

DISCRIMINATION AGAINST WOMEN: GENDER GAPS IN NIGERIA'S STATUTES AND INSTITUTIONAL POLICIES

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Abstract

The Nigerian population is largely tilted in favour of the female gender as opposed to the male population. Yet women and the girl-child have remained the most vulnerable group due to entrenched systematic practices and laws which impose severe restrictions and denial of their basic human rights. The findings of this study reveals that although anti-discriminatory laws exist in the statute books, the problem is implementation and enforcement. Nigeria is a member of United Nations and signatory to major treaties against discrimination and violence against women. Yet, discrimination and marginalisation of women in economic development and in social and political spaces is rife. Being the most vulnerable group in the society, Nigerian women still suffer as they are considered and treated as property in some cultures and as second class citizens due to the systemic discrimination they face on all front. The fact that these infringements are endorsed legally and institutionalised makes the situation even more dire. Using the doctrinal research methodology, the author found that Nigerian women continue to groan under the burden of marginalisation and discrimination at

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an era when their counterparts in other parts of the world are reaping the dividends of the Beijing Conference of 1975, which represents a major turning point for women's right and liberties globally. For example, Focusing on some of these repressive and discriminatory laws as well as their impact on women in Nigeria, the paper recommends inter alia, a repeal of these laws and customs towards achieving gender parity in the interest of social justice.

Keywords: Gender Discrimination, Gender Parity, Women Rights, Human Rights, Child Rights

1.1 Introduction

Nigeria is a federal state of over 200 million people, with women making more than half of the population, according to recent statistics. Nigeria's legal system is pluralistic, consisting of the Common Law, Customary Law, Islamic Law (Sharia) and Statutory Law. Customary law prevails in the south, while Islamic law is widespread in many northern states. Nigerian society is inherently patriarchal, which is largely due to the influence of different religions and customs in many parts of the country. In this clime, women are seen as the "weaker sex" and discriminatory practices by the state and society (especially by men) are tolerated³.

It has been argued that the traditions and culture of each society determine the values and patterns of behavior of individuals and society, a culture that attributes one sex to superiority over the other exposes the perceived inferior sex to various forms of discrimination⁴. Commenting on the interference of culture on human rights as it relates to women, Ibidapo-Obe expressed the view that:

³ E. Alemika 'Family Practices and Violations of the Rights of Women' (2010)8 *University of Maiduguri Law Journal* 25-38

⁴ J. Ngwankwe 'Realising Women's Economic and Cultural Rights: Challenges and Strategies in Nigeria' (2012) <<http://www.serac.org/Publications/NGWAKWE.pdf>> accessed 22 May 2022

human rights is flavoured by the culture within which it is to be invoked...the perception of human rights is conditioned, in space and time, by a combination of historical, political, economic, social, cultural and religious factors.

It is noteworthy that discrimination against women is endemic and was widespread in ancient societies such as Rome, Athens and Africa, among others. Unfortunately, Nigeria still suffer women as they are considered and treated as property in some cultures⁵. Therefore, women are among the most vulnerable groups in Nigeria due to the systemic discrimination they face on all fronts⁶.

This paper seeks to critically examine some aspects of the laws, policies, institutions, customs and traditions considered as being detrimental to the global efforts to end gender discrimination for their emphasises and reinforcement of discrimination against the Nigerian women.

1.2 Discriminatory Policies and Practices against Nigerian Women

Many Nigerian laws, policies, and customary practices continue to perpetuate discrimination against women. Some of these laws include some aspects of common law practice, labour law, Sharia law and some constitutional provisions, among others.

⁵ Cited in Eghosa Ekhatör 'Women and the Law in Nigeria: A Reappraisal' (2015) (16) (2) *Journal of International Women's Studies* 285

⁶ J.O. 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%20-%20A-VIS%20CUSTOMARY%20PRACTICES.pdf>> accessed 17 June 2021

1.2.1. Labour-Related Issues

While basic international human rights norms and laws such as the United Nations (UN) Universal Declaration of Human Rights (UDHR) promote and protect the right of every individual to employment without discrimination on the basis of gender or any other primordial consideration, the labour law works against the interest of the female gender. According to Section 55(1) of Labour Act, a woman may not be employed as a night worker in any public, agricultural enterprise, or mine except for nurses and women in executive management positions⁷. In addition, women are denied the opportunity to be accompanied by their spouses to their place of work or post⁸. This restriction does not apply to men particularly those in public service, as they may be accompanied to their place of work by family members (no more than two wives and minor children) as he wishes to take with him⁹.

