

Prohibition of Discriminatory Laws and Practices Against Women's Rights in Nigeria

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ABSTRACT

Nigeria has ratified several international and regional treaties; and other protocols in order to fulfill its obligation in promoting and protecting the rights of Nigerian women. However, women in Nigeria still face many discriminatory practices under the law. Nigeria is inherently patriarchal, this can be attributed to the influence of customs and various religions practiced in Nigeria. Women and girls are often victims of discriminatory practices by the state and the society which is mostly done by men.

The 1999 Constitution of the Federal Republic of Nigeria prohibits discrimination on the basis of gender. However, customary laws and religious laws continue to threaten and restrict women's rights; these factors have contributed significantly to the discrimination women face. In as much as the 1999 constitution of the Federal Republic of Nigeria and others laws have been promulgated to improve the status of women in Nigeria, still many laws and statues condone domestic violence against women and discriminate against women in Nigeria.

Keywords: Nigeria, women's rights, culture, religion, discrimination, statutes, Constitution

INTRODUCTION

Nigeria is signatory to many international and regional treaties focused on promoting the protection of the rights of women in Nigeria. The treaties include the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). The convention urges member states to condemn discrimination against women and put in place policies that eliminate discriminatory practices by localizing the equality of sexes in their various constitutions.

Despite the ratification of CEDAW and its protocol by Nigeria as a member party, under the Nigerian law, international treaties are not recognized as national laws except if domesticated by virtue of Section 12 of the 1999 Constitution of the Federal Republic of Nigeria. However, the CEDAW has persuasive influence on the Nigerian law; the court has the liberty to refer to it in his judgments. Many non-governmental organizations (NGOs) in Nigeria have used it as a basis of activism in holding the government responsible for the inertia in women's rights promotion and protection¹.

Furthermore, Nigeria has ratified and signed the African Charter on Human Rights and Peoples' Rights (African Charter) on the continental level. The Maputo Protocol on Women's Rights in Africa has also been signed and ratified by Nigeria. The African Charter has been domesticated into Nigerian law and it promotes women's rights in many of its articles. Article 3 of the Charter enjoins countries to combat discrimination against women through legislative, institutional and other means.

Nigeria practices a federal system of government with over 150 million populations with more than half are

¹ See CEDAW, "Statement on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women", reproduced in UN, IWRAW, Commonwealth, Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of all Forms of Discrimination against Women, London, 2000, 90.

women. The Nigerian society is inherently patriarchal this is mainly attributed to the influence of various religions, culture and customs in many part of Nigeria. Nigeria is made of 36 states of which 19 states are in the Northern part and 17 in the Southern part of Nigeria. Each of the states has different culture and traditions that are peculiar to the communities and regions. The country is made up of three major religions which include Christianity, Islam and African Traditional Religion (ATR). It is generally accepted that Islam is more dominate in the Northern Nigeria and Christianity in the Southern Nigeria and a small percentage practice the African Traditional Religion in Nigeria. Religion, tradition and culture influence human rights in Nigeria.

This article will show laws and statutes that discriminate against women in Nigeria despite the provision of the law in the 1999 Constitution of the Federal Republic of Nigeria. Some of these laws include some aspects of customary law practices, the labor Act, Sharia law and some constitutional provisions amongst others. And how religion, tradition and culture has been a tool to justify the violation of Nigerian women's rights in many areas such as education, marriage, inheritance, property, harmful gender stereotypes and violence.

Constitution

Discrimination against women is also reflected in citizenship under Section 26 of the 1999 Constitution of the Federal Republic of Nigeria that the president may confer Nigerian citizenship on any woman who is or who has been married to a citizen of Nigeria. Under this provision, the president cannot confer Nigerian citizenship to a man married to a Nigerian woman; he can only acquire citizenship by naturalization which is a much longer process. Whereas a foreign spouse, married to a Nigeria man become a citizen by mere registration².

Labor Act

Section 55 of the Labor Act prohibit the employment of women to work in a public at night with the exception under the provision of section 55 (7) women who are nurses and in management positions who are not manual laborers are permitted³. Also, 56 (1) of the Labor Act prevents women from engaging in any underground work in any mine. In addition, women are denied the opportunity to be accompanied by their spouses to their place employment or post of service. This provision is only applicable to women and not men⁴.

