

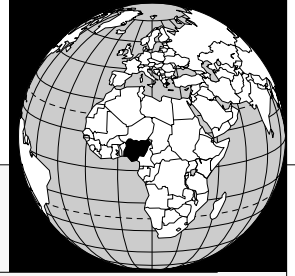


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# 5. Nigeria



## Statistics

### GENERAL

#### Population

- Nigeria, the most populous nation in Africa, has an estimated 112 million people, of which approximately 53.8 million are women.<sup>1</sup> The average annual population growth rate is 2.9%.<sup>2</sup>
- About 48% of the population is below the age of 15.<sup>3</sup>
- In 1993, 38% of Nigerians resided in urban areas, and the urban growth rate from 1980 was 5.5%.<sup>4</sup>

#### Economy

- The estimated annual gross national product (“GNP”) per capita for 1993 was U.S.\$300.<sup>5</sup> From 1980 to 1993 the average annual GNP growth rate was -0.1%, and the average annual rate of inflation was 20.6%.<sup>6</sup>
- From 1980 to 1993 the average annual growth rate of the gross domestic product (“GDP”) was 2.7%, about half what it was during the 1970s.<sup>7</sup>
- From 1970 to 1993, Nigeria’s expenditure of the GDP on industry rose from 14% to 43%, while its expenditure on agriculture declined from 41% to 34%.<sup>8</sup>
- Nigeria’s expenditure of the total budget on health in 1987 was 0.8%.<sup>9</sup>

#### Employment

- In 1993, the labor force was estimated to be 45.6 million people, of which 34.3% were women.<sup>10</sup>
- The unemployment rate for the total population was estimated at 28% for 1992.<sup>11</sup> The overall unemployment rate reported by the Nigerian government for the middle of 1995 was 1.8%.<sup>12</sup> The majority of the unemployed are between the ages of 15 and 24.<sup>13</sup>

### WOMEN’S STATUS

- In 1996, life expectancy was projected to be 55 years for women and 53 years for men.<sup>14</sup>
- Polygamy is common. Approximately 42.6% of all married women are in polygamous unions and 56.7% are in monogamous unions.<sup>15</sup>
- According to 1990 estimates, literacy rates were between 31%<sup>16</sup> and 39% for women, and 51% for the total population.<sup>17</sup>
- The number of prison admittances for sex offenses in 1993 was 430, a significant decrease from the 1,201 admittances in 1990.<sup>18</sup>

### ADOLESCENTS

- In 1988, only 76% of girls and 74% of boys reached grade four in school.<sup>19</sup> An estimated 76% of primary school-aged children were actually enrolled, with only 67% of girls enrolled. These figures decline drastically by secondary school, to a total enrollment of 20% and a female enrollment of 17%.<sup>20</sup>
- The average age at first sexual intercourse for all women is 15.9 years.<sup>21</sup>
- The median age at first marriage is 16 years.<sup>22</sup>
- Half of all women have children by the age of 20,<sup>23</sup> and 17% of all births in 1993 were to women under the age of 20.<sup>24</sup>
- Approximately 40% to 50% of Nigerian women have undergone FGM.<sup>25</sup>

### MATERNAL HEALTH

- In 1992, it was estimated that each Nigerian woman would have an average of six children during her lifetime.<sup>26</sup>
- Maternal mortality estimates for Nigeria are among the highest in the world. Studies indicate maternal mortality rates ranging from 800 to 1,500 deaths per 100,000 live births.<sup>27</sup>

■ The infant mortality rate is approximately 83 deaths per 1,000 births.<sup>28</sup>

### CONTRACEPTION AND ABORTION

■ Total contraceptive prevalence is 7.5% and the use of modern contraceptive methods is 3.8%.<sup>29</sup>

■ Among women who use contraception, the most common modern methods of contraception are the pill (29.7%) and injectables (24.3%).<sup>30</sup>

■ A community based study in 1987 revealed that 34.8% of women who underwent abortion were married, and 52.2% had two or more children.<sup>31</sup>

■ Of the estimated annual 50,000 maternal deaths, approximately 20,000 result from the complications of unsafe induced abortions.<sup>32</sup> Complications from illegal abortions account for approximately 50% of all maternal deaths.<sup>33</sup>

### HIV/AIDS AND STDs

■ In a study of three cities in Nigeria, the four most common STDs were non-specific genital infection (59.4%), gonorrhoea (19.2%), candidiasis (10.5%), and trichomoniasis (10.5%).<sup>34</sup>

■ As of June 1996, there were 5,500 reported cases of AIDS.<sup>35</sup> Sero-prevalence rates for HIV were estimated in 1994 to be 3.8% of the general population; however, these figures are thought to be underreported.<sup>36</sup>

■ Of the total number of Nigerians who test positive for HIV, 96% are adults (over age 20) and 67% are males.<sup>37</sup>

### ENDNOTES

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In 1960, the Federal Republic of Nigeria (“Nigeria”) achieved independence within the British Commonwealth. In 1963, the country assumed a representative form of government.<sup>1</sup> Following a military coup in 1966, Nigeria was governed by a succession of military regimes, only broken by a brief return to civilian rule from 1979 to 1983.<sup>2</sup> After canceling the results of elections held in 1993, the current military regime led by General Sani Abacha has indefinitely postponed the return to civilian government.<sup>3</sup>

Nigeria is Africa’s most populous nation, with an estimated 112 million inhabitants, including approximately 53.8 million women.<sup>4</sup> Nigeria is comprised of over 300 ethnic groups.<sup>5</sup> The dominant tribes are the Hausa and Fulani in the northern regions, the Yoruba in the southwest, and the Ibos in the southeast.<sup>6</sup> Christianity and traditional beliefs predominate in the south, while much of the northern population is Muslim.<sup>7</sup> Over 200 regional languages and dialects are spoken in Nigeria.<sup>8</sup> The official languages are English, Hausa, Yoruba, and Ibo.<sup>9</sup>

## I. Setting the Stage: The Legal and Political Framework

To understand the various laws and policies affecting women’s reproductive rights in Nigeria, it is necessary to consider the legal and political systems of the country. Without this background, it is difficult to determine the manner in which laws and policies are enacted, interpreted, modified, and challenged. The passage and enforcement of law often involves specific formal procedures. Policy enactments, however, are not subject to such a process.

### A. THE STRUCTURE OF GOVERNMENT

Nigeria is a federation of 36 states and one Federal Capital Territory (Abuja).<sup>10</sup> The states are further subdivided into 589 local government areas.<sup>11</sup> The Nigerian government is thus structured in three tiers: federal, state, and local. The federal government defines and monitors national policy, while state and local governments are charged with implementing such policies.<sup>12</sup> Traditional rulers provide essential support to state and local governments in the implementation of national policy in Nigeria.<sup>13</sup> The 1979 Constitution (the “Constitution”) establishes state Councils of Chiefs to advise state governments on cultural and customary legal issues and to assist in the processes of government.<sup>14</sup>

The Nigerian government is under centralized military administration. Although the Constitution provides for three independent branches of government — the executive, leg-

islative, and judicial — the military regime has suspended the legislature’s activities by decree and limited the scope of the judiciary’s power, especially with regard to the review of constitutional issues and the protection of human rights.<sup>15</sup> Under the present government, the executive is controlled by the president, who heads the military government and is commander in chief of the armed forces.<sup>16</sup> The civilian cabinet was dissolved in 1995. Currently, a Provisional Ruling Council (“PRC”), formerly the Armed Forces Ruling Council, has assumed the legislative function.<sup>17</sup> At the state level, the executive and legislative functions are performed by military governors, who have been installed by the central military regime.<sup>18</sup> All acts of the military regime, including the promulgation of decrees, are not subject to review by the courts.<sup>19</sup>

Courts both create and interpret law. The judicial system can have significant impact on legislation, including that affecting reproductive rights, because it is able to enforce the law and deal with complaints from individuals challenging the constitutionality of specific laws. However, with the current system of military decrees, the power of the court system is significantly weakened.

The Supreme Court of Nigeria is the highest court in the federal system. It has original jurisdiction over disputes between states and between states and the federal government, and appellate jurisdiction over cases appealed from the lower federal courts and the highest state courts.<sup>20</sup> Each state has its own court system, which include Magistrates’ or District Courts as the courts of first instance in civil and criminal cases, and a High Court with original and appellate jurisdiction.<sup>21</sup> Pursuant to the Constitution, states may also establish lower and appellate customary courts with limited jurisdiction over civil disputes.<sup>22</sup> In the northern states, separate Sharia courts hear appeals involving Islamic personal law.<sup>23</sup> Judges in the state and federal court system, including justices of the Supreme Court, do not have secured tenure and are removable at the will of the federal government, as is also the case with other civil service officers.<sup>24</sup>

### B. SOURCES OF LAW

#### *Domestic Sources of Law*

Laws that affect women’s legal status — including their reproductive rights — derive from a variety of sources. In Nigeria, military decrees determine the validity of all laws, including the Constitution.<sup>25</sup> The Nigerian legal system is based on English common law, statutory law, Islamic law, and tribal customary law.<sup>26</sup> Pursuant to state and federal legislation, courts may not enforce customary laws that are “repugnant to natural justice, equity and good conscience,” “incompatible

either directly or by implication with any law...in force,” or “contrary to public policy.”<sup>27</sup> Two sets of criminal laws are in force in Nigeria: the Criminal Code,<sup>28</sup> which applies to the southern states of Nigeria, and the Penal Code,<sup>29</sup> applicable in the northern states. Although the two codes are similar in content, the Penal Code reflects the values of the predominantly Muslim population of the north.<sup>30</sup>

### ***International Sources of Law***

Because international instruments are legally binding, they create an obligation on the part of the government to undertake numerous actions, including those at the national level. A number of international human rights treaties, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), recognize and promote specific reproductive rights. The government of Nigeria is a party to various international legal instruments, including, *inter alia*: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights;<sup>31</sup> the CEDAW;<sup>32</sup> the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>33</sup> the Convention on the Rights of the Child;<sup>34</sup> and the African Charter on Human and Peoples’ Rights.<sup>35</sup>

## **II. Examining Reproductive Health and Rights**

Issues of reproductive health and rights are dealt with in Nigeria within the context of the country’s health and population policies. Thus, an understanding of reproductive rights in Nigeria must be based on an examination of those policies.