There are also some civil service regulations which institutionalise discrimination against women. For example, Rule 03303 of the Kano and Kaduna Code of Officials states that any officer, whether married or single, who is about to complete a training course of not more than six months in duration shall be required to make an agreement covering the entire period or reimburse part of the course costs if her course is interrupted because of pregnancy.

1.2.2 Discrimination in the Police Force and Other Similar Para-Military Services

Section 127 of the Police Act forbids married women from applying to join the Nigerian Police. According to this provision, if an unmarried police woman becomes pregnant, she will be dismissed from the police force.

⁷ Section 55(7), 56 (1) Labour Act

⁸ M.O.A. Ashiru 'A Consideration of Nigeria Laws which are Gender Insensitive: the Female Gender in Focus' (2010) (1) (1) *University of Benin Journal of Private and Property Law*, 90-110.

⁹ Section 34(1) Labour Act

Similarly, a policewoman wishing to marry must first apply in writing to the Inspector General of Police for permission¹⁰.

The National Drug Law Enforcement Agency Act (NDLEA) also emphasises discrimination against women in some of its regulations. For instance, the Act stipulates that all female applicants must be unmarried at the time of entry and remain unmarried for a period of at least two years during enlistment¹¹. In addition, all single female employees wishing to marry must submit a written application to the Chief Executive for permission, and providing the details of the intended spouse¹².

Moreover, the Air Force Act use of the word 'airmen' in reference to both female and male officers, is discriminatory as it fails to recognise the female airforce officer as a distinct gender.

1.2.3 Discriminatory Sexual Violence Laws

There are three variants of penal codes in Nigeria namely the penal code in the southern part, the Sharia penal code which applies in about 12 states in the northern part of Nigeria and the penal code which applies to the generality of the 19 northern States. Gender based violence as it relates to the woman, refers to violence any act that causes sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life¹³. Female rape is a major scourge that plagues Nigerian society and one of the most underreported crimes in Nigeria. This is due to the associated social stigma in Nigeria¹⁴. It is mainly perpetrated by men against women.

¹⁰ Section 124 Police Act

¹¹ Section 5(1) National Drug Law Enforcement Agency Act

¹² Section 5(2) Ibid

¹³ See Article 113 of the Beijing Platform for Action

¹⁴ E.E. O. Alemika and E.I. Alemika 'Criminal Law Provisions on Sexual Violence and Deviance in Nigeria' (2005) *University of Jos Online Repository*. <<http://dspace.unijos.edu.ng/bitstream/10485/1993/3/criminal%20law%20provisions%20on%20sexualviolence0001.pdf>> accessed 9 May 2022

Section 357 of the Criminal Code Act provides as follows:

Any person who has unlawful carnal knowledge of a woman or a girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by impersonating her husband, is guilty of an offence which is called rape.

A main barrier in rape cases as far as the Nigerian legal system is the rules of evidence which are tailored against the victims' interest in courts. For example, Section 211 of the Evidence Act states thus:

When a man is prosecuted for rape or for attempt to commit rape or for indecent assault, it may be shown that the woman against whom the offence is alleged to have been committed was of a generally immoral character, although she is not cross-examined on the subject; the woman may in such a case be asked whether she has a connection with other men, but her answer cannot be contradicted and she may also be asked whether she had connection on other occasions with the prisoner, and if she denies it may be contradicted.

This passage builds on the old English common law dictum that the general bad character of the prosecutor in relation to sexual morals is relevant not only to her credibility as a witness but also to the matter¹⁵.

The Penal Code contains provisions similar to the Penal Code in relation to the crime of rape in Nigeria. However, in Nigeria a husband cannot be guilty of the crime of "raping" his wife. This is because Section 6 of the Criminal Code defines unlawful carnal knowledge as sexual intercourse not taking place between husband and wife. The basis of this law is hinged on the cultural and religious background of Nigerian society. In addition, it can also be located in the old English common law. In the case of *R v. Roberts*¹⁶, the

¹⁵ T.A. Aguda, *Law and Practice Relating to Evidence in Nigeria* (2nd edn Lagos: MIJ Professional Publishers, 1998)

¹⁶ [1966] Criminal Law Reports 188

court ruled that the condition of the marriage implies that the wife gave consent to her husband having intercourse with her for the duration of the marriage; she cannot unilaterally withdraw. Common law exceptions (also applicable in Nigeria) are cases:

- (a) where there is a divorce decree,
- (b) when the parties live apart due to a court-ordered separation,
- (c) when the husband has agreed not to return to the wife,
- (d) when one of the parties has filed for or initiated divorce proceedings,
- (e) when there is a separation order agreed between the parties, and
- (f) when there is a court prohibition on contact with the wife.