While by virtue of section 34 (1) of the Labor Act, men has the liberty to be accompanied by his family members which includes not exceeding two wives and children under the age of sixteen years (as he wishes) to his place of employment especially those who work in public service in Nigeria⁵. Also there are some civil service rules provisions that accentuate discrimination of women in certain aspect. For instance, by virtue of Rule 03303 of both Kano and Kaduna States provides that any woman civil servant whether married or unmarried who is about to undertake a training course of not more than six months duration shall undertake to refund in part or whole the cost of a course in the event that she gets pregnant during the course as it will interrupt the course⁶.

Police Act and other similar Para-Military services in Nigeria

Section 127 of the Police Act prevents married women to seek enlistment in the Nigeria police force. In addition, this section also renders a pregnant unmarried police woman to be relieved of her duty and she can only be reinstated by the approval of the Inspector General of Police⁷. In Regulation 124 of the Police Act, a woman police officer who is ready to get married must make an application to the Commissioner of Police for approval. Also in the Air Force Act, both men and women are referred to as 'airmen'. This term has been argued to be discriminatory⁸.

Likewise, the Nigerian Drug Law Enforcement Agency (NDLEA) Act, also accentuates discrimination of

² Section 26 of the 1999 Constitution of the Federal Republic of Nigeria.

³ Section 55 of the Labor Act

⁴ Section 56 (1) of the Labor Act

⁵ Section 34 (1) of the Labor Act

⁶ Rule 03303 of both Kano and Kaduna States

⁷ Section 127 of the Police Act

⁸ Regulation 124 of the Police Act

women in some of its regulations. For example under the provision Article 5(1) of the NDLEA Order 2002, all the female applicant shall be unmarried at the level of entry, and shall remain unmarried for a period of not less than two years upon enlistment⁹. Furthermore, by virtue of Article 5 (2) all unmarried female members of staff that is ready to marry must make an application to the Chairman or Chief Executive asking for permission and stating the details of the intended spouse¹⁰.

Sharia Law

Some provision of the Sharia codes accentuates discrimination against women. In Northern Nigeria, beating of the wife is not a crime so long that the beating does not inflict serious injury or grievous harmful. This situation is contended that is, one of the major reasons why most women in the Northern part of Nigeria decline to institute cases of assault and brutality against their husbands in the courts.

Criminal code and Penal code

By the provision of Section 360 of Criminal Code, indecent assault of a woman is misdemeanor punishable for two years imprisonment¹¹ as opposed to indecent assault of a man which is felony punishable for three years under section 353¹².

Section 55 of the Penal code allows a husband to chastise his wife for the purpose of correction in as much as it does not cause grievous harm to the person. Thus, under section 55 (1) (d) Penal code, it is not an offence for the husband to beat his wife so far there is no serious injury or grievous harm¹³. Under 241 of the Penal Code, serious injury or grievous harm includes facial disfiguration, tooth dislocation, bone fraction, inability to speak or hear, permanent loss of sight, derivation of any member or joint, emasculation, permanent impairing of the powers of any member or joint¹⁴. The penal code tolerates domestic violence against women. Marital or spousal rape wasn't a crime in Nigeria¹⁵ until the violence against persons (Prohibition) Act 2015 was formulated¹⁶.

In the case of *Eshugbayi Eleko v The Government of Nigeria*, it was held that customary law has been accepted as obligatory by members of the community has accepted as unwritten customs and traditions¹⁷. Many communities in Nigeria have customary practices that discriminate against women in Nigeria. For example, a woman cannot inherit her husband's estate but she may be inherited alongside with the estate of her husband by another male relative in the family¹⁸. She is perceived to be a property and cannot own herself¹⁹. While in some customs, a male child is superior to a female child in many matters such as inheritance. In the case where is the deceased man has no son who is usually referred to as an heir, the closest male relative of the deceased man inherit his property instead of his daughters. However, in the Yoruba customary law and Islamic

⁹ Article 5(1) of the Nigerian Drug Law Enforcement Agency (NDLEA) Order 2002

¹⁰ Article 5 (2) of the Nigerian Drug Law Enforcement Agency (NDLEA) Act

¹¹ Section 360 of Criminal Code

¹² Section 353 of Criminal Code

¹³ Section 55 of the Penal code

¹⁴ Section 241 of the Penal code

¹⁵ Social, religious and cultural norms are the justification/basis that marital rape is not a crime in Nigeria. For example, a wife is the property of the man who paid the bride price. Oby Nwankwo 'Effectiveness of Legislation Enacted to Address VAW in Nigeria' (30 May 2008) <

http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_Oby%20Nwankwo_.pdf accessed 11 July 2018

¹⁶ However, there are divergent academic views on the criminalization of spousal/marital rape by the VAPP Act.