### **A. HEALTH LAWS AND POLICIES**

The Nigerian government estimates that 40% of the population has access to health facilities.<sup>36</sup> In 1992, there was roughly one doctor for every 3,867 people.<sup>37</sup> Approximately one third of all births are attended by a doctor, nurse, trained midwife, or traditional birth attendant.<sup>38</sup>

#### ***Objectives of the Health Policy***

The Federal Ministry of Health (the “Federal MOH”) is responsible for establishing health policies.<sup>39</sup> In 1988, the Nigerian government adopted the National Health Policy and Strategy To Achieve Health for All Nigerians (the “National Health Policy”), which articulates the goal of enabling all Nigerians to achieve socially and economically productive lives.<sup>40</sup> According to the National Health Policy, health is an “essential component of social and economic development as well as being an instrument of social justice and national security.”<sup>41</sup> The policy seeks to equitably distribute health care and to disseminate information to underserved communities.<sup>42</sup>

Since 1975, the Nigerian government has utilized a Primary Health Care (“PHC”) approach to the provision of national health care.<sup>43</sup> PHC is defined in the National Health Policy in accordance with World Health Organization guidelines to include general health services, preventive, curative, promotive, and rehabilitative care.<sup>44</sup> Although the National Health Policy does not specifically provide for reproductive health care, PHC encompasses basic treatment, maternal and child health (“MCH”) and family planning services, the prevention and control of infectious diseases, and the provision of essential drugs and supplies.<sup>45</sup> The National Health Policy establishes PHC as an “integral part of the national health system” and a priority for national development.<sup>46</sup> In 1992, the importance of the PHC system was reinforced by the establishment of the National Primary Health Care Development Agency (“the Agency”).<sup>47</sup> The Agency seeks to implement the National Health Policy by revising existing health policies where necessary, translating policies into feasible strategies, and providing technical support to the management of the PHC system.<sup>48</sup>

The National Health Policy assigns responsibility for the implementation of health policies to the Federal MOH and state Ministries of Health (“State MOHs”).<sup>49</sup> The Federal MOH oversees national strategies for the provision of health care, directing federal resources for health programming, drafting national health legislation, and monitoring the health status of citizens.<sup>50</sup> State MOHs control state funds and resources, and draft enabling legislation at the state level.<sup>51</sup>

#### ***Infrastructure of Health Services***

Since 1946, the Nigerian government has been involved in the provision of health care.<sup>52</sup> The Federal MOH establishes service delivery guidelines and coordinates the efforts of state governments and the private sector.<sup>53</sup> However, the actual provision of basic health care is assigned to local governments under the supervision of State MOHs.<sup>54</sup> The Nigerian health system consists of over 12,000 health care institutions, non-profit service providers, and for-profit medical providers, as well as commercial pharmaceutical outlets and traditional medical practitioners.<sup>55</sup> The Nigerian public health care system provides health care at three levels.

The primary level of care in Nigeria provides a range of medical services through the PHC program.<sup>56</sup> PHC services are administered by local governments and delivered by 1,071 local government and private health centers, clinics, dispensaries, first aid stations, and maternity centers.<sup>57</sup> These service centers offer basic care, health education, simple laboratory tests, and preventive care services. MCH services offered by such centers as part of the primary level of care include: prenatal and postnatal care for mothers; family planning; immu-

nization for children; oral rehydration therapy; nutritional education; and treatment of minor childhood ailments.<sup>58</sup> Traditional healers and trained community health workers also provide essential care, minimal or traditional family planning, and MCH services.<sup>59</sup> Primary level service providers are the “entry point” into the Nigerian health care system, referring patients to institutions at the secondary and tertiary levels of care for specialized services.<sup>60</sup>

There are two additional levels of health care — secondary and tertiary. The secondary level of care, based at the state level, is provided by 119 district hospitals and 780 general hospitals.<sup>61</sup> Secondary level care providers offer comprehensive community-based health care with greater laboratory and facility support than at the primary level.<sup>62</sup> State institutions provide models for the delivery of PHC services and supervise primary care provision within the local government areas.<sup>63</sup>

The Federal MOH is responsible for policy formulation, technical assistance, and provision of services in tertiary health institutions.<sup>64</sup> Highly specialized services, mainly focusing on curative care, are available at 13 teaching hospitals and other tertiary health institutions, which are primarily based in urban areas.<sup>65</sup>

#### ***Cost of Health Services***

Nigeria has no social security system.<sup>66</sup> The National Health Policy commits state and local governments to the provision of health subsidies for preventive care and additional public assistance for low-income individuals.<sup>67</sup> In its 1996-97 budget, the federal government allocated N 30 billion (approximately U.S.\$380 million) of a special petroleum trust to fund improvements in roads and the supply of basic medicines in rural areas.<sup>68</sup> In 1987, the last year for which full budget figures were available, health expenditures comprised 0.8% of the national budget compared to a 2.5% average spent in 1987 by the public sector in sub-Saharan Africa.<sup>69</sup>

#### ***Regulation of Health Care Providers***

Who is legally permitted to provide what types of care? Are there meaningful guarantees of quality control? Because the Nigerian government regulates these issues, reviewing such laws is important. The medical and dental professions are regulated by the Medical and Dental Practitioners Decree of 1988<sup>70</sup> (the “1988 Decree”). Pursuant to the 1988 Decree, all medical and dental practitioners must be registered in Nigeria.<sup>71</sup> The 1988 Decree establishes a regulatory council (the “Medical and Dental Council”), which is responsible for determining standards for the training and qualifications of health providers in Nigeria.<sup>72</sup> In addition, the Medical and Dental Council is responsible for the preparation and review of a professional code of conduct reflecting current standards of practice.<sup>73</sup> The 1988 Decree also establishes a disciplinary

tribunal and an investigating panel that may initiate an inquiry into the conduct of any registered health professional.<sup>74</sup> The provisions of the 1988 Decree do not affect the nonsurgical practices of traditional medical practitioners who have received community recognition as practitioners trained in “the system of therapeutic medicine traditionally in use.”<sup>75</sup> However, any unregistered person who performs an “activity involving an incision in human tissue” in return for a fee or reward is subject to a fine up to N 10,000 (U.S.\$127).<sup>76</sup>

The practice of nursing and midwifery is regulated by the Nursing and Midwifery (Registration, etc.) Decree of 1979<sup>77</sup> (the “1979 Decree”). The 1979 Decree establishes a Nursing and Midwifery Council that determines standards for professional qualifications and conduct and oversees internal disciplinary procedures.<sup>78</sup> All nurses and midwives in Nigeria must be registered with the Nursing and Midwifery Council.<sup>79</sup> Pharmacists are regulated under the Pharmacists Council of Nigeria Decree of 1992.<sup>80</sup>

#### ***Patients’ Rights***

Nigerians have access to limited legal protection against medical malpractice. Medical practitioners may incur civil liability for professional negligence or malpractice.<sup>81</sup> In addition, criminal laws seek to protect individuals against “grievous harm.”<sup>82</sup> While there is no significant body of law protecting patients’ rights, a few policies seek to ensure quality health services by protecting the rights of patients. The Medical and Dental Council of Nigeria has published ethical guidelines governing professional conduct, the violation of which may result in disciplinary action by the council or suspension from practice.<sup>83</sup> The guidelines prohibit public disclosure of patient information relating to “criminal abortion, venereal [sic] disease, attempted suicide, concealed birth and drug dependence” unless required by law.<sup>84</sup> The council guidelines also state that medical practitioners “must desist from compulsory treatment of a patient in the absence of illness... [and] must always obtain consent of the patient or the competent relatives or seek another professional opinion, before embarking on any special treatment procedures with determinable risks.”<sup>85</sup>

## **B. POPULATION AND FAMILY PLANNING**

### ***The Population and Family Planning Policy***

Nigeria’s population policy provides the framework within which its family planning services are provided. In 1988, in response to the perceived adverse socioeconomic consequences of rapid population growth, the government adopted the National Policy on Population for Development, Unity, Progress and Self-Reliance<sup>86</sup> (the “National Policy on Population”). This policy is designed to achieve the primary

goals of decelerating the rate of population growth and improving standards of living.<sup>87</sup> This voluntary policy is predicated upon the principle that couples and individuals have the right to determine the number and the spacing of their children.<sup>88</sup> The National Policy on Population identifies several objectives, including: promoting awareness of population problems and the effects of rapid population growth on development; providing information on the benefits of reasonable family size; making family planning services easily accessible to all couples and individuals at an affordable cost; and educating youth on matters relating to sexuality, fertility regulation, and family planning.<sup>89</sup>

The National Policy on Population seeks to achieve a number of specific objectives, many of which are set forth in quantitative terms. These targets include:<sup>90</sup>

- Reducing the proportion of women who marry before the age of 18 by 50% by 1995, and by 80% by 2000;
- Reducing the number of children a woman bears over her lifetime from the prevailing average of above six children to an average of four children;
- Reducing the proportion of women bearing more than four children by 50% by 1995, and by 80% by 2000;
- Reducing the present rate of population growth from about 3.3% per year to 2.5% by 1995, and to 2.0% by 2000;
- Extending the family planning coverage to 50% of women of childbearing age by 1995, and to 80% by 2000;
- Reducing the infant mortality rate to 50 per 1,000 live births by 1990, and to 30 per 1,000 live births by 2000;
- Reducing the crude death rate to 100 per 1,000 by 1990, and to 80 per 1,000 by 2000; and
- Providing 50% of rural communities with basic social amenities by 1990, and 75% by 2000, to stimulate and sustain self-reliant development.