This provision contradicts the current global trend for other jurisdictions which legislates against spousal rape. It also contradicts a variety of international treaties Nigeria is a party to, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights and the Protocol on Women's Rights in Africa, among others.

A husband cannot be guilty of marital rape, as far as the Sharia Penal Code is concerned. Section 127 of the Zamfara harmonised Sharia Code stipulates thus:

A man is said to commit rape if he has sexual intercourse with a woman in any of the following circumstances:

- (a) against her will*
- (b) without her consent*
- (c) when her consent has been obtained by putting her in fear of death or hurt*
- (d) with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married*
- (e) with or without her consent when she is under fifteen years of age or of unsound mind.*

This provision is similar to the Penal Code.

Furthermore, under Islamic law, a husband may be held liable for harm caused by forced sexual intercourse with his wife, but he can never be held liable for rape as long as there is a valid existing marriage between them¹⁷. This is comparable to the provision in the Criminal Code. Evidence shows that women who accuse men of rape are condemned because of their character and marital rape is not recognised, hence there is limited protection for women in Nigeria¹⁸. Here the victims (mostly women) have to invoke the Criminal Code's provisions on common assaults in cases of “marital rape” caused by the activities of their husbands.

Regarding penalties, both the Criminal Code and the Criminal Code provide for life imprisonment as a punishment for offenders. Under the Sharia Penal Codes, rape is a form of zina, ie illicit sex. To prove the crime of 'zina', a confession from four witnesses is essential. Otherwise, the victim could be held liable for defamation if a confession cannot be obtained from the perpetrator. In addition, the Sharia codes provide for discriminatory penalties for married and unmarried offenders (mostly women) with sentence of one year in prison and lashes up to a maximum of one hundred¹⁹.

It is submitted that these provisions of the Sharia Codes are unconstitutional and violate several provisions of the Constitution which prohibit degrading treatment of persons, freedom of religion and protection against discrimination, among others. However, religion is a highly politicised issue in Nigeria and this is an obstacle to the advancement of women's rights in some parts of Nigeria, especially in the core northern region of the country.

¹⁷ O. Oyelade ‘Women’s Right in Africa: Myth or Reality’ (2008) (9) (1) *UBL* 100 <<http://www.nigerianlawguru.com/articles/human%20rights%20law/WOMEN%92S%20RIGHTS%20IN%20AFRICA,%20MYTH%20OR%20REALITY.pdf>> accessed 7 March 2022

¹⁸ I. Eze-Anaba ‘Domestic Violence and Legal Reforms in Nigeria: Prospects and Challenges’ (2010) 12 *Cardozo Journal of Law and Gender* 21-59.

¹⁹ E.E. O. Alemika and E.I. Alemika (n 12)

1.2.4 Indecent Assault

In general, indecent assaults against men and women are punished differently in Nigeria. Here, the penalty for an indecent attack on a woman is less than that on a man. Under Section 353 of the Criminal Code, a person who assaults a man unlawfully and indecently is a criminal offence punishable by three years in prison. On the other hand, a person who unlawfully and indecently assaults a woman is guilty of a misdemeanour and is liable to imprisonment for two years under Section 360 of the Criminal Code.

Here again, the disparity in terms of punishment for assault among the sexes is in favour of the male gender. One would expect that since the male gender is considered to be physically stronger than the female gender, the latter deserves even more protection by the law, than the former. Moreover, it is a fact that most assault or violence acts are normally perpetrated more by the males than the females. Hence, the need for the law to recognise and ensure that the reverse is the case as it were.

1.2.5 Laws Aggravating Wife Battery in Nigeria

Section 34(1) of the Nigerian Constitution grants individual respect for the dignity of his or her person. However, a multitude of laws encourages wife brutality in Nigeria. Some of these laws are highlighted in this section. Under Section 55(10) of the Criminal Code, husbands can punish their wives. It provides that nothing is an offence which does not amount to inflicting serious injury on a person, and which is committed by a husband to correct his wife. Thus, under the Penal Code, a husband may beat his wife so long as it does not lead to serious injury or damage. According to Section 241 of the Criminal Code, a serious violation includes castration, permanent loss of sight, hearing or speech, removal of a limb or joint, destruction or permanent impairment of strength of limb or joint, facial disfigurement, broken bone or dislocated tooth. In essence, the Penal Code condones and encourages domestic violence against women. So many women have been disfigured, and even killed by rascal husbands who hide behind the law to inflict grievous bodily harm on their wives. To make matters worse, even when the

matter is reported to the police, the case is often dismissed with a wave of the hand as being mere “family issue”²⁰.