¹⁷ *Eshugbayi Eleko v The Government of Nigeria* [1931] A.C. 662

¹⁸ Generally, see Olutunji Oyelade, 'Women's Right in Africa: Myth or reality' (2006) 9(1) University of Benin Law Journal 100

¹⁹ Justice Otabor Olubor, 'The Legal Rights of the Vulnerable Groups vis-a-vis Customary Practices' A paper delivered by Justice Olubor, President Customary Court of Appeal, Edo State at the Refresher Course for Judges and Kadis from 23-27 March, 2009.

<<http://www.nigerianlawguru.com/articles/customary%20law%20and%20procedure/THE%20LEGAL%20RIGHTS%20OF%20THE%20VULNERABLE%20GROUPS%20VIS%20A%20VIS%20CUSTOMARY%20PRACTICES.pdf> > accessed 11 July 2018.

Arguably, this is no longer the prevailing view in most communities in Nigeria. In many communities in Nigeria, women can own property, Ekhaton

law, a daughter can inherit her father's property²⁰. In some communities in Nigeria, daughters inherit land only where there are no male surviving brothers while in other communities, where the deceased has no surviving sons, his daughters are not allowed to get married and are mandated to remain in their father's house to procreate in order to preserve the direct bloodline²¹.

Marriage Act

By the provision of Section 18 of the Marriage Act the written consent of the father of either party to an intended marriage is required if he or she is under 21 years of age. The written consent of the mother is required only if the father is dead or of unsound mind or absent from Nigeria. This provision is discriminatory to the mother²².

Immigration Act

The immigration Act did not explicitly provide for discrimination. However, married women applying for Nigerian passports are required to submit a written consent from their husbands. Also, a person whose mother is a Nigerian but whose father is a foreigner is not entitled to a Nigerian passport.

Customary practices/law

Many customary practices/ law in Nigeria discriminate against women. For example, the customary law of some communities denies a woman the rights to own property as women are regarded as property to be possessed by a man. However, this customary practice is not applicable in all the regions in Nigeria. In the Southern part of Nigeria for example, many women own property distinct or separate from their spouses.

As regards, the right to own property, women married under the customary law have little or no right on their spouse property. In this practice, women are entitled to whatever the husband give them as gifts inter vivos. Whereas women married under the Marriage Act are protected by the Act, they are entitled to a share in the matrimonial property including the husband's property, the jointly owned and acquired property.

Taxation Law

According to the provision of the Nigerian Tax Law only married men enjoy tax exemption because he is considered as the bread winner of the family with dependants to care for. However, women such as single mothers with dependants who feeds for her family does not enjoy this exemption. This unequal taxation is contrary to the provision of Article 7 of the ICESCR and Article 2(1) of the CEDAW which guarantees equal pay for equal work as well as equal treatment for both men and women²³.

Extant Reforms

Many reforms have been initiated by the government of Nigeria, Non-Governmental Organizations (NGOs) and international bodies to address the issues of women. NGOs have initiated many conferences, trainings and seminars to enlightening women about their rights and to seek redress if their rights are violated. Likewise, the government has enacted laws to protect and promote the rights of women in Nigeria. For example, Enugu state in Nigeria enacted the Prohibition of Infringement of a Widower's Fundamental Rights Law 2001 to protect women from discriminatory customary inheritance practices.

Since the transition of Nigeria from a military rule to democracy, the court has been quite activist on

²⁰ Solomon Ukhuegbe and Anthony Ewere, 'Gender-Based Violence/Social-Cultural Discrimination in Nigeria and the fate of the Gender and Equal Opportunities Bill 2015' (2016). A Paper presented at the International Conference on Strengthening Policy Implementation in a Contemporary World at the University of Benin, Nigeria

²¹ Ngozi Odiaka, 'The concept of gender justice and women's rights in Nigeria: Addressing the missing link' (2013) 2 (1) Journal of Sustainable Development Law and Policy 190, 201

²² Section 18 of the Marriage Act

²³ Article 7 of International Convention on Economic, Social and Cultural Rights (ICESCR) and Article 2 (1) of the Convention on the Elimination of all Forms of Discrimination against women (CEDAW).