The policy also contains non-numerical targets such as ensuring access to services for high-risk clients, including women under the age of 18 or over the age of 35, those with four or more children, or those with chronic illnesses that increase the health risk of pregnancy.<sup>91</sup> In addition, the policy seeks to expand family life education and programming to increase the use of family planning services by men and adolescents.<sup>92</sup>

Nigeria's population policy identifies a number of strategies with which to meet its objectives. One strategy is to embark on an aggressive information and communication

campaign to educate individuals about the importance of maintaining a reasonable family size both for personal and national welfare.<sup>93</sup> The policy also proposes to encourage the use of family planning methods by raising the status of women and easing their employment burden.<sup>94</sup> These measures include: the establishment of day care centers; the promulgation of legislation to eliminate discrimination against women in education and employment; and educational efforts to increase the age of marriage to 18 years.<sup>95</sup>

The National Policy on Population devotes an entire section to the implementation of national MCH programming. The objective of the policy in this section is to "reduce the current high childhood and maternal morbidity and mortality rates, especially in the rural and suburban areas."<sup>96</sup> Several strategies to improve maternal and child health are set forth: increasing the emphasis on MCH care within the PHC system, as well as the promotion of breast-feeding, nutrition, clean water, sanitation, immunizations, birth spacing, fertility regulation, and family planning services; reducing the incidence of high-risk births, which include births to women below the age of 18 or over the age of 35, births at intervals of less than two years, and more than four births to one woman; and promoting research into traditional health care methods.<sup>97</sup>

The National Policy on Population is primarily administered by the Federal MOH.<sup>98</sup> The Department of Population Activities ("DPA") is responsible for planning most of the activities at the federal level and ensuring adequate coordination of population programs at all levels.<sup>99</sup> The National Consultative Group on Population for Development and the Population Working Group assist in the implementation of population programming.<sup>100</sup> Family planning has been introduced into state health care delivery systems, resulting in 1987 in the creation of a family planning coordinator in each state.<sup>101</sup>

Pursuant to the Constitution,<sup>102</sup> the federal government established a National Population Commission to monitor the national population policy, provide information and data on population to facilitate national development planning, and advise the federal government on population-related programming.<sup>103</sup>

#### ***Government Delivery of Family Planning Services***

From 1983 to 1989, the nation's first public family planning program was implemented.<sup>104</sup> Family planning services are provided through the PHC system and are available at approximately 20% to 25% of MCH facilities.<sup>105</sup> Although the National Health Policy defines family planning to include education, counseling, the provision of information on child spacing, and fertility treatment, most government facilities only distribute contraceptives.<sup>106</sup> Government providers supply approximately 37% of modern contraceptives in

Nigeria, including condoms, spermicides, intrauterine devices (“IUDs”), injectables, and the pill.<sup>107</sup> Government family planning clinics require a N 50 (approximately U.S.\$0.63) fee for registration and N 100 (approximately U.S.\$1.25) for disbursement of the contraceptive.<sup>108</sup> Despite governmental efforts, there is often a shortage of contraceptives at health clinics.<sup>109</sup> Furthermore, because the PHC system is primarily located in urban and semirural areas, the availability of modern contraceptives in rural areas is extremely limited.<sup>110</sup>

### C. CONTRACEPTION

Total contraceptive prevalence is 7.5%, and the use of modern methods is 3.8%.<sup>111</sup> Among married women, the most common modern methods of contraception are the pill (29.7%) and injectables (24.3%). The private sector is the primary source of contraceptives for women in Nigeria.<sup>112</sup>

#### *Legal Status of Contraceptives*

There is no law that explicitly regulates the sale or use of contraceptive drugs and devices. However, the National Policy on Population states that “[n]ational family planning programmes shall make available a variety of methods of fertility regulation to ensure free and conscious choice by all couples.”<sup>113</sup> The availability of contraceptives at government distribution centers indicates that contraceptive use and distribution is legal in Nigeria. In fact, a wide assortment of contraceptive devices and procedures, including pills, injectables, IUDs, diaphragms, foams, jellies, condoms, and female and male sterilization are available.<sup>114</sup>

The Nigerian government does not have a policy directed specifically at the safety requirements of contraceptive drugs and devices. However, the Food and Drugs Act prohibits misleading labeling and advertising practices.<sup>115</sup> This act authorizes the Minister of Health to require manufacturers of drugs to furnish information on a drug’s chemical composition, its intended use, the results of clinical investigations, and any adverse effects on health.<sup>116</sup> Devices or drugs may not be imported into Nigeria unless they are accompanied by a certificate that guarantees that they comply with Nigerian standards and the standards of the country in which they are manufactured.<sup>117</sup> Any person who contravenes the requirements of the Food and Drugs Act is subject to imprisonment for two years or to a fine.<sup>118</sup>

#### *Regulation of Information on Contraception*

No law prohibits the advertising of contraceptives or the distribution of contraceptive information. However, advertisements or other published material concerning contraceptive use must not contravene laws prohibiting the publication or distribution of “obscene” materials. Materials which “tend to deprave and corrupt” may be deemed obscene and prohibited.<sup>119</sup>

### D. ABORTION

#### *Legal Status of Abortion*

The performance of an abortion in Nigeria is a criminal offense unless it is performed to save a pregnant woman’s life. As stated earlier, criminal law in Nigeria is bifurcated. The Criminal Code applies to the southern states and the Penal Code applies to the northern states.<sup>120</sup> The Criminal Code and the Penal Code provisions treating the subject of abortion are similar and refer to the inducement or procurement of a “miscarriage.”<sup>121</sup> Abortions are illegal regardless of duration of pregnancy; the laws prohibit abortions performed at all stages of fetal or embryonic development from the time of fertilization.<sup>122</sup>

The Penal Code regards the performance of most abortions as a criminal act. It states that any person who “voluntarily causes a woman with child to miscarry”<sup>123</sup> may be punished by imprisonment. A woman who causes herself to miscarry is considered to be within the meaning of the provision.<sup>124</sup> Under the Penal Code, a woman must actually be pregnant for the crime of abortion to have occurred. In contrast, under the Criminal Code the crime of abortion only requires intent to commit the act.<sup>125</sup> Nigerian law permits the performance of an abortion only if it is necessary to save a woman’s life. The Criminal Code stipulates that a person “is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation . . . upon an unborn child for the preservation of the mother’s life.”<sup>126</sup> Similarly, the Penal Code permits an abortion to save the life of a woman.<sup>127</sup> However, the laws do not clearly distinguish between abortions performed by registered medical practitioners and unregistered medical practitioners, and do not stipulate the kind of facility in which abortions may take place.<sup>128</sup>

Laws cover other abortion-related offenses. For example, in southern Nigeria the Criminal Code provides that it is illegal to supply materials knowing that they may be used unlawfully to “procure the miscarriage of a woman.”<sup>129</sup> The Penal Code provides that any person who, with intent to cause a “miscarriage,” undertakes any act that causes a woman’s death is subject to imprisonment for 14 years.<sup>130</sup> It also makes it unlawful for a person to “use force to any woman and thereby unintentionally caus[e] her to miscarry.”<sup>131</sup>

#### *Requirements for Obtaining Legal Abortion*

Spousal consent is not a requirement for operations necessary to save a woman’s life, but it is commonly required by medical establishments in Nigeria.<sup>132</sup> The government does not subsidize abortion services and abortions are not available in most public health facilities.<sup>133</sup>



### *Penalties*

Both the Criminal Code and the Penal Code impose a penalty of 14 years of imprisonment for the performance of an abortion. In addition, upon conviction for the performance of an abortion, a medical practitioner may have his or her license suspended or may be subject to other disciplinary action.<sup>134</sup> Under the Criminal Code, a woman who consents to the performance of an illegal abortion or attempts to self-induce an abortion may be punished by seven years of imprisonment.<sup>135</sup>

### **E. STERILIZATION**

Sterilization is legal in Nigeria. Although "emasculatation" is regarded as a "grievous harm" in the Penal Code, the law exempts surgical operations that are performed in good faith and with reasonable care from prosecution as a crime.<sup>136</sup> The Criminal Code contains similar provisions.<sup>137</sup> In 1992, the government confirmed in a report to the United Nations Population Fund that sterilization in Nigeria is legal if performed for life, health, eugenic, or contraceptive purposes.<sup>138</sup> Sterilization is not a common method of contraception in Nigeria; women who have elected female sterilization comprise fewer than four percent of female contraceptive users.<sup>139</sup>