The Sharia codes contain similar provisions allowing for the raising of hands on wives by their husbands. In northern Nigeria, wife beating is not a crime unless it causes serious bodily harm to the woman. This provision is archaic and an example of state-sanctioned brutality against women. This is arguably one of the reasons why many women refuse to bring cases of assault and brutality against their husbands before Nigerian courts. The law is biased in favor of the male sex and women are at the mercy of their husbands and the law.

1.2.6 Foreign Spouse Citizenship Status, Marital and Passport Consent

Other laws that discriminate against women in Nigeria include those related to citizenship. Section 26 of the Constitution states that the President may confer Nigerian citizenship on any woman who is or has been married to a citizen of Nigeria. Under this provision, the President has no authority to confer Nigerian citizenship on any man who is or has been married to a Nigerian citizen.

Therefore, women cannot transfer their Nigerian citizenship to their spouses. A Nigerian woman's spouse can only acquire citizenship through naturalisation, which is a much longer process (minimum of 15 years). Whereas a foreign spouse married to a Nigerian almost automatically becomes a citizen simply by registration. The injustice of such a discriminatory practice was manifested in the deportation of Dr. Patrick Wilmot, a Jamaican, from Nigeria by the military regime of Ibrahim Babangida, although his wife is an indigenous person from Sokoto State in Nigeria²¹.

²⁰Sandra Umeh and Deborah Akpede, ‘Wife-battering and the Nigerian Woman’ (Premium Times, 27 December 2012) <<https://www.premiumtimesng.com/news/112785-wife-battering-and-the-nigerian-woman-by-sandra-umeh-and-deborah-akpede.html>> accessed 1 May 2022

²¹F. Falana, ‘Women’s Day and the Gender Agenda’ (Thisday Newspaper Online Edition, 2013) <<http://www.thisdaylive.com/articles/women-s-day-and-the-gender-agenda/141787/>> accessed 18 March 2022

As regards marital and passport consent, Section 18 of the Marriage Act requires the written consent of the father of either party to an intended marriage if he or she is under the age of 21. Only if the father is dead or estranged or absent from Nigeria may the mother's written consent be required. This provision is discriminatory as the mother's consent is only required if the father is dead or mentally handicapped²².

The same consent requirement governs passport application procedure for the women. Although there is no discrimination under immigration law, married women applying for Nigerian passports must provide their husbands' written consent. A person whose mother is Nigerian but whose father is a foreigner is not eligible for a Nigerian passport. While this may be due to the patrilineal system being practiced in Nigeria, it is nevertheless considered to be against the overall interest of the female gender for being discriminatory²³.

1.2.7 Customary Laws and Practices

Some customs have been identified as being not only barbaric or repugnant to natural justice, but also discriminatory against women in Nigeria. For example Customary laws in different communities establish conditions that allow women access to land only through male relationships. However, this common practice is not universal in Nigeria²⁴. For example, women can own property in many communities. In the southern part of Nigeria, many women own property separately or separately from their spouses²⁵ in marital

²² Ibid

²³ See K. Adekile 'Property Rights of Women in Nigeria as Impediments to Full Realisation of Economic and Social Rights'. Working Paper Series 2010 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1616270> accessed 4 May 2022

²⁴ Olubor, J. O. '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%20avis%20customar%20practices.pdf>> accessed 25 September 2022

²⁵ M. Attah 'Extending Family to Non-marital Cohabitation in Nigeria' (2012) (26) (1) *International Journal of Law, Policy and the Family* 162–186.

property, including the husband's property, and in joint property and acquired property.

Women married under the Customary law have little or no rights to their spouse's property. Here, women often have more rights over kitchen utensils and what their husbands are allowed to give them as interpersonal gifts²⁶.

There is a plethora of other laws discriminating against women that are not analysed in this work. These include tax law, maternity law and wills, etcetera.

