cent in the North-west). This is indeed high compared with other regions across the country, with less than one per cent in the South-east and two per cent in the South-west. A similar picture applies to deliveries. About 82 per cent and 89 per cent of women in the North-east and North-west respectively had deliveries at home in the past five years, compared with 13 per cent from the South-east and 21 per cent from the South-west. Another health complication that is associated with this delay is vesico-vaginal fistula (VVF). In Nigeria, prolonged and obstructed labour is the main cause of VVF, a condition caused when a woman's vagina is badly torn, resulting in the continuous leaking of urine and at times faeces. It is estimated that in Nigeria there are 200,000 sufferers and 70 per cent of them are found in the northern part of the country (Stolz and Le Faure, 1997).

What Sharia says

See Maintenance – 3.4.

9.3 Women's reluctance to seek medical help

Even where women do not require the permission of a member of the household to seek medical care, they are still constrained by their role within the household from seeking early medical attention for themselves. The multiple roles of women as wives, mothers, and above all managers of the household can hinder their ability to seek early medical care. In addition, in rural areas, there is the tendency for women who are regularly sick to hide their condition in order not to be stigmatised because of their regular hospital visits. The husband may also consider her a nuisance and a costly burden, in comparison with her 'healthy' co-wives. Other members of the community may also have the same opinion.

What Sharia says

See Maintenance – 3.4.

9.4 The lack of required nutrition for pregnant women

Mothers' nutritional status during pregnancy is important for both the baby's development and protection against maternal mortality. The general practice is for food to be prepared and eaten collectively without consideration for the needs of the child or the pregnant or lactating mother, who require extra nutrition. Also the division of labour between the female members of the family does not exempt pregnant women from undertaking routine heavy physical activities. Illness, but not pregnancy, is accepted as a possible excuse for a woman not to do her own share of domestic tasks. In fact, jealousy within the family, between co-wives and children of co-wives for example, would preclude any special treatment. Provision of special meals by a husband for instance, might be interpreted as an act of favouritism.

This practice is said to be a major factor in the high prevalence of anaemia among pregnant women in the North-west zone and is considered to be one of the major causes of maternal mortality. If there are no special feeding arrangements for the expectant mother, the alternative should be supplementary diets in vitamins and iron, for example. However, data on micronutrient intake among women indicates that pregnant women from the North are less likely to take nutritional supplements than those from the South. For example, in the 2003 NDHS survey only 10 per cent of pregnant women from the North-west reported taking an iron supplement for at least 90 days, compared with 63 per cent of pregnant women from South-west who have taken iron supplements for at least 90 days.

What Sharia says

See Maintenance – 3.4.

9.5 The lack of protection for women against STDs and HIV/AIDS

The practice of polygyny, divorce and remarriage provides a conducive environment for the spread of sexually transmitted diseases. Yet there is no accepted behaviour that protects women against being infected by STDs, particularly HIV/AIDS. It is taken for granted that a woman should not challenge, on health grounds, the type of woman her husband marries. This is particularly disturbing considering the current HIV and AIDS epidemic in the country. An infected woman who is divorced could remarry into another polygynous family and thereby infect her new co-wives. If nothing is done, this practice is likely to increase HIV and AIDS at an alarming rate and thus change the status of the North-west zone, which has a low level of infection compared with other zones of Nigeria. This is more disturbing because NARHS (2003) reports that people from the North have less knowledge of sexually transmitted infections than people from the South. In the North-east, 52 per cent of the population is knowledgeable while in the South-east it is 90 per cent.

What Sharia says

There is a potential danger in polygynous marriages when a new wife comes into the family. A recent verdict of the *Ulama* rules in favour of permitting medical verification and tests in circumstances such as this. In Islam, it is a principle that one should do no harm nor permit harm to be done to oneself. It is in line with this that Sharia recommends investigation of the character and condition of a potential partner before the contract of marriage.