#### *Requirements*

Sterilization is available in government health institutions and teaching hospitals.<sup>140</sup> In addition, missionary organizations such as the Nongo U Kristu U Ken Sudan Hen Tiv ("NKST") provide family planning services, including sterilization, in rural health facilities.<sup>141</sup> All surgical operations must be performed by registered practitioners in Nigeria.<sup>142</sup> It is common for Nigerian medical practitioners to require spousal consent for female sterilizations.<sup>143</sup>

### **F. FEMALE GENITAL MUTILATION/ FEMALE CIRCUMCISION**

The practice of female genital mutilation ("FGM") — also referred to as female circumcision — is prevalent among most major ethnic groups in Nigeria, affecting approximately half of Nigerian women.<sup>144</sup> Several forms of FGM are common in Nigeria, including scarification, infibulation, and introcision (involving cuts into the vaginal wall).<sup>145</sup> An estimated 85% of FGM operations are performed by traditional birth attendants, barbers, or traditional medical practitioners.<sup>146</sup>

Currently, there is no law in Nigeria that prohibits FGM.<sup>147</sup> Although the Constitution recognizes the "sanctity of the human person" and prohibits torture and inhuman or degrading treatment, there has been no constitutional challenge to the customary practice of FGM.<sup>148</sup> Prior to 1987, federal and state governments did not even address the issue of FGM. At that time, the National Association of Nigerian

Nurses and Midwives ("NANNM") launched a 10-year campaign to educate and mobilize women health professionals and other non-governmental organizations with regard to the health consequences of FGM. The campaign set as its goals the achievement of an 80% reduction in FGM prevalence by 1997, and complete eradication by the year 2002.<sup>149</sup> The NANNM project has also instigated the revision of medical and nursing school curricula, as well as training material for midwives, to include information about FGM.<sup>150</sup> For further discussion regarding FGM, see section on adolescents below.

### **G. HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES**

Examining HIV/AIDS issues within a reproductive health framework is essential insofar as the two areas are interrelated from both a medical and public health standpoint. Hence, a full evaluation of laws and policies affecting reproductive health and rights in Nigeria must examine HIV/AIDS and sexually transmitted diseases ("STDs").

AIDS was first reported in Nigeria in 1986.<sup>151</sup> In 1994, the prevalence rate for HIV was reported to be 3.8% of the population; as of June 1996, government authorities had confirmed 5,500 cases of AIDS.<sup>152</sup> The prevalence of STDs is generally not reported in Nigeria, especially among women.<sup>153</sup> There are no governmental mandates or policies regarding such prevalence.<sup>154</sup> Moreover, studies have indicated that the high cost of health care in Nigeria and regional disparities with regard to access to health facilities significantly affects levels of self-reportage and participation in treatment programs.<sup>155</sup>

#### *Laws Affecting HIV/AIDS and STDs*

Currently, no laws deal specifically with AIDS, HIV, or STD transmission.<sup>156</sup>

#### *Policies Affecting Prevention and Treatment of HIV/AIDS and STDs*

Nigeria has not been able to address the AIDS epidemic in a significant manner.<sup>157</sup> Since 1986, the country has, however, attempted to coordinate governmental responses to the epidemic, and has implemented HIV, AIDS, and STD prevention activities pursuant to its National AIDS and STD Control Program ("NASCP"). NASCP's Second Medium-Term Plan sets forth four strategic objectives: prevention of HIV infection; reduction of the personal and social impact of HIV/AIDS in HIV-positive individuals and their families; reduction of the impact of HIV/AIDS on society; and the mobilization of efforts and resources to combat HIV/AIDS.<sup>158</sup>

### III. Understanding the Exercise of Reproductive Rights: Women's Legal Status

Women's reproductive health and rights cannot be fully evaluated without investigating women's status within the society in which they live. Not only do laws relating to women's legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women's ability to exercise reproductive rights. The legal context of family life, a woman's access to education, and laws and policies affecting her economic status can contribute to the promotion or the prohibition of a woman's access to reproductive health care and her ability to make voluntary, informed decisions about such care. Laws regarding age of first marriage can also have a significant impact on a young woman's reproductive health. Furthermore, rape and other laws prohibiting sexual assault or domestic violence present significant rights issues and can also have direct consequences for women's health.

#### A. RIGHTS WITHIN MARRIAGE

##### *Marriage law*

Three types of marriage — customary, Islamic, and civil — are recognized in Nigeria. Marriages adhering to customary or civil law are legally valid throughout the country.<sup>159</sup> In the northern states, marriages under Islamic law are also legally recognized.<sup>160</sup> Pursuant to customary and Islamic law, marriages may be polygamous; Islamic law in Nigeria permits a man to have up to four wives.<sup>161</sup>

Under customary law, marriages are arranged between families, and the prospective suitor is often required to pay a bride-price to the bride's family.<sup>162</sup> Within customary marriages, traditions requiring women to undergo harsh and burdensome rites at widowhood, and the periodic ritual seclusion of women, are prevalent.<sup>163</sup> Under Islamic law in northern Nigeria, the father of a woman retains the "right" (*ijbar*) to arrange the marriage of his virgin daughter, regardless of her age and without her consent.<sup>164</sup> Islamic law marriage involves a dower paid directly to the woman to be married.<sup>165</sup> In the northern states, the customary seclusion of women is particularly rigorous and may restrict women's movement outside of their homes even in emergency situations.<sup>166</sup>

Under civil law, marriage must be monogamous, and, unlike the other two types of marriage, it must be registered.<sup>167</sup> In a civil or customary marriage, the spouses have a reciprocal duty to maintain each other as well as any children

of the union.<sup>168</sup> Valid civil marriages in Nigeria must be voluntarily entered into by both parties.<sup>169</sup> In southern Nigeria, forced marriage under any system of law is formally prohibited by law as a criminal offense, punishable by imprisonment for up to seven years.<sup>170</sup> Despite this prohibition, women in the southwestern regions may be compelled to marry the local *oba* (king).<sup>171</sup> Arranged marriages are also common in rural areas of the south.<sup>172</sup>

For a discussion on marriage and adolescents, see section on adolescents below.

##### *Divorce and Custody Law*

Like marriage, divorce is regulated by various laws. The dissolution of civil marriages is governed by the 1970 Matrimonial Causes Act<sup>173</sup> (the "1970 Act"). Pursuant to the 1970 act, a civil divorce may only be granted on the ground that the marriage has broken down "irretrievably."<sup>174</sup> An exclusive list of situations satisfy this condition: the willful and persistent refusal to consummate the marriage;<sup>175</sup> adultery that is "intolerable";<sup>176</sup> the absence of consortium for two or more years;<sup>177</sup> desertion lasting at least one year;<sup>178</sup> and marital behavior such that "the petitioner cannot reasonably be expected to live with the respondent."<sup>179</sup> The 1970 Act states that unreasonable marital behavior includes the failure to pay maintenance for at least two years and the commission of sexual assault, including rape.<sup>180</sup>

Customary and Islamic law marriages, which are not governed by the 1970 Act, may be dissolved either nonjudicially in accordance with customary law or in Sharia courts.<sup>181</sup> In northern Nigeria, a man married under Islamic law may divorce his wife unilaterally by repeating the phrase "I divorce you" three times (the *talaq*). Such action is not available to women.<sup>182</sup> However, Islamic law does provide that a woman may divorce her husband with his consent if she returns the dower payment to him.<sup>183</sup> In considering the grounds for divorce, Sharia courts may take into account, *inter alia*, any failure to pay maintenance, a prolonged absence, or the infliction of harm.<sup>184</sup> Available grounds for divorce are not defined under non-Islamic customary law.<sup>185</sup> Many customary law courts will consider as relevant: adultery; cruelty; desertion; and impotence, sterility, or the presence of any reproductive health problem.<sup>186</sup> At the dissolution of a customary law marriage, the parties must refund a portion of the bride-price or dower payments that were made.<sup>187</sup>

Pursuant to the 1970 Act, courts may determine custody and maintenance disputes within civil, customary, and Islamic marriages.<sup>188</sup> In any custody dispute, the 1970 Act provides that the interests of the child shall be paramount.<sup>189</sup> In determining responsibility for spousal and child maintenance, courts may consider the "means, earning capacity and

conduct” of each party, as well as “all other relevant circumstances.”<sup>190</sup> However, irrevocable divorce under Islamic law and any divorce under customary law terminates all rights of spousal maintenance.<sup>191</sup>

## **B. ECONOMIC AND SOCIAL RIGHTS**

### ***Property Rights***

There are no formal laws restricting women’s rights to own property in Nigeria.<sup>192</sup> An 1882 law in force in many Nigerian states affirms the capacity of a married woman to hold, acquire, and dispose of property.<sup>193</sup> Because property acquired during a marriage is often presumed to belong to the husband or male head of the household, a woman often cannot demonstrate her rights in property without documentation of ownership or proof of her contribution to the purchase of the property.<sup>194</sup>