1.3 Extant Reforms

It would appear from the surface that the government, non-governmental organisations and the international community have introduced reforms to mitigate the impact of the above laws. Regarding spousal rape in Nigeria, the government has organized workshops on the subject. In 2008, for example, a workshop on legislative reform regarding rape and other sexual offenses was carried out in Nigeria. The consensus of the conference was that spousal rape should be criminalized in certain situations to protect women from all forms of violence. But then, this has yet to be enacted into law by the National Assembly²⁷.

Similarly, NGOs have initiated many workshops and conferences to educate women about their rights and how to seek redress when these rights are violated. Governments have enacted laws that protect and promote the rights of women in Nigeria. For example, in Enugu State in Nigeria, the Widows and Widowers Fundamental Rights Violation Prohibition Act 2001 was enacted to protect women from discriminatory customary inheritance practices²⁸.

²⁶ Ibid

²⁷ See S.C. Ifemeje 'Legalization of Marital Rape in Nigeria: a Gross Violation of Women's Health and Reproductive Rights' (2011) (33) (1) *Journal of Social Welfare and Family Law* 39-46.

²⁸ Ibid

Education for girls is promoted as Primary education is free and compulsory in Nigeria. Women are becoming a little more influential in Nigerian politics and a few of them occupy sensitive political positions in government. Also, the first female Chief Justice of Nigeria was recently appointed. Due to the emergence and deepening of democracy in Nigeria (after many years of regulation), the courts become quite active, deciding on the legality or inadmissibility of some discriminatory laws against women. For instance, Section 124 of the Police Act was declared illegal and unconstitutional. The provision stipulates that a female police officer who wishes to marry must first apply in writing to the police commissioner of the state command in which she is serving for permission to marry, stating the name, address and occupation of the person to whom she intends to marry. Permit is granted for marriage if the prospective husband is of good character and the policewoman has served at least three years in the service. The court relied on the provisions of the African Charter on Human and Peoples' Rights (ACHPR) and the Nigerian Charter Constitution to repeal this violating provision²⁹. A similar decision was made in the case of *Dr. (Ms.) Priye Iyalla Amadi v. Nigerian Immigration Service (NIS)*.

In the the case of *Mojekwu v. Ejikeme*³⁰, the Nigerian Court relied on the provisions of the ACHPR repealing a customary practice (law) that prevented the daughters of a deceased man from inheriting his property. In this case, Justice Niki Tobi stated as follows:

Nigeria is an egalitarian society where the civilised society does not discriminate against women. However, there are customs, all over which discriminate against the womenfolk, which regard them as inferior to the menfolk. 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

²⁹ F. Falana (n 18)

³⁰ (2000) 5NWLR 402

*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*³¹.

As late as 2010, in the case of *Mrs Esther Sunday and Ors v Victor Menenyorwika and Ors*³², a High Court in the Port Harcourt Department of Justice in Nigeria invoked the ACHPR to hold a group of police officers liable for the injuries inflicted on the applicants (plaintiffs). In this case, the court sentenced the defendants to a fine of N40 million. With the increasing cases of discrimination against women in the Country, Nigerian courts have been creative, relying on international conventions and the ACPHR (as well as Section 42 of the Nigerian Constitution) to discourage some of these discriminatory practices. Section 42 of the Nigerian Constitution states:

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

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

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

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

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a

³¹ See C.E. Ukhun and N.A. Inegbedion 'Cultural Authoritarianism, Women and Human Rights Issues among Esan People of Nigeria (2005) 5 *African Human Rights Law Journal* 129-147.

³² Suit No. PHC/361M/2003/Unreported.

member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

It can be argued that Section 42(3) of the Nigerian Constitution 1999 indirectly promotes constitutional discrimination against women. The ACHPR, other sections of the Constitution, such as Section 17(1)(2), Section 42(1)(2) and other international treaties or conventions signed and ratified by Nigeria have served as bastions to invalidate some of these state-sanctioned discriminatory practices in Nigeria. In *Timothy v. Oforka*³³, the Nigerian Court of Appeal ruled that no law or custom that stands in the way of our constitution should apply regardless of the circumstances. In *Yetunde Tolani v. Kwara and Ors State Judicial Service Commission & Ors*³⁴, where the Court of Appeals ruled that the appointment of a female judge who was dismissed because of her single status was unlawful and void and ordered her immediate reinstatement.