9.6 Competition over fertility among co-wives

Women compete among themselves within the domain of reproduction for of a number of reasons. It gives them a sense of security. Women with many children are less at risk of being divorced than a woman with few or, worse, none at all. Moreover, having many children provides material advantage within the household economy. Women use their children to secure material and monetary gains from their husbands and relatives. Furthermore, under the Islamic law of inheritance every child has a share in their father's wealth, so in the final analysis, a woman's benefit from her husband's estate is proportionate to the number of her children. Hence, the incentive to reproduce outweighs the risk to women's health. In some cases, women continue to reproduce even if advised against it on medical grounds.

What Sharia says

The issue raised here is whether a woman should control her fertility for the preservation of her health and wellbeing. Some scholars are of the view that in line with Qur'anic provision '*do not push yourself towards destruction knowingly*' women should exercise restraint in childbearing where the circumstance requires it.

Political participation

10.1 The exclusion of women from decision-making

The exclusion of women from decision-making is a common practice in many societies across the world. It occurs at different levels of society: family, community and government. At the family level, for example, in many cases, women are hardly consulted for decision-making, especially if they are in an extended family situation. Decisions that may affect the children may be taken by their husbands in consultation with the male relatives in the family. Similarly, at community level, women are hardly consulted on issues that affect the community. It is felt that husbands provide enough representation for the family and there is therefore no necessity to hear the wives' views concerning community matters. Furthermore, women are hardly involved or represented in community institutions and organs where decisions that affect the community are taken. Reasons for the exclusion are very much linked to the perceived psychological deficiencies of women.

What Sharia says

The principle of consultation in the Sharia permeates all segments of Muslim society for private, family and community matters. Referring to the Muslim community the Qur'an describes the members as those '*... who conduct their affairs by mutual consultation ...*' (42:38). The Qur'an specifically enjoins consultation and consensus in matters relating to family, particularly the upbringing of children. For example the Qur'an directs that all matters relating to the weaning of the child be decided mutually between the parents '*... if they both decide on weaning by mutual consent and after due consultation there is no sin on them*' (2:233). In another verse talking about decision-making within the family the Qur'an says '*let each one of you accept the advice of the other in a just way*' (65:6). Consultation is one of the qualities of the Prophet (SAW) which he exhibited in his dealings with his family, friends and the community at large.

10.2 The exclusion of women from politics

It has been observed that Islam has been used as the main reason for discouraging women from participating in politics, and the few who have participated are sometimes discredited as bad Muslims of low morals, who cannot but compromise their reputation. There is a vast amount of literature on the participation of Nigerian Muslim women in politics. This varies between opposition and restriction on the one hand, to support on the other, each citing Islamic sources to support its point of view. And there are scholars who take a middle course. This view contends that women are allowed to engage in politics but with some restrictions. Most of the supporters of this view see nothing wrong in women being elected to, for example, councillorship, or assemblies at both state and national levels, but they are not allowed to run for chairmanship, governorship and the presidential post. Similarly, others raise the issue of age, that is, a woman who has reached menopause and therefore has no childbearing responsibility, faces no inhibition in her quest for political position. Women who attempted to contest this in the past were blackmailed and discredited, using Islam as justification.

What Sharia says

Women's participation in politics is not against the principles of the Sharia. The only restrictions discussed and agreed by the majority of Jurists relate to the contest for and occupying the office of the chief-executive of the state by a woman. They contend that a woman can vie for any office except that of Head of State. The traditional modesty of Muslim women in Nigeria will hardly allow them to participate on the same scale as their male counterparts in political activities.

Access to justice

11.1 The high costs of litigation

Litigants, including women, have to contend with the high costs of litigation. This is the case even though official court fees are minimal, depending on the state. In Jigawa State, for example, there is no court fee and women do not often require the services of an attorney in the lower courts. In reality, though, women litigants often have to pay to gain court access. Some court officials and touts take advantage of women's ignorance and extort money from them. When women need the services of a lawyer, their problem of lack of access can be exacerbated by lack of resources and unavailability of free legal assistance. However, free legal aid, even where available, does not usually cover issues that are of concern to women.

What Sharia says

Under the Sharia litigation is free. Court fees are either non-existent or minimal and affordable where it is necessary for administrative convenience. The high cost of litigation, however, impedes this right.