State laws and common law provisions governing intestate inheritance rights do not discriminate against women.<sup>195</sup> Moreover, under customary law, daughters may inherit from their parents’ estates.<sup>196</sup> However, most systems of Nigerian customary law exclude widows from inheriting property in their own right, and widows often must enter into leviratic arrangements (in which the widow marries a member of her husband’s family, such as a brother) to ensure the continuing support of their husband’s family.<sup>197</sup> Under Islamic inheritance laws as practiced in northern Nigeria, one eighth of a man’s estate is allocated to his surviving wife or wives.<sup>198</sup> The remainder of the estate is distributed so that male heirs receive twice the share of any female heirs.<sup>199</sup>

### ***Labor Rights***

The Constitution recognizes the principle of “equal pay for equal work without discrimination on account of sex” and seeks to eliminate discrimination “on any ground” in employment matters.<sup>200</sup> However, Nigerian women encounter informal discrimination in employment and often do not receive wages commensurate with those received by male coworkers.<sup>201</sup> Moreover, the Labour Act contains some provisions that — although designed to protect women — prohibit women from engaging in certain areas of employment, such as working at night or underground.<sup>202</sup> In 1990, less than 10% of Nigerian women were employed in non-agricultural jobs.<sup>203</sup> The Constitution also seeks to ensure working conditions that are “just and humane” and do not endanger worker health, safety, or welfare.<sup>204</sup> By law, all women are entitled to 12 weeks’ maternity leave, during which period they must receive, at minimum, 50% of their regular wages.<sup>205</sup> In addition, the labor laws require employers to provide women workers with at least one hour each day to nurse their children.<sup>206</sup>

### ***Access to Credit***

No specific laws limit women’s access to credit.<sup>207</sup> However, several obstacles exist for women who attempt to obtain credit in Nigeria that are attributable to discriminatory customary laws relating both to women’s right to own property and the prevailing attitudes of major financial institutions and investors toward female applicants.<sup>208</sup> Women tend not to own real property that could serve as collateral for their loan applications.<sup>209</sup> Moreover, financial houses currently require married women to obtain their husband’s support for their credit applications.<sup>210</sup>

### ***Access to Education***

The Constitution states that a fundamental objective of state policy is the provision of educational opportunity at all levels of schooling.<sup>211</sup> In its 1981 revised National Policy on Education, the government of Nigeria perceived an “imbalance” in female enrollment levels, and committed state and local governmental authorities to programming intended to encourage female attendance, particularly in primary, secondary, and technical schools.<sup>212</sup> The federal government has allocated funds to establish women’s education centers in each local governmental area to promote educational opportunities for women.<sup>213</sup> For further discussion regarding education, see section on adolescents below.

## **C. RIGHT TO PHYSICAL INTEGRITY**

### ***Rape***

Both Nigerian criminal codes define rape in similar terms. In southern Nigeria, the criminal code defines rape as “unlawful carnal knowledge of a woman or girl, without her consent.”<sup>214</sup> Unlawful intercourse with a woman’s consent also constitutes rape if the consent is obtained by force, fraud, threats, or “intimidation of any kind.”<sup>215</sup> The laws in southern Nigeria also proscribe attempted rape as an offense.<sup>216</sup> In northern Nigeria, the Penal Code defines rape to be sexual intercourse with a woman against her will or without her consent, or sexual intercourse with a girl under the age of 14.<sup>217</sup> Furthermore, the Penal Code criminalizes consensual intercourse if the woman’s consent was obtained through the use of threats to her life or threats of physical harm.<sup>218</sup> The punishment for rape under both codes is imprisonment for life.<sup>219</sup> “Carnal knowledge” and sexual intercourse are defined for the purposes of both codes as acts of penetration.<sup>220</sup> This definition excludes other sexual offenses, such as sodomy or the insertion of foreign objects into a woman’s vagina, from the definition of rape.<sup>221</sup> Such acts may be prosecuted under the laws prohibiting “unnatural” sexual offenses,<sup>222</sup> assault,<sup>223</sup> “indecent assault,”<sup>224</sup> or acts of “gross indecency.”<sup>225</sup>

In general, both criminal codes in Nigeria provide little protection against marital rape. Under the Criminal Code in southern Nigeria, intercourse between a husband and wife can never constitute rape.<sup>226</sup> Pursuant to the Penal Code in northern Nigeria, the definition of rape explicitly excludes the marital rape of a woman who has attained the age of puberty.<sup>227</sup> Women may receive limited protection from marital rape under the prohibitions against assault. In addition, the above provisions that preclude prosecution of marital rape do not apply to the rape of an estranged spouse.<sup>228</sup> For further discussion on sexual offenses against minors, see section on adolescents.

#### *Domestic Violence*

Incidents of domestic violence may be prosecuted under general criminal code provisions penalizing assault.<sup>229</sup> In northern Nigeria, it is permissible for husbands to “correct” their wives with physical punishment if it is lawful under the system of customary law to which the spouses adhere, and if the punishment is not “unreasonable in kind or in degree” or “does not amount to the infliction of grievous hurt.”<sup>230</sup> In all states in Nigeria, a woman may use domestic violence as a ground for divorce if her husband has been convicted of grievously injuring her or attempting to seriously injure or kill her.<sup>231</sup>

#### *Sexual Harassment*

No laws deal explicitly with sexual harassment in Nigeria. However, criminal law in Nigeria prohibits “indecent assault,” which is defined as an act of “gross indecency” committed against a person, without consent or by use of force or threats.<sup>232</sup> But pursuant to the Criminal Code, indecent assault committed against a woman is a lesser offense than indecent assault of a man, and the crime carries lower penalties.<sup>233</sup>

## iv. Focusing on the Rights of a Special Group: Adolescents

The needs of adolescents are often unrecognized or neglected. Given that approximately 22% of the Nigerian population is between the ages of 10 and 19,<sup>234</sup> it is particularly important to meet the reproductive health needs of this group. The effort to address issues of adolescent rights, including those related to reproductive health, is important for women’s right to self-determination as well as for their health.

### **A. REPRODUCTIVE HEALTH AND ADOLESCENTS**

Adolescents are not legally restricted from access to contraceptives, but informal restrictions operate to limit contraceptive use.<sup>235</sup>

### **B. FEMALE GENITAL MUTILATION AND ADOLESCENTS**

No laws in Nigeria either prohibit or explicitly address FGM. Yet several different forms of FGM are prevalent in Nigeria, and the age at which the operation may be performed varies. In some regions, the ritual is performed on children one week or a few years old; in other areas, young women may undergo FGM at marriage, during pregnancy, or at the birth of their first child.<sup>236</sup> Among these groups, excision or clitoridectomy of the pregnant woman is believed to protect the child during birth.<sup>237</sup> FGM may also be performed on young girls as part of traditional puberty rites.<sup>238</sup> As a result of educational and mobilization campaigns conducted by organizations of women health professionals and other non-governmental organizations, secondary school curricula have recently been revised to include information about the health consequences of FGM.<sup>239</sup>

### **C. MARRIAGE AND ADOLESCENTS**

The average age at first marriage in Nigeria is 16.<sup>240</sup> Child marriage is particularly common in the north, where the majority of girls are married between the ages of 12 and 15.<sup>241</sup> The National Policy on Population discourages early marriage and states that parents should not arrange marriages for girls below the age of 18.<sup>242</sup>

A variety of conflicting laws relate to the age at first marriage. The eastern states of Nigeria have enacted legislation that prohibits marriage contracts between parties under the age of 16 and declares any such marriage legally unrecognizable.<sup>243</sup> In addition, for the remainder of the states, the civil law provides that parties to a valid civil marriage be “of marriageable age.” Although the term “marriageable age” is not defined,<sup>244</sup> adolescents under the age of 21 cannot marry without parental consent under the civil law.<sup>245</sup> Yet customary law provides that children can marry when they have attained puberty, usually at age 14 for boys and age 12 for girls.<sup>246</sup> Under Islamic law as practiced in northern Nigeria, on the other hand, there is no minimum age for marriage.<sup>247</sup>

### **D. EDUCATION AND ADOLESCENTS**

State and local governmental authorities are responsible for the provision and maintenance of primary educational facilities.<sup>248</sup> Some Nigerian states have established scholarship funds for female students and made school attendance mandatory, prohibiting the withdrawal of female students for the purposes of marriage.<sup>249</sup>

### **E. SEX EDUCATION AND ADOLESCENTS**

The National Social Development policy gives primary importance to the role of family life education in achieving

“planned parenthood.”<sup>250</sup> Family life education is defined to include child spacing and family planning information, and may also include sex education and AIDS prevention information.<sup>251</sup> This information is presently a component of secondary school curricula.<sup>252</sup> The National Policy on Population seeks to incorporate this information, including education on issues related to fertility, into community programming and the curricula of training and vocational schools.<sup>253</sup>

### F. SEXUAL OFFENSES AGAINST MINORS

Under the Penal Code in northern Nigeria, children under the age of 14 are incapable of providing consent, including consent to sexual acts.<sup>254</sup> In addition, a child under the age of 16 is presumed incapable of consent to any act of “gross indecency” with an adult in a position of authority, such as a teacher or guardian.<sup>255</sup>

In southern Nigeria, the Criminal Code prohibits statutory rape.<sup>256</sup> Sexual intercourse with a girl under the age of 13 is punishable by life imprisonment, with or without caning, and sexual assault of a girl under the age of 13 is punishable by imprisonment of up to three years.<sup>257</sup> Assaults committed against girls between the ages of 13 and 16, including statutory rape, are punishable by imprisonment for up to two years.<sup>258</sup>