Nigeria has signed and ratified many international and regional treaties that promote and protect the rights of women in Nigeria, including the Convention on the Extermination of All Forms of discrimination against women (CEDAW). Nigeria signed and ratified CEDAW in 1985. The Optional Protocol to CEDAW was ratified by Nigeria in 2004. CEDAW calls on countries to condemn and (immediately) implement discrimination against women in its entirety a policy to eliminate discrimination against women by enshrining gender equality in their various constitutions (Anaba, 2007). Despite Nigeria's ratification of CEDAW and its Protocol, international treaties are not part of national law under Nigerian law unless domesticated under Section 12 of the Constitution. However, CEDAW has a persuasive influence on Nigerian law; Courts can refer to it during the process. And NGOs have used it as a basis for their activism to hold the

³³ (2008)9 NWLR (pt. 1091) CA.

³⁴ (2009) LPELR CA/IL/2/2008.

government accountable for laziness in promoting women's rights in Nigeria³⁵.

Likewise, Nigeria has ratified and signed the African Charter on Human and Peoples' Rights (African Charter). The Protocol on the Rights of Women in Africa (also known as the Maputo Protocol) was also signed and ratified in Nigeria. The African Charter has been incorporated into Nigerian law and promotes women in many of its articles. Article 3 of the Charter calls on countries to combat discrimination against women through legal, institutional and other means. On the one hand, the protocol represents the first time that an international human rights treaty expressly articulates a woman's right to abortion if the pregnancy resulted from sexual assault, rape or incest; if the continuation of the pregnancy endangers the life or health of the pregnant woman; and in severe fetal defects incompatible with life³⁶. However, the protocol has not been domesticated in Nigerian law, making it difficult to enforce in Nigeria.

1.4 The Impudent Abortion of Gender-based Bills

The date 1 March 2022 will remain a watershed sad historic day in the life of the Nigerian women. Despite extensive support, lobbying, awareness-raising, consultation, negotiation and advocacy work, the 9th National Assembly joined the previous ones to legislate and legitimise discrimination against women. It is of particular concern that this happened on the first day of International Women's Month and Non-Discrimination Day, when the world commemorated and celebrated the right of all people to lead a full and productive life, with dignity and without discrimination³⁷.

³⁵ Eghosa Ekhatior 'Women and the Law in Nigeria: A Reappraisal' (2015) (16) (2) *Journal of International Women's Studies* 285

³⁶ E.O. Ekhatior 'The Impact of the African Charter on Human and Peoples Rights on Domestic Law: A Case Study of Nigeria. A paper presented at the Kings College London Seventh International Graduate Legal Research Conference Forum. 8-9 April 2013, London.

³⁷ Bukky Shonibare 'The Brazen Legalisation of Gender Inequality in Nigeria' (Thisday 7 April 2022) <<https://www.thisdaylive.com/index.php/2022/04/07/the-brazen-legalisation-of-gender-inequality-in-nigeria/>> accessed 26 May 2022

Paradoxically, this year's Zero Discrimination Day theme is "Remove Laws that Harm, Make Laws that Empower," emphasizing states' moral and legal obligation to repeal discriminatory laws and enact laws that protect people from discrimination. It is important to note that laws determine the differential treatment of discrimination for different people, sometimes leading to the exclusion of certain people from essential services, along with the possibility of facing undue restrictions in the way they go about their lives³⁸.

The ongoing review of Nigeria's 1999 Constitution has reached the point where, following the transmission of proposed constitutional amendment legislation harmonised by the joint Constitutional Review Committee of both houses, two-thirds of the total number of members are required from each of the Senate and House of Representatives (HoR), to pass any amending law. This was the event that took place on 1 March 2022 as the Upper and Lower Houses of the National Assembly (NASS) simultaneously voted on these amendment legislation. It should be noted that both chambers must vote on a bill in the same way for it to move to the next stage of the constitutional amendment process. Thus, if a bill fails in one chamber but passes in another, the bill remains a failure. Out of the 68 bills proposed to reform various provisions of the 1999 Constitution, five related directly to gender equality and covered the subject matters as highlighted hereunder³⁹.

1.4.1 Reserved Seats

This Reserved Seats Bill was meant to among other things, amend Articles 48, 49 and 71 of the 1999 Constitution to create a total of 111 additional seats for women representatives of their Senate and constituencies in both the National and State Assemblies, With a current NASS share of 95.9% in favour of the male gender, the justification for this is to increase the proportion of women in the legislature, without jeopardising the existing structure.