discriminatory laws against women. For example in the case of *Wela v Attorney General of the Federation*²⁴ held that Regulation 124 of the Police Act to be illegal and unconstitutional. The Police Act provides a woman police who is desirous of getting marry has to make a written application to the Commissioner of Police for the state command in which she is serving. She is expected to give details of the intended spouse including his name, address and occupation. She will given approval if the intended spouse as met the requirement of being person of good character and the woman must have served the force for a period of not less than three years. In this case, the court relied on the provision of the African Charter on Human and Peoples' Rights (ACHPR) and the Nigeria constitution to nullify this provision of the Police Act.

A similar decision was reached in the case of *Dr. (Mrs.) Priye Iyalla-Amadi v Nigerian Immigration Service (NIS)*. In *Mojekwu v Ejikeme*, the court in Nigeria also relied on the African Charter on Human and Peoples' Rights (ACHPR) to nullify a customary practice that denies daughters of a deceased man from inheriting from his property²⁵ and the case of *Mrs. Sunday Esther & Ors v Victor Meneyorwika & Ors* the court also relied on the ACHPR to hold a group of Nigerian police liable for injuries inflicted on the plaintiff. The plaintiff was awarded the sum of 40 million Naira which is equivalent to about \$250,000.

Furthermore, the Nigerian court has also relied on international conventions, ACPHR and the Constitution of Nigeria in adjudicating cases of discriminatory practices. In the case of *Timothy v Oforka*, the Nigerian court of Appeal held that no law or custom that should prevail over the constitution no matter the circumstances. In *Yetunde Tolani v Kwara State Judicial Service Commission & Ors*, the Court of Appeal held that the termination of the appointment of a female magistrate due to her single status was illegal and ordered for her immediate reinstatement.

The ratification of international treaty, the African Charter on Human and Peoples' Rights and the Maputo Protocol on the Rights of women in Africa has aided Nigeria in combating discriminatory practices against women. The African Charter has been domesticated into the Nigerian law and it promotes the rights of women. Article 3 of the charter enjoins member states to combat discrimination against women through legislative, institutional and other means.

Tradition, Culture and Religion factors for gender discrimination in Nigeria

The 1999 Constitution of Nigeria prohibits discrimination against women on the basis of gender. However, customary laws and religious laws continue to threaten and restrict women's rights; these factors have contributed significantly to the discrimination women face²⁶. In traditional African societies like Nigeria, tradition and culture has a pervasive influence on how women are treated. Many Nigerian women have been unable to realize their full potential due to cultural beliefs and practices. It is, therefore, no surprise that all discriminations against women tend to seek justification in cultural moves, beliefs, and practices.

In Nigeria, culture and religion determines societal beliefs, norms and attitudes towards women despite the provision of the constitution, laws and international treaties that protects the rights of women. Religious, traditions and cultural norms are forces that influence women's rights in Nigeria. Religions in the world share a universal interest and tradition. The early religious writing formulated moral codes of conduct which were eventually ratified and incorporated into international law in the twentieth century. Culture on the other hand recognizes human rights and to a large extent affected the promotion and protection of women's rights. However religion, tradition and culture has been a tool to justify the violation of Nigerian women's rights in

²⁴ *Wela v Attorney General of the Federation* (unreported) Suit No: FHC/IKJ/CS/M128/2010

²⁵ In *Mojekwu v Ejikeme*, Justice Niki Tobi stated thus: "Nigeria is an egalitarian society where the civilized society does not discriminate against women. However, there are customs, all over which discriminate against the women folk, which regard them as inferior to the men folk. That should not be so as all human beings, male and female are born into a free world and are expected to participate freely without any inhibition on grounds of sex. Thus, any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy. The

Oli-ekpe custom, which permits the son of the brother of a deceased person to inherit his property to the exclusion of his female child, is discriminatory and therefore inconsistent with the doctrine of equity. (Ukhun & Inegbedion 2005:143-144)

²⁶ Obaoye, Justina Kehinde, and Li Shouping. "Gender discrimination against Women and discriminatory law in Nigeria." (2021).

many areas such as education, marriage, inheritance, property, harmful gender stereotypes and violence.