In both southern and northern Nigeria, the criminal laws also contain specific prohibitions against the “procurement” or employment of a minor child in prostitution.<sup>259</sup>

### ENDNOTES

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2. *Geography and History*, Political Risk Services, April 1, 1995, available in LEXIS, World Library, IBCRPT File.
3. *Id.* Local elections were held in March 1996 under restricted conditions, which included a ban on political parties and campaigning, and public elections of electoral representatives. See *Sub-Saharan Africa: Nigeria*, *supra* note 1.
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6. Walden Reports, *supra* note 4.
7. NDHS, *supra* note 4, at 1.
8. *Id.*

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10. NDHS, *supra* note 4, at 2; Memorandum from Theresa Akumadu, Head, Women's Right Project, Civil Liberties Organisation (Mar. 12, 1997) (on file at The Center for Reproductive Law and Policy).
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12. UNFPA, *supra* note 5, at 7.
13. UNFPA, *supra* note 5, at 8.
14. D.I.O. Ewezukwa, *Nigeria*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 27, 27-28 (Albert P. Blaustein & Gisbert H. Flanz eds. 1986). The 1979 Constitution was restored in 1993. See *Nigeria Country Report*, *supra* note 4.
15. Walden Reports, *supra* note 4; REYNOLDS & FLORES, *supra* note 1, at 2, 5; see also Supremacy and Enforcement of Powers Act, No. 13 (1984) (Nig.); Theresa Akumadu, Data on the Nigerian Chapter of the Anglophone Africa Report 1 (unpublished paper, on file with The Center for Reproductive Law and Policy).
16. Walden Reports, *supra* note 4; *Geography and History*, *supra* note 2.
17. *Nigeria Country Report*, *supra* note 4. See NIGERIA CONST. (Suspension and Modification) (Amendment) Decree 1985, ch. I, § 2(6), Sched. 3-C [hereinafter NIGERIA CONST.].
18. NIGERIA CONST., 1985, ch. I, § 2(6), Sched. 3-C; Walden Reports, *supra* note 4.
19. Ambrose O. O. Ekpu, *Judicial Response to Coup D'Etat: A Reply to Tayyab Mahmud (From a Nigerian Perspective)*, 13 ARIZ. J. INT'L & COMP. L. 23 (1996).
20. REYNOLDS & FLORES, *supra* note 1, at 5; Namnguhan Madza, *The Judicial System of Nigeria*, ARMY LAW 20, 23-24 (July 1987).
21. REYNOLDS & FLORES, *supra* note 1, at 5-6. In the northern states, Magistrates' Courts have jurisdiction over criminal cases and District Courts have jurisdiction over civil cases. See *id.*
22. NIGERIA CONST. (1979), § 245.
23. *Id.* § 240; REYNOLDS & FLORES, *supra* note 1, at 6.
24. Ekpu, *supra* note 19, at 26-27.
25. *Id.* at 21.
26. Akumadu, *supra* note 15, at 1.
27. Kaniye S.A. Ebeku, *The Legal Status of Nigerian Children Born by a Widow: Chimweze v. Masi Revisited*, 38 J. AFR. L. 46, 57 (1994); see generally HIGH COURT LAW OF LAGOS STATE, § 26(1); EVIDENCE ACT (Federation and Lagos) ch. 62 (1958 Revision); EVIDENCE LAW OF EASTERN NIGERIA (1963); EVIDENCE LAW, LAWS OF NORTHERN NIGERIA (1963).
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36. *Governing Council of the United Nations Development Program, Proposed Programmes and Projects*, United Nations Population Fund, 39th Sess., Agenda Item 7, at 4, U.N. Doc. DP/FPA/CP/94 (1992).
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53. HEALTH POLICY, *supra* note 40, at 2.
54. NIGERIA CONST. (1979), 4th Sched., § 2(c); HEALTH POLICY, *supra* note 40, at 2.
55. *Market Reports: Nigeria—Health Care Development Plan*, National Trade Data Bank, Sept. 11, 1995, available in LEXIS, World Library, MKTRPT File; HEALTH POLICY, *supra* note 40, at 11.
56. Oyeneeye, *supra* note 43, at 54.
57. Grace E. Delano, *Examination of Health Services and the Service Delivery System*, in PREVENTION OF MORBIDITY AND MORTALITY FROM UNSAFE ABORTION IN NIGERIA 25, 26 (Friday E. Okonofua & Adetoun Ilukoma eds., 1993).
58. UNFPA, *supra* note 5, at 33.
59. HEALTH POLICY, *supra* note 40, at 13; Delano, *supra* note 57, at 27.
60. HEALTH POLICY, *supra* note 40, at 12.
61. NDHS, *supra* note 4, at 117; Delano, *supra* note 57, at 25.
62. HEALTH POLICY, *supra* note 40, at 13; Delano, *supra* note 57, at 26.
63. HEALTH POLICY, *supra* note 40, at 13, 21; Delano, *supra* note 57, at 26.
64. NDHS, *supra* note 4, at 5, 117.
65. Delano, *supra* note 57, at 26.
66. NIGERIA COUNTRY STUDY, *supra* note 52, at 152.
67. HEALTH POLICY, *supra* note 40, at 49.
68. *Sub-Saharan Africa: Nigeria*, *supra* note 1. One U.S. dollar is worth approximately 79 Nigerian Nairas. See U.N. Operational Rates of Exchange (visited Feb. 27, 1997) <gopher://gopher.undp.org/00/uncurr/exch\_rates>. Since 1994, the official exchange rate has remained fixed at N 21.9996 per U.S.\$.
69. *Nigeria Country Report*, *supra* note 4; *World Development Report, Investing in Health*, WORLD BANK 210 (1993).
70. Decree No. 23, Medical and Dental Practitioners Decree (1988) [hereinafter Medical Decree].
71. *Id.* §§ 17–18.
72. *Id.* §§ 1(2)(a), 9(1)(a)–(c), (2).
73. *Id.* § 1(2)(c); see generally MEDICAL AND DENTAL COUNCIL OF NIGERIA, RULES OF PROFESSIONAL CONDUCT FOR MEDICAL AND DENTAL PRACTITIONERS IN NIGERIA (1995) [hereinafter RULES].
74. Medical Decree, *supra* note 70, § 15.
75. *Id.* § 17(6).
76. *Id.* §§ 17(1)(a), (5), (7).
77. Decree No. 89, Nursing and Midwifery (Registration, Etc.) (1979) [hereinafter Nursing Decree].
78. *Id.* §§ 1(2), 17.
79. *Id.* § 1(2).
80. Decree No. 91, Pharmacists Council of Nigeria Decree (1992).
81. Akumuda, *supra* note 15, at 10–11; RULES, *supra* note 73, at 16–18.
82. For example, § 332 of the Penal Code provides imprisonment for life to any person who with the intent to disfigure or disable another “unlawfully wounds or does any grievous harm.” PEN. CODE § 332. Section 241 of the Penal Code criminalizes the act of voluntarily causing “grievous hurt.” See PEN. CODE § 241. However, it is not an offense if the act is likely to cause injury but is performed without criminal intent and with the aim of benefitting the injured person. See PEN. CODE § 49.
83. RULES, *supra* note 73, at 16.
84. *Id.* at 21–22.
85. RULES, *supra* note 73, at 12–13.
86. FEDERAL REPUBLIC OF NIGERIA, NATIONAL POLICY ON POPULATION FOR DEVELOPMENT, UNITY, PROGRESS AND SELF-RELIANCE 1 (1988) [hereinafter NAT'L POLICY].
87. *Id.* at 12.
88. *Id.* at 2.
89. *Id.* at 12–13.
90. *Id.* at 13–14.
91. *Id.* at 14.
92. *Id.* at 13–14.
93. *Id.* at 15–17.
94. *Id.* at 20.
95. *Id.* at 20–22.
96. *Id.* at 18.
97. *Id.* at 18.
98. UNFPA, *supra* note 5, at 21–22.
99. *Id.* at 21.
100. *Id.* at 21–22.
101. Bamikale J. Feyisetan & Martha Ainsworth, *Contraceptive Use and the Quality, Price, and Availability of Family Planning in Nigeria*, in THE WORLD BANK, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, Living Measurement Study Working Paper No. 108, at 4 (1994).
102. NIGERIA CONST. ch. VI, pt. III(A), § 211.
103. Decree No. 23, National Population Commission Decree (1989) (Nig.).
104. Makinwa-Adebusoye, Levels of Contraceptive Knowledge and Use in Nigeria 1 (1992) (unpublished paper, on file with The Center for Reproductive Law and Policy).
105. UNFPA, *supra* note 5, at 12, 33.
106. *Id.* at 34; HEALTH POLICY, *supra* note 40, at 9–10.
107. Planned Parenthood, *supra* note 4, at 147; UNFPA, *supra* note 5, at 36.
108. Akumuda, *supra* note 15, at 9.
109. Feyisetan & Ainsworth, *supra* note 101, at 4–5.
110. UNFPA, *supra* note 5, at 12.
111. Planned Parenthood, *supra* note 4, at 147.
112. *Id.*
113. NAT'L POLICY, *supra* note 86, § 5.1.7, at 16.
114. NDHS, *supra* note 4, at 37.
115. Food and Drugs Act, § 5(a), ch. 150 (1990). This law, as well as other industry regulations, is not well enforced. See generally H.D. KAYIT, PHARMACISTS COUNCIL OF NIGERIA: RESPONSIBILITIES AND CONSTRAINTS, PHARMACY LAWS AND PRACTICE IN NIGERIA (1995).
116. Food and Drugs Act, § 4.
117. *Id.* § 8(2).
118. *Id.* § 17.
119. CRIM. CODE §§ 233C(1), 233d; PEN. CODE § 202 (also covering “willful exhibition” of obscene matter).
120. KARIBI-WHYTE, *supra* note 30, at 212–13.
121. CRIM. CODE § 228; see PEN. CODE § 232. The criminal code provision is based on the Offences Against the Persons Act 1861, § 58. See T.B.E. Ogiamien, *A Legal Framework to Liberalize Abortion in Nigeria*, NIG. CURRENT L. REV. 107, 111 (1988–91). The Criminal Code also proscribes the “killing of an unborn child,” which under English law was criminalized as “child destruction.” See CRIM. CODE § 228. The offense criminalizes any deliberate act or omission when a woman is about to give birth which prevents the child from being born alive, encompassing “the wilful [sic] infliction of ante-natal injuries on a child in order to cause its death before it has an independent existence of its mother.” CRIM. CODE §§ 328, 309; see EMMANUEL OLAWUYI FAKAYODE, THE NIGERIAN CRIMINAL CODE COMPANION 391, ¶ 64 (1977). This offense is punishable by life imprisonment. However, any operation performed for the preservation of a woman's life is excluded from prosecution under this provision. See CRIM. CODE § 297. The Penal Code contains a similar provision which criminalizes the intentional performance of an act “preventing [a] child from being born alive or causing it to die after its birth...” but does not limit the applicability of this offense to situations where a woman is about to give birth. PEN. CODE § 235.
122. The definition of pregnancy utilized in the Nigerian laws on abortion is derived from developed English law. See I.E. Adi, *The Question of Abortion*, NIG. CURRENT L. REV. 191, 192 (1982).
123. PEN. CODE § 232.
124. *Id.*
125. Ogiamien, *supra* note 121, at 119; FAKAYODE, *supra* note 121, at 395, ¶ 65.
126. CRIM. CODE § 297. The ground of preservation of the mother's life may include consideration of risks posed by the pregnancy to the mother's physical or mental health, as defined by developed law following the English case of *R. v. Bourne* [1939] 1 K.B. 687 (Ireland); see Ogiamien, *supra* note 121, at 121.