³⁸ Ibid

³⁹ Ibid

With the aim of increasing the proportion of women in legislative positions, this quota model is currently being implemented in more than 33 countries. Countries in sub-Saharan Africa, including 13 countries such as Rwanda, Kenya, Burundi, Uganda and Tanzania, where seat reservations are in place. One would think that the co-sponsorship of the Nigerian Reserved Seats Bill by Speaker of the House Rt.Hon.Femi Gbajabiamila along with more than 100 co-sponsors would guarantee success. Nevertheless, this laudable Bill failed to sail through both the Senate and House of Representatives, and was therefore, thrown into the trashcan of history.

1.4.2 Citizenship

The Citizenship Amendment Bill sought to confer citizenship by registering foreign spouses of Nigerian women by amending Section 26 of the 1999 Constitution which gives a foreign woman married to a Nigerian man the right to become a Nigerian citizen, while the right itself is not extended to a foreign man married to a Nigerian woman. Consequently, a Nigerian woman cannot pass on her nationality to her foreign husband in the same way as her male counterpart. But again, the bill was aborted by the legislature⁴⁰.

1.4.3 Affirmative Action

This Affirmative Action Bill intended to amend Section 223 of the 1999 Constitution to provide 35% affirmative action to ensure that women hold at least 35% in the administration of political parties and appointed positions at the federal and state levels. A similar provision will be included in the bill aimed at adjusting the deadline for submitting names of nominees for ministers or commissioners, which proposes to amend Sections 147 and 192 of the 1999 Constitution to include at least women 20% to provide as candidates for ministers or commissioners. In Namibia for example, the ruling party SWAPO ensures through its “zebra system” that 50% of the parliamentary seats are occupied by women, which ensures a parliamentary gender parliament and at the same time ensures a balanced gender ratio in

⁴⁰ Ibid

ministerial posts. If a minister is a man, the deputy must be a woman and vice versa⁴¹.

Although women make up about 50% of the population, there is still a fight for affirmative action in Nigeria. Indeed, during the vote in the House of Representatives, after the proposal was vehemently voted against by 35%, Hon. Bamidele Salam and Hon. Dachung Musa Bagos proposed 15%, which in turn was rejected. The clause was rejected in the Senate, although reduced to 10%. Although the Affirmative Action Bill did not pass, the bill, which would require at least 20% women as nominated ministers or commissioners, was passed by both houses⁴².

1.4.4 Indigeneship

The Indigeneship Rights Bill seeks to amend Sections 31 and 318(1) (the Interpretative Section) of the 1999 Constitution to allow a woman to become an indigene of her husband's state of origin after at least five years of marriage. The inability of a woman to accept the indigeneship status of her spouse from a different state has had dire repercussions, including but not limited to the continued practice of denying women the opportunity to hold elective or appointed office in her husband's states, while also restricting their appointments and promotions in their own states because they are married to a person from another state⁴³.

This bill was not adopted and Nigerian women have always fought to protect their rights. They always have to negotiate, which should be a fact, and men always have to vote and decide whether to accept it or not, is a shameful pattern that should concern us all. One thing is certain, there is no reasonable or compelling reason for this absolute and blatant constitutional deprivation of Nigerian women's right to equality other than the patriarchal and misogynist belief that women continue to be subjugated and relegated to the abyss of employment. The general implication of rejecting these

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

constitutional changes in relation to gender equality is simply the instrumentalization of supreme law - based on the abuse of position, power and privilege - to legitimise gender inequality.

Any member of the National Assembly who has rejected gender legislation should look in the mirror and criticise the very reason why gender equality threatens them. They must acknowledge that women are not trying to take over, but to contribute equally to the growth and development of the country. Women are therefore demanding that these gender laws be re-approved so that they can be re-examined and voted on in the hope of favourable outcomes. The task of challenging such laws that hinder women's rights at both the national and sub-national levels is a conscious, cooperative and adamant call for a Nigeria that is legally beneficial to our mothers, wives, sisters, daughters and nieces. Challenging restrictive laws and holding our lawmakers accountable to ensure discriminatory laws are eliminated at all levels. Our girls should never have to wonder why they don't have access to the same social, economic and political assets, opportunities and resources as their male counterparts. That is the least we owe to the generations we are giving birth to and to those who are yet to be born⁴⁴.

1.5 Conclusion and Recommendations

Women are discriminated against in Nigeria. However, the tide is turning. Many Nigerians have access to education and the reorientation of Nigerians (in relation to women's rights) has improved. Democracy has improved the status of women in Nigeria. However, some cultures and communities are still stuck in the past. These communities need to be "re-educated" about the rights of women in Nigeria. Also, with the advent of democracy in Nigeria, many laws have been enacted to improve the status of women before the law. For example many states in Nigeria have enacted laws prohibiting domestic violence against women, such as the Oyo State Violence against Persons (Prohibition) Act 2021, patterned after the Violence against Persons (Prohibition) Act 2015.