Inheritance and Widowhood

The Nigerian law on testate inheritance/succession includes the Wills Act and its Amendments (1837, 1852); The Wills Law Western Nigeria (1987). Succession Law Edict, 1987 of old Anambra State as amended and applicable to Enugu and Ebonyi States²⁷. These statute is only applicable to women who are married under the customary law but in most regions across the country, customary law deprive women the rights to equal rights of inheritance as with men. Women are denied legal right or granted limited ownership to property or inherit land. In the North-East Nigeria, women own only 4% of land and just over 10% of land ownership in the South-East and South-South. Under the Nigerian civil law, women are entitled to equal rights to inheritance but certain customary laws stipulate that only men have the rights to own land²⁸. In the case of *Nezianya v. Okagbue*²⁹ the court held that under the native law and custom of Onitsha, a widow in possession of her deceased husband property does not give her the right to own the property and she cannot deal with the property without the consent of the husband's family. Further if a husbands dies without a male child, the property of the deceased is inherited by his family and his female children do not have the right to ownership of the property, according to custom. Also, in the case of *Nzekwu v Nzekwu*³⁰, the Supreme Court of Nigeria restated the principle that the consent of the family is needed by a widow who is dealing with the property of her deceased husband and she cannot by efflux ion of time claim the property as her own without consent. She has, however, a right to occupy the building or part of it during her lifetime, but this is subject to her good behavior. Also, in the case of *Onwuchekwa v Onwuchekwa*³¹ the Court of Appeal refused to reject as repugnant a custom in which a husband is said to own the wife along with her properties. In that custom a women is equate to a property which is form of gender discrimination in itself.

The supreme court of Nigeria has been at the fore front of holding that discriminatory practices and laws against women are illegal and unconstitutional. In the case of *Onyibor Anekwe & Anor v Mrs. Maria Nweke*³² where a widow was denied inheritance to her husband's property because she had no male child for the deceased husband. The issue in this case was whether the custom in Awka, Anambra state in Nigeria that denies a woman the rights to her decease husband or father's property is repugnant to natural justice, equity and good conscience. It was held by the Supreme court per Justice Ngwuta that the custom of the Awka people of Anambra state is repugnant to natural justice, equity and good conscience because the custom pleaded and relied on by the appellant is barbaric which ought to be abolished. Also, Justice Ogunbiyi posited thus: "I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in very strong terms...It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society"³³.

There were criticisms of the case of *Anekwe v Nweke* that the court did not rely on the provision of the constitution for non-discrimination, right to property and right to human dignity³⁴.

A similar decision was also reached by the Supreme Court in the case *Mrs. Lois Chituru Ukeje & Anor v Mrs. Gladys Ada Ukeje*³⁵. In this case the court relied on the provision of the constitution for non-discrimination/equality for the basis of its judgment. One of the major issue in this case was whether the Igbo customary law/ practices which denies children born out of wedlock by a decease man has no rights to inheritance of their deceased father estate or property is unconstitutional. Justice Rhodes Vivour gave the lead

²⁷ The Wills Act of 1837 does not place any disability on widows with regards to their right to inherit property under testamentary disposition

²⁸ JK Obaoye, L Shouping Gender discrimination against women and discriminatory law in Nigeria- 2021 - thelawbrigade.com

²⁹ *Nezianya v. Okagbue* (1963) 1 All NLR 352

³⁰ *Nzekwu v Nzekwu* (1989) 2 NWLR 373

³¹ *Onwuchekwa v Onwuchekwa* (1991) 5 NWLR (PT 194)739

³² In *Onyibor Anekwe & Anor v Mrs Maria Nweke*(2014) All FWLR (Pt 739) 1154

³³ Suit No. SC. 129/2013 (2014) LPELR – 22697 (SC).

³⁴ Anthony Diala, 'A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria's southern states' (2018) 18 (1) African Human Rights Law Journal 100

³⁵ *Ukeje v Ukeje* (2014) LPELR – 22724 (SC) Electronic Law Reports

judgment in agreement with the others Justices of the Supreme Court that no matter the circumstance of the birth of a female child she is not deprived inheritance of her father's estate. Furthermore, the Igbo customary law which denies a girl child from inheritance is contrary to the provision of section 42 (1) and (2) of the constitution which guarantees fundamental human rights for every Nigerian. This discriminatory customary law is void and its conflict with the provision of the constitution.