127. PEN. CODE § 235.
128. See *Abortion in Nigeria: What the Law Says and What it Doesn't Say*, CAMPAIGN AGAINST UNWANTED PREGNANCY NEWSLETTER (Campaign Against Unwanted Pregnancy), June 1993, at 3-4.
129. CRIM. CODE § 230.
130. PEN. CODE § 233.
131. *Id.* § 234.
132. Akumadu, *supra* note 15, at 10.
133. *Id.*; Delano, *supra* note 57, at 25.
134. RULES, *supra* note 73, § 39.
135. CRIM. CODE § 228.
136. See PEN. CODE § 54.
137. CRIM. CODE § 297.
138. *Sterilization Laws, Practices, Policies and Conditions in Africa*, at 17 (1994) (unpublished paper, on file with The Center for Reproductive Law and Policy).
139. Planned Parenthood, *supra* note 4, tbl. B, § 2.8 (female sterilization as a form of contraception estimated at 3.9%); see generally Akumadu, *supra* note 15, at 10.
140. Akumadu, *supra* note 15, pt. III; DHS *Regional Analysis Workshop for Anglophone Africa*, Fertility Trends and Determinants in Six African Countries, at 70 (1994) [hereinafter *DHS Analysis*].
141. *DHS Analysis*, *supra* note 140, at 70.
142. Medical Decree, *supra* note 70, §§ 17(1)(a), (5), (7).
143. Akumadu, *supra* note 15, at 10.
144. NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 25 (Rainbø 1995); Mairo U. Mandara, *Prevalence Of Female Genital Mutilation In Zaria: A Critical Appraisal*, in DISCUSSING REPRODUCTIVE RIGHTS IN NIGERIA at 29, 36 (1995).
145. Mandara, *supra* note 144, at 30-31.
146. Christine Adebajo, *Female Genital Mutilation Educational Approach*, in RESEARCH ACTION & INFORMATION NETWORK FOR THE BODILY INTEGRITY OF WOMEN AND COLUMBIA SCHOOL OF PUBLIC HEALTH, CENTER FOR POPULATION AND FAMILY HEALTH, REPORT OF THE GLOBAL ACTION AGAINST FEMALE GENITAL MUTILATION FIRST INTER-AGENCY WORKING GROUP MEETING 5 app. IV (1994).
147. *Id.* at 8, app. IV.
148. NIGERIA CONST. 1985 §§ 17(2)(b), 31(1)(a); Skumadu, *supra* note 15, at 17.
149. Adebajo, *supra* note 146, at 2.
150. *Id.* at 8.
151. NATIONAL AIDS/STD CONTROL PROGRAMME, FACT SHEET OF AIDS (1996) [hereinafter FACT SHEET].
152. *Id.*
153. VOICES, *supra* note 37, at 106-07.
154. Feyisetan & Ainsworth, *supra* note 101, at 9.
155. VOICES, *supra* note 37, at 106-07; FACT SHEET, *supra* note 151.
156. Akumadu, *supra* note 15, app. ¶ 3.
157. TONY BARNETT & PIERS BLAIKIE, AIDS IN AFRICA: ITS PRESENT AND FUTURE IMPACT 636 (1992).
158. Feyisetan & Ainsworth, *supra* note 101, at 1.
159. See LESLYE OBIORA ET AL., WHAT EVERY WOMAN IN NIGERIA SHOULD KNOW 1-3 (1986).
160. *Id.* at 2.
161. *Id.*
162. VOICES, *supra* note 37, at 72, 115. A bride-price payment may range between N 10-N 25, approximately U.S.\$0.12-\$0.31. See *Id.* at 115.
163. *Id.* at 78-83, 119-20. In the southwest, a woman is commonly assumed to be responsible for her husband's death, and may be required "to sit on the floor, have no bath, wear the same clothes [and] eat with unwashed left hand throughout the mourning...period," lasting from three to seven days. *Id.* at 81.
164. Akumadu, *supra* note 15, at 12. However, the father may lose this right if he has given his daughter an option to choose among suitors. See *Yakubu v. Paiko*; CA/K/80s/85, at 18-19, 24 (Kaduna Ct.App. 1985) (noting also that fathers that choose to exercise this right should consult the wishes of their daughters if they are over 14 years old); Auwalu H. Yadudu, *Colonialism and the Transformation of the Substance and Form of Islamic Law in the Northern States of Nigeria*, 9 J.L. & RELIGION 17, 43 (1991).
165. VOICES, *supra* note 37, at 72, 115.
166. *Id.* at 120-21.
167. MARRIAGE ACT [Chapter 218], §§ 11(1)(d), 30, 33, 35, 39, 46-47 (1971) (Nig.) (stating the penalties for contravention of these provisions). In practice, the requirement of monogamy in civil marriage has not invalidated subsequent customary law marriages. See OBIORA, *supra* note 159, at 2.
168. OBIORA, *supra* note 159, at 6.
169. *Id.* at 4.
170. CRIM. CODE, § 361 (punishing "[a]ny person who, with intent to marry or carnally know a female of any age, or to cause her to be married...takes her away, or detains her against her will").
171. VOICES, *supra* note 37, at 23.
172. *Id.* at 72.
173. MATRIMONIAL CAUSES ACT [Chapter 220] (1970) (Nig.).
174. *Id.* § 15(1).
175. *Id.* § 15(2)(a).
176. *Id.* § 15(2)(b). A woman petitioning for divorce on the ground of adultery may receive damages from her spouse. See E.N.U. Uzodike, *A Decade of the Matrimonial Causes Act 1970*, NIG. CURRENT L. REV. 55, 56 (1983).
177. MATRIMONIAL CAUSES ACT § 15(2)(e)-(h).
178. *Id.* § 15(2)(d).
179. *Id.* § 15(2)(c).
180. *Id.* § 16. A petitioner does not have to provide proof of the respondent's conviction of rape, but must merely "satisfy" the court that "...respondent has committed rape." See *id.* § 16(1)(a). It is unclear if marital rape would qualify. However, conviction for a spousal assault involving the intentional infliction of grievous harm is an adequate ground for divorce. See *id.* § 16(1)(e).
181. OBIORA, *supra* note 159, at 11; Akumadu, *supra* note 15, at 13.
182. *Id.*
183. *Id.*
184. OBIORA, *supra* note 159, at 12.
185. Akumadu, *supra* note 15, at 13.
186. *Id.*; OBIORA, *supra* note 159, at 13.
187. VOICES, *supra* note 37, at 77.
188. Akumadu, *supra* note 15, at 13; see generally MATRIMONIAL CAUSES ACT §§ 3(a)(i), 25.
189. MATRIMONIAL CAUSES ACT § 71(1).
190. *Id.* § 70(1). In addition, the criminal laws in the south require heads of households to maintain their legitimate children. See CRIM. CODE § 301. The head of a household is usually considered to be the father. See O.A. Ipaye, *Custody and Child-Support Laws in Nigeria*, NIG. CURRENT L. REV. 67, 75 (1988-91).
191. OBIORA, *supra* note 159, at 25; VOICES, *supra* note 37, at 78.
192. UNITED STATES DEPARTMENT OF STATE, NIGERIAN HUMAN RIGHTS PRACTICES 1995 (1996) [hereinafter NIGERIAN PRACTICES 1995].
193. Akumadu, *supra* note 15, at 14. The law is not in force in the Oyo, Ondo, Ogun, Osun, Edo, and Delta states. See *id.*
194. *Id.* However, courts have discretion in distributing marital property upon dissolution of a marriage. For further discussion, see section on divorce and custody law.
195. See *id.*; Administration of Estates, Distribution of Residuary Estate, pt. VI, § 49.
196. Akumadu, *supra* note 15, at 14. Less than five percent of Nigerians provide for the distribution of their property by will. See *id.*
197. See *Suberu v. Sunmonu*, 2 F.S.C. 33, 34 (1957) (Jibown, FJ.) (holding that a Yoruba widow was not entitled to inherit from her husband's estate because she herself was inherited by her husband's family); Abdulmalik Bappa Mahmud, *Succession under the Sharia in Nigeria*, NIG. CURRENT L. REV. 121, 131 (1982); Ebeku, *supra* note 27, at 49-50.
198. Mahmud, *supra* note 197, at 126.
199. *Id.*; Akumadu, *supra* note 15, at 15.
200. NIGERIA CONST. ch. II, §§ 17(3)(a), (e).
201. Akumadu, *supra* note 15, at 15; NIGERIAN PRACTICES 1995, *supra* note 192.
202. See LABOUR ACT §§ 55-58. Nurses and women in managerial positions are exempt from some of these provisions. See *id.*
203. U.S. DEPARTMENT OF STATE, NIGERIAN HUMAN RIGHTS PRACTICES, 1993 (1994) [hereinafter NIGERIAN PRACTICES 1993].
204. NIGERIA CONST. ch. II, §§ 17(3)(b)-(c).
205. LABOUR ACT § 54.
206. *Id.*
207. Akumadu, *supra* note 15, at 15.
208. *Id.*
209. *Id.*
210. *Id.*
211. NIGERIA CONST. § 17(3)(e).
212. UNITED NATIONS ECO COMMISSION FOR AFRICA, ADVANCES OF AFRICAN WOMEN: FORGING A STRATEGY FOR THE 1990s, NIGERIA 4.11 (1990).
213. UNFPA, *supra* note 5, at 53.