11.2 The unequal participation of women in ADR (alternative dispute resolution)

Women are frequent users of ADR, especially to resolve family matters through *sulh*. The informal nature of ADR and the fact that women know the arbiters attract women to this process. However, while they have equal access to ADR, women do not enjoy equal participation with men in all the processes of ADR and they are not allowed to express their views as freely or as often as they wish (Ahmad, 2003).

What Sharia says

In the administration of justice, Islam does not impose any restriction on women regarding their movement or participation. Sharia allows equal access to the Courts of Law or other justice forums. Muslim women have enjoyed this right from time immemorial. Qur'anic precept protects this right by documenting the case of Khaulat bint Thaalaba, a woman complainant to whom the Qur'an granted full hearing and prescribed an immediate remedy (58:1).

11.3 Women's access to courts

There is widespread evidence of women's easy access to and utilisation of the Sharia courts, even in rural areas. Women have realised the importance of the court as a medium for redressing their grievances.

What Sharia says

See The unequal participation of women in ADR – 11.2.

Criminal justice

12.1 The lack of facilities in prison for pregnant and nursing mothers

The prison system does not have any special provision to cater for the needs of pregnant or nursing mothers. The child of a woman prisoner spends his or her early years in prison along with the mother under harsh prison conditions. The Federal Government is responsible for this situation.

What Sharia says

Sharia requires that only the guilty shall suffer the consequences of their crime. Wherever a woman is expected to be, facilities necessary for her welfare must be put in place, and this includes her care for children that are inseparable from her.

12.2 Pregnancy as proof of *zina*

Premarital sex or sex outside of wedlock is a criminal offence (*zina*) under Sharia. With the introduction of the Sharia criminal justice system a number of cases of women accused of adultery with no other proof except pregnancy were brought before the Sharia courts. These cases have raised considerable controversy with some feminists and women's groups questioning the courts' reliance on pregnancy as sufficient proof of *zina* and describing it as bias against women. They argue that it is only women who are biologically capable of bearing and delivering children, and therefore only women who can be found guilty of *zina* on those grounds, while the male partner escapes punishment.

What Sharia says

There are four schools of law that are regarded as valid by Nigerian Muslims. These schools hold different positions on the issue of pregnancy as a proof of *zina*. The Maliki school, which is the officially recognised school by our courts, accepts pregnancy as sufficient proof in establishing the offence of *zina*. In view of the importance of this issue and the lack of consensus on it, there is a need for Nigerian scholars (*Ulama*) to come up with the most appropriate and just ruling for our situation.

Conclusion and recommendations

In this report we have documented some negative and positive practices relating to the rights of Muslim women in Northern Nigeria. Our documentation is by no means exhaustive. Our report has shown that the negative practices are in most cases perpetrated out of shared ignorance of the relevant rulings of Sharia. The entire Muslim community has a duty to work to eradicate these negative practices. We have also identified some exemplary practices that enhance respect for the rights and dignity of women which need to be encouraged. To achieve this, we propose the following recommendations:

- To address the problem of ignorance about Sharia, by embarking on an awareness campaign targeting both men and women. This can take the form of sermons, radio jingles, booklets, leaflets, and flyers; these printed materials may be prepared in English and Hausa. The objectives of the campaign should include improving perception of the status and rights of women.
- To embark on initiatives aimed at legislative intervention to curb or better eradicate some of the harmful practices and provide for civil or criminal sanctions as appropriate.
- To incorporate the relevant issues treated in this report into primary, secondary and Islamiyya schools.
- To work towards establishing a pilot scheme for a community-based annual award ceremony to identify and recognise people who engage in exemplary practices, such as care for orphans and children of the poor.
- To pursue credible poverty reduction initiatives, since poverty lies at the heart of many of the practices.
- To raise the value which society accords girl-child education to a level comparable to the value of marriage in society.
- To establish women's forums where women may freely air their views and voice their concerns at family and community level and iron out their concerns at community level .

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www.wluml.org
 Baobab for Women's Human's Rights
www.baobabwomen.org
 Sisters in Islam
www.sistersinislam.net
 Human Rights Watch
www.hrw.org



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