Also, in the case of *Muojekwu v. Ejikeme*³⁶, the Court of Appeal held that a female child can and have the right to inherit from the deceased father's estate in Igbo land which is in the Eastern part of Nigeria without the performance of the *Nrachi* ceremony. *Nrachi* is a traditional ceremony where one of the female children of the deceased stays unmarried for the rest of her life and she is expected to raise male children to succeed the father. After the daughter has fulfilled this obligation to her family she assumes the position of a man in her father's house. As regards this case, the court took the liberty to interpret the constitutional nature of freedom from discrimination. The court held that by Section 42 (1) of the Constitution of the Federal Republic of Nigeria, 1999 a citizen of Nigeria community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person, be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions which citizens of Nigeria of other communities, ethnic groups, placed of origin, sex, religious or political opinions are not made subject. Consequently, the court held that such a custom clearly discriminated against the daughter of the deceased who did not perform the ceremony and is therefore unconstitutional in the light of the provisions of section 42 of the Constitution of the Federal Republic of Nigeria, 1999.

Among the Tiv, Idoma, Etulo, Igala of Benue State, Delta State, Edo State and some part of Northern part of Nigeria, daughters are deprived from inheriting their Parents properties. This practice denies women the rights to inheritance irrespective of the marriage or economic status of the female children. In the Western part, women are referred to as property of a man or chattel and have no rights to the inheritance of the husband.

Under the Islam (Sharia Law) and the Quran, women's rights to acquire or utilize property through purchase or inheritance are recognized. However, such rights under the Islamic legal system are limited. For example, a daughter is entitled to half of her brother's share of inheritance and she has absolute power over whatever she gets by her labor or inheritance. As a Muslim wife, a woman is not obligated to cater for the family except she voluntarily does but it is the full responsibility of the man to do. Thus, this is the reason why a daughter from a Muslim family does not inherit property on equal terms with the male counterpart. In the Northern Nigeria which is predominated by Islam, the Sharia law is strictly followed except in cases where customs superimpose the provision of the Quran.

While Christianity on the other hand which is predominate in the Southern part of Nigeria. The religious laws are well documented in the Holy Bible which contains direct injunctions and instructions from God. The Bible contains laws both in the old and new testaments. In the old testaments there is law referred to as the Torah which literally mean the Law of God in the Hebrew word, the torah recognizes equality among the creation which includes male and female. Critical reviews by many scholars shows that the Bible support women's rights to property and inheritance. For example, there is no place in the scripture, where women have been deprived of their rights to property or referred to as property or chattel owned by a man. In Nigeria, Christian leaders condemn discriminatory practices and laws that impede women access to ownership rights. However, customs and traditions prevail over laws of intestate succession as Christian laws are viewed by many to be foreign to the Nigerian Law.

The Nigerian society both historical and contemporary has been dotted with peculiar cultural, tradition and religion practices that potently harmful to women's emancipation. Women are often denied access to inheritance or ownership of land in many customary and traditional practices in Nigeria. Unfortunately, the Nigerian constitution did not specifically make provision for the protection of widows.

Education

Nigeria is a highly patriarchal society with ideological construct that sees women primarily as wives, mothers,

³⁶ *Muojekwu v. Ejikeme* (2000) 5 NWLR 403

domestic workers and secondary adjuncts to men. Gender stereotype and practices is mostly derived from religion which continues to affect the lives, social aspirations and development prospects of educated Nigerian women. Despite the 1999 constitution to protect the rights of women and girls to equal education, they are persistently affected by culture and religion. The government has taken the necessary steps also to engage traditional and religious leaders on the importance of eradicating contrary to cultural practices from their communities. There are also considerable gender disparities between boys' and girls' education, especially in the older generation; the younger persons are more likely to be literate than the older ones.

Tradition, custom, religion and motherhood instincts are some factors that influence gender bias in education sector in Nigeria. Cultural and social belief and religion practices prevent girls from benefiting from educational opportunities to the same extent as boys. For example, in the Northern Nigeria girls are deprived opportunity to go to school compared to boys while in some community the boys are viewed as superior to girl child thus in a situation where there is limited funds or poverty boys are rather sent to school to be educated instead of the girls because it is believed that the girl child will be given up for marriage eventually and get low pay jobs. The Nigerian tradition has been seen as a tradition that attaches higher value to men than women, whose place is believed to be the kitchen³⁷. The imbalance in boys' and girls' participation in schooling can be linked to the long held belief in male superiority and female subordination³⁸.