214. CRIM. CODE § 357. Under Nigerian law, a mistake regarding the woman's consent may be a defense to a charge of rape. However, it is unclear if the mistaken belief must be both honest and reasonable. See CRIM. CODE § 25; ISABELLA OKAGBUE, *THE REFORM OF SEXUAL OFFENCES IN NIGERIAN CRIMINAL LAW* 7 (1991).
215. CRIM. CODE § 357. Under the criminal code's definition of rape, the use of economic threats or the threat of social injury may vitiate a woman's consent. See OKAGBUE, *supra* note 214, at 7.
216. CRIM. CODE § 359. Attempted rape is punishable by 14 years of imprisonment, with or without caning. See *id.*
217. PEN. CODE §§ 282(1)(a)-(b), (c).
218. *Id.* § 282(1)(c). A woman's consent is vitiated by fear of "hurt," which is defined as the fear of bodily pain, disease or infirmity. See *id.* § 240. In addition, a woman who is intoxicated may be incapable of validly consenting to intercourse. See *id.* § 39(b).
219. CRIM. CODE § 358 (imposing a penalty of life imprisonment, with or without caning); PEN. CODE § 283 (imposing a penalty of life imprisonment, with or without a fine).
220. PEN. CODE § 282 (explanation) (stating that "[m]ere penetration is sufficient to constitute the sexual intercourse necessary to the offense of rape"); CRIM. CODE § 6 (defining "carnal knowledge" and "carnal connection"). Under the Criminal Code, males under the age of 12 are presumed incapable of sexual intercourse. See CRIM. CODE § 6.
221. OKAGBUE, *supra* note 214, at 6; PEN. CODE § 282 (using the term "sexual intercourse" to define rape), § 284 (using the term "carnal intercourse" to define "unnatural" sexual offences); see also FAKAYODE, *supra* note 121, at 430, ¶ 71 (defining "carnal knowledge" and "carnal connection").
222. PEN. CODE § 284. Section 214 of the criminal code contains a similar provision but also penalizes a woman who "permits a male person to have carnal knowledge of...her against the order of nature." CRIM. CODE § 214. Under both codes, conviction of an unnatural sexual offence is punishable by 14 years of imprisonment. See *id.* § 214.
223. Assault with intent to commit an unnatural offence is punishable by 14 years of imprisonment. See CRIM. CODE § 352.
224. CRIM. CODE §§ 353, 360. Under these provisions, indecent assault on a woman is punishable by two years of imprisonment, while indecent assault of a man is punishable by three years of imprisonment. See OKAGBUE, *supra* note 214, at 6.
225. PEN. CODE § 285. This provision criminalizes acts of "gross indecency" committed upon the person of another without that person's consent, or through the use of threats or force. See *id.* The offence is punishable by seven years of imprisonment, with or without a fine. Children under 16 years of age in certain relationships are presumed incapable of consenting for the purposes of this section. See *infra* text accompanying notes 254-59 (under the heading "*Sexual Offences against Minors*").
226. CRIM. CODE § 6.
227. PEN. CODE § 282(2).
228. OKAGBUE, *supra* note 214, at 9.
229. Akumadu, *supra* note 15, at 14.
230. PEN. CODE §§ 55(1)(d), 56. "Grievous hurt" is defined exclusively under the penal code to be: "emasculatio[n]; permanent deprivation of sight, hearing or speech; loss of a limb or permanent impairment to the use of a limb; permanent disfigurement of the head or face; the fracture or dislocation of a bone or tooth; or harm that is life-threatening, or which causes the victim to suffer for 20 days either incapacitated or in severe physical pain..." PEN. CODE § 241.
231. MATRIMONIAL CAUSES ACT §§ 5(2)(c), 16(1)(e); see also PEN. CODE § 241 (defining "grievous hurt"). The Act provides that a conviction for attempted murder or the infliction of grievous harm is "sufficient" evidence of marital behavior such that "the petitioner cannot reasonably be expected to live with the respondent."
232. See CRIM. CODE §§ 353, 360; PEN. CODE § 285. Under the criminal code, an indecent assault is defined to be an assault accompanied by an act that is "depraved, outrageous or scandalous[.] e.g., exposing the body or the male organ in public." FAKAYODE, *supra* note 121, at 71.
233. Indecent assault of a man is a felony offense punishable by three years of imprisonment while indecent assault of a woman is classified as a misdemeanor punishable by two years of imprisonment. See CRIM. CODE §§ 353, 360.
234. Planned Parenthood, *supra* note 4, tbl A.
235. Akumadu, *supra* note 15, app.
236. NIGERIAN PRACTICES 1993, *supra* note 203.
237. Adebajo, *supra* note 146, at 5.
238. NIGERIAN PRACTICES 1993, *supra* note 203; Adebajo, *supra* note 146, at 5, app IV.
239. Adebajo, *supra* note 146, at 8.
240. Akumadu, *supra* note 15, at 13.
241. VOICES, *supra* note 37 at 118.
242. NAT'L POLICY, *supra* note 86, at 14.
243. AGE OF MARRIAGE LAW [Chapter 6] §§ 2-4, 6 (Eastern Region 1956).
244. *Id.* § 3(1)(e); OBIORA, *supra* note 159, at 4. English common law doctrine set a minimum age for marriage at 14 for boys and 12 for girls. See Harrod v. Harrod, 69 E.R. 344, 349 (1954).
245. MARRIAGE ACT §§ 18-20, 48 (proscribing penalties for contravention of these provisions).
246. OBIORA, *supra* note 159, at 3-4. In the eastern states, the minimum age for customary marriages is set by law at 16. See Akumadu, *supra* note 15, at 12.
247. Sarah Y. Lai & Regan E. Ralph, *Female Sexual Autonomy and Human Rights*, 8 HARV. HUM. RTS. J. 201, 219 (1995).
248. NIGERIA CONST., 4th Sched., § 2(a).
249. UNFPA, *supra* note 4, at 4.
250. FEDERAL REPUBLIC OF NIGERIA, SOCIAL DEVELOPMENT POLICY FOR NIGERIA 21 (1989).
251. NIGERIAN EDUCATIONAL RESOURCE AND DEVELOPMENT COUNCIL, POPULATION EDUCATION DEPARTMENT, POPULATION AND FAMILY LIFE EDUCATION SUPPLEMENTARY TEACHER'S GUIDE ON INTEGRATED SCIENCE FOR JUNIOR SECONDARY SCHOOLS (1990).
252. *Id.*
253. NAT'L POLICY, *supra* note 86 at 22-23.
254. PEN. CODE § 39; see also PEN. CODE § 282(1)(b).
255. *Id.* § 285.
256. CRIM. CODE §§ 218, 221. Any prosecution for statutory rape under the criminal code must be brought within two months after the offense was committed. See *id.*
257. *Id.* §§ 218, 222. Attempted statutory rape of a girl under the age of 13 is punishable by imprisonment up to 14 years, with or without caning. See *id.*
258. *Id.* §§ 221, 222.
259. See PEN. CODE §§ 275, 276, 278, 281; CRIM. CODE §§ 219, 223, 224.