⁴⁴ Ibid

Based on the problems discussed above, the following suggestions have been proffered as recommendations towards bridging the policy and institutional gaps towards gender parity in Nigeria:

1. On labour related issues, there is the need to expunge the relevant parts of the laws that discriminate against the right of women to decent work and equal pay. Particularly, Section 55(1) of Labour Act, which provides that woman may not be employed as a night worker in any public, agricultural enterprise, or mine should be expunged. It will then be a matter of choice for any woman willing to work at night to do so. Similarly, the provision which denies women the opportunity to be accompanied by their spouses to their place of work or post should be expunged. Moreover, some civil service regulations which institutionalises discrimination against women such as Rule 03303 of the Kano and Kaduna Code of Officials with regard to pregnancy for public officers training course should be deleted as constituting a violation of the International Labour Law which recognises and promotes the rights of married and pregnant women, including maternity leave.
2. As regards laws that discriminate against women in the Nigerian Police Force and other paramilitary services, Section 127 of the Police Act which forbids married women from applying to join the Nigerian Police should be deleted. Similarly, the requirement that if an unmarried police woman becomes pregnant, she will be dismissed from the police force is discriminatory just as the stipulation that a policewoman wishing to marry must first apply in writing to the Inspector General of Police for permission. The right to family is guaranteed under the Universal Declaration of Human Rights. Hence this restriction is a clear violation of Nigerian women in the force to this right. In the same vein, Sections 5 (1) and (2) of the National Drug Law Enforcement Agency Act should be expunged for entrenching discrimination against women in some of its regulations, particularly the stipulation that all female applicants must be unmarried at the time of entry and remain unmarried for a period of at least two years during enlistment; as well as the stipulation that all single female employees

wishing to marry must submit a written application to the Chief Executive for permission, and providing the details of the intended spouse.

3. With regards to spousal rape and sexual violence, Sections 211 of the Evidence Act, Section 6 of the Criminal Code, and Section 127 of the Sharia Penal Code should be amended to align with the current global trend for other jurisdictions and a variety of international treaties Nigeria is a party to (such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights and the Protocol on Women's Rights in Africa, among others) which legislates against spousal rape.
4. Indecent assaults against men and women should not be punished differently. Thus, Section 353 and 360 of the Criminal Code which criminalises the offence, ought to be amended to impose the same penalty for the misdemeanour regardless of the gender.
5. Similarly, laws aggravating wife battery in Nigeria goes the extant provision of Section 34(1) of the Nigerian Constitution which grants individual respect for the dignity of his or her person. Thus, Sections 55(10) of the Criminal Code and the relevant sections of the Sharia and Penal Codes which encourages husbands to punish their wives and thereby promoting domestic violence against the female gender remains barbaric and must be expunged from our laws for being unconstitutional.
6. Other laws that discriminate against women in Nigeria with regards to citizenship, foreign marital status, and passport issues need to be amended. Worthy of note is Section 26 of the Constitution which empowers the President to confer Nigerian citizenship on any woman who is or has been married to a citizen of Nigeria, but without a corresponding provision for the Nigerian man who marries a foreign man. Such amendment will also ensure that women can also transfer

their Nigerian citizenship to their spouses similar to their male counterparts. As regards marital and passport consent, Section 18 of the Marriage Act requires the written consent of the father of either party to an intended marriage if he or she is under the age of 21 should be amended to provide for below 18 years as the age of restriction, which should apply to both males and females alike.

7. Finally, customary practices and a plethora of other laws discriminating against women with respect to property inheritance rights, taxation, maternity law and wills and so on needs to be expunged. In addition to the amendments, a holistic legal and institutional reform is necessary towards stemming the tide of discrimination against women. To achieve these lofty ideals, all hands must be on deck. Relevant stakeholders including the Judiciary and Non-Governmental Organisations (NGOs) should utilise the African Charter's judicial machinery and other relevant international legal frameworks such as the CEDAW and the UDHR among others, to ameliorate the plight of women in Nigeria. Here activists should follow the example of the strategies and activities of NGOs in the oil and gas industry in Nigeria that have improved access to environmental justice for victims of activities (derived from the activities of oil and gas companies).