Education is seen in some societies as a fear of change and now globalization or the fear of losing cultural identity.

Violence against women

Due to the patriarchy belief and practice in Nigeria, some part of the country treat women as subordinate to men. Thus, they are often subjected to various forms of violence ranging from rape, battering, trafficking and even murder. There have been various report of these violence acts suffered by women featured in the media and documented reports as well.

Many Nigerian women hardly talk about domestic violence because it is accepted to be part of marriage which is mostly derived from religion and traditional custom of many societies and the stigmatization with reporting such cases. In a study conducted in Guma and Makurdi Local Government Areas of Benue State, Nigeria the report shows that domestic violence is a common practice that seems to be accepted by men as normal in order to keep the women under control³⁹. In the Efik of south-south geo-political zone of Nigeria, wife battering by men is a sign of authority over married women. This practice of physical violence is common among married couples, boyfriends and girl friends⁴⁰. This form of violence is contrary to the provision of the constitution.

Early marriage is another form of violence against women where a girl child is giving out for marriage at a tender age, mostly when the girls knows nothing about their rights. Often times these female children are subjected to various forms of violence after marriage. In Nigeria and in some part of the world, a girl child is given out to early marriage has soon as she is delivered in form of child betrothal. The early marriage is done usually without the consent of the girl child and she is forced into marriage, as a result some of the girls are withdrawn from school or have no access to education. There are several cases in which parents have forced their daughters into marriages against their wishes either due to cultural, social, economic or political reasons.

In Northern part of Nigeria, the average for marriage is 11 years⁴¹. A report by the National Demographic Health Survey (NDHS) revealed that in 26.5 % of couple there is a wide age difference of about 15years between husband and wife⁴². This age difference is a factor for women's powerlessness with respect to decision

³⁷ Nmadu, T. (2000). "On Our Feet: Women in Grass root Development", in *Journal of Women in Academics*, Vol. 1 No 1, Sept. 2000, JOWACS Pp. 165-171

³⁸ Awake Charles, Aioli Flayed, Benedict Eminem and Tombola Adel ore (2008). "Impact of decentralization and Privatization on the Quality of Education in Sub-Saharan Africa: The Nigerian Experience." *European Journal of Social Sciences*, Volume 7, Number 1. University of Ibadan, Nigeria.

³⁹ Angye, et al., 2004.

⁴⁰ Angye, et al., 2004.

⁴¹ United Nations International Children's Emergency Fund (UNICEF) 2001

⁴² National Demographic Health Survey (NDHS) 1998

making in sexuality and reproductive health. For a young married adolescent girl with a much older husband have no place to negotiate or make decisions about child bearing or birth control and unable to protect herself from exploitation and maltreatment by her older husband.

The most common form of violence against women is rape and sexual harassment or assault. This is done through direct violence or forceful intercourse by a male without the consent of the female. This practice also occurs amongst married couples as well. Pursuant to section 357 of the criminal code, rape is defined as a person having unlawful carnal knowledge of a woman or girl without her consent obtained by force, fear, threat, intimidation of any kind or by any means of false and fraudulent representation as to the nature of the act, or impersonating the husband in the case of a married woman such a person will be guilty of the crime of rape⁴³. Rape is contrary to the provision of section 37 of the 1999 constitution of the Federal Republic of Nigeria that denies the fundamental rights of women and girls to private and family life. Majority of the cases of rape are unreported because of social stigmatization that many who reported has gone through in the society and the burden of proof. For instance, to prove a case of rape, the testimony of the victim must be corroborated. Indeed a person cannot be convicted of any of the sexual offences upon the uncorroborated evidence of one witness. Thus, section 179(5) of the evidence Act states thus: it is not the rule of law that an accused person in a charge of rape cannot be convicted on uncorroborated evidence of the applicant. The proper direction is that it is not safe to convict on the uncorroborated evidence of the applicant. The court may after paying due attention to the warning. Nevertheless convict the accused person if it is satisfied with the truth of her evidence. Due to lack of corroboration, many perpetrators of the rape have been acquitted while the victims who are usually women become double jeopardized and traumatized.

In some societies, the custom makes widows to be subjected to physical and psychological violence and torture after the death of the husband. For example, by shaving their hair, drinking the water used to bath the corpse of her deceased husband or even sleep with the corpse alone in a locked room over night to prove her innocence. In the Eastern part of Nigeria, women are subjected to dehumanizing rites upon the death of the husbands. For example some customs requires the woman not comb her hair, take bath, and change her dress or the compound for a certain period of time.

Out of thirty two recommendations on Nigeria by the working group on the Universal Periodic Review Seventeenth session held in Geneva, 21 October- 1 November 2013, three recommendations were on repeal laws that allow violence and discrimination against women eliminate existing harmful traditional practices and adopt all necessary measures to provide full protection of children, girls, women, and widows from the effects of these traditions were accepted. In Nigeria, it is a state priority to address violence against women through public policies. Efforts are being made to consolidate and strengthen policies and programs which will eliminate violence against women and provide support for victims⁴⁴. A product of these efforts is the violence against persons Bill being considered in the National assembly. Section 42 of the 1999 Constitution of the Federal Republic of Nigeria guarantees and protects the rights of women and minority to freedom from discrimination under the fundamental rights provisions of the Constitution⁴⁵. Under this provision, a citizen of Nigeria shall not be subjected to discrimination based on sex. Under section 46 (1) of the Constitution, women who are victims of violence and discrimination may apply to a High Court for redress by way of fundamental rights enforcement proceedings in the event of the application of any law that allows violence and discrimination against them. Nigerian courts have on several occasions declared null and void all laws and customs that are not in the spirit of the Constitution in this regard⁴⁶. The court has played activism role by pronouncing on the legality of some discriminatory laws against women. The Nigerian court has relied on the provisions of the 1999 constitution of the Federal Republic of Nigeria, the Convention on the Elimination of all forms of Discrimination against women, the African charter on Human and Peoples' Rights, repugnancy doctrine to nullify some of the discriminatory practices. The repugnancy doctrine was used by the court in cases where customary law needed to pass a general test of validity as being repugnant to natural justice,

⁴³ 357 of the criminal code, 2004

⁴⁴ United Nation General Assembly working group on the Universal Periodic Review Seventeenth session held in Geneva, 21 October- 1 November 2013

⁴⁵ Section 42 of the 1999 Constitution of the Federal Republic of Nigeria

⁴⁶ Section 46 of the 1999 Constitution of the Federal Republic of Nigeria

equity and good conscience either directly or indirectly by implication with any law for the time being in force⁴⁷. These decisions had minimal impact on protection and promotion of women rights in the country as many scholars believed it was an attempt to downgrade the customs of the people⁴⁸.

In conclusion, many laws continue to institutionalize second class status for women and girls with regard to nationality, citizenship, health, education, marital rights, employment rights, parental rights, inheritance and property rights. The onus of protection of such rights falls on the States to ensure that laws are applied to protect women and such laws have actual impact on women's lives. States are under an obligation to enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women. Crucially States are under an obligation to ensure the "reform of existing discriminatory laws and practices in order to promote and protect the rights of women. However, despite the recognition of women's rights, the enforcement of these rights have not been fully achieved and this has been a major concern for protection and enjoyment of fundamental human rights by women.

It is recommended that a strategic campaign on the protection of the rights of women be prioritized in all states across the Federal Republic of Nigeria. Anyone who violates the rights of women should be punished under the law regardless of the provision of the religious law and customary law such as the sharia law, penal and criminal code.

Ratification of the International treaty such as Convention on the Elimination of all forms of discrimination against women (CEDAW) and regional treaties such as the African Charter and the Maputo Protocol on the Rights of women in African is not enough to address the issues of women in Nigeria; further steps should be taken to domesticate the treaties in order to have a significant impact. The government of Nigeria should prioritize the protection of women's rights and fulfill its obligations to ensure the prohibition of discriminatory practices against women.

Patriarchy system should be addressed thoroughly. Patriarchy belief and practice in Nigeria is a major underlining factor that has contributed immensely to discriminatory practices which often subjected women to various forms of violence ranging from rape, battering, sexual harassment, trafficking, even murder and early marriage. This system has also limited a large sum of Nigerian women from enjoying women's rights with regard to nationality, citizenship, health, education, marital rights, employment rights, parental rights, inheritance and property rights.

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⁴⁷ Nwudego Chinwuba 'Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary' (2015) 29(3) International Journal of Law, Policy and the Family 341, 342.

⁴⁸ Section 21 of the constitution states that the Nigerian state shall protect, preserve and promote Nigerian culture which enhances human dignity.

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