



NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW

**Legal Protection of Women's Rights in Nigeria: Successes and Failures of the Nigerian
Legal system**

LL.M THESIS

GLORY SHADRACH IFECHUKWUKU

Nicosia

December, 2021

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Approval

We certify that we have read the thesis submitted by titled
“.....” and that in our combined opinion it is fully
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Declaration

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

GLORY SHADRACH IFECHUKWUKU

27/12/2021

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Abstract

Legal Protection of Women's Rights in Nigeria: Successes and Failures of the Nigerian Legal system

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The Nigerian society is deeply rooted in cultural and religious practices which have created a very patriarchal society, wherein, women's rights are discriminated against. The level of patriarchy in society has led to the legalisation of discriminatory policies against women in regards to the workplace, inheritance, family life, marital relations, citizenship and all aspects of living. Therefore, women are constantly faced with problems that are institutionalized and not faced by men.

The study finds that there are provisions in the Nigerian Constitution, Civil Code, Penal Code, Labour Act and other legal instruments used in Nigeria which is discriminatory against women. Similarly, it is seen in the study that despite the signing of the Maputo Protocol and other international agreements, the discriminatory position of women against men is due to the cultural and legal arrangements in Nigeria.

Key words: women's rights, legal protection of women's rights, success, failures

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OZ

Nijerya toplumu, kadın haklarının ayrımcılığa uğradığı çok ataerkil bir toplum yaratan kültürel ve dini uygulamalara derinden kök salmıştır. Toplumdaki ataerkilliğin düzeyi, işyeri, miras, aile hayatı, evlilik ilişkileri, vatandaşlık ve hayatın her alanında kadınlara yönelik ayrımcı politikaların yasallaşmasına yol açmıştır. Bu nedenle kadınlar sürekli olarak kurumsallaşmış ve erkeklerin karşılaşmadığı sorunlarla karşı karşıya kalmaktadır.

Çalışma, Nijerya Anayasasında, Medeni Kanunda, Ceza Kanununda, İş Kanununda ve Nijerya'da kullanılan diğer yasal belgelerde kadınlara karşı ayrımcılığa neden olan hükümler bulunduğunu ortaya koymaktadır. Benzer şekilde, Maputo Protokolü ve diğer uluslararası anlaşmaların imzalanmasına rağmen, Nijerya'daki kültürel ve yasal düzenlemelerden dolayı kadınların erkeklere karşı ayrımcı konumunun olduğu çalışmada görülmektedir.

ABBREVIATIONS

1. AFF: African Feminist Forum
2. ACHPR: African Court of Human and Peoples' Rights
3. AU: African Union
4. CEDAW: Convention on the Elimination of all forms of Discrimination Against Women.
5. FOMWAN: Federation of Muslim Women Association of Nigeria
6. ICESCR: International Convention on Economic, Social, and Cultural Rights
7. ICPR: International Convention on Civil and Political Rights
8. NCWS: National Council of Women Society
9. NDLEA: Nigerian Drug Law Enforcement Agency
10. UN: United Nations
11. UNDHR: United Nations Declaration on Human Rights
12. WIN: Women in Nigeria
13. WOWICAN: Women Wing of Christian Association of Nigeria

Chapter 1

INTRODUCTION

1.1 General Background

The nature of human rights in Nigeria is highly contested, more so, even worse for a woman. Having employed numerous domestic legislation as well as international legislation such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the International Convention on Civil and Political Rights (ICCPR), women's right under the Nigerian legal system continues to be abused. For example, under section 55 of the Labour Act, women in Nigeria are faced with employment limitations as they are prohibited from working at night shifts, with an exception of only nurses¹.

Women in Nigeria are faced with a patriarchal society that continually limits the position of women in politics, the workplace, and the family. A majority of these limitations faced by women are laws in the legal instruments used in the country. Similarly, according to Section 360 of the Criminal Code, an assault on women is seen as a misdemeanour with a prison sentence of only two years, whereas, when a woman assaults a man, this is regarded as a felony with a prison sentence of over three years². This flaw in the Nigerian Criminal Code is a reason why gender-based violence against women is common in Nigeria.

Another inequality in the Nigerian legal system against women is reflected in Section 118 (g) of the Police Act, prohibiting married women from seeking enlistment in the Nigerian

¹ Nigerian Labour Act, 'Labour Act Section 55' (Nigerian Labour Act 2004)
<https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127565.pdf> accessed date: 5th November, 2021
²Nigerian Criminal Code Act, 'Section 360' (Nigerian Criminal Code Act 1916)
<<https://lawsofnigeria.placng.org/laws/C38.pdf>> accessed date: 6th November, 2021

Police Force³. Additionally, under section 12 of the Police Act, an unmarried pregnant woman in the police force is discharged of her duties, except if reinstated by the Inspector General of Police⁴. There are also provisions in the Nigerian legal system that permits husbands to discipline their wives under necessary conditions, whereas, the woman is not allowed to do so.

Under Section 55 of the Penal Code, husbands may punish or discipline their wives for wrongdoing and will not face any wrath of the law regarding abuse, provided that they do not cause grievous harm to the woman⁵. This, therefore, summarizes that domestic violence against women is accepted under the Nigerian Penal Code.

Concerning family relationships and equality, it was only until 2015 that the Nigerian government pronounced marital rape as a crime under the Violence against Persons Prohibition Act of 2015. However, since this prohibition has not been passed into a bill yet, marital rape is still prevalent in Nigeria, as it is generally believed that the woman or wife must not refuse the husband from conjugal activities. Similarly, under inheritance law, women in all parts of the Nigerian society are discriminated against and treated unfairly and this has continued to cause increased tensions in families. In the Nigerian Legislature, there have been petitions made by Islamists to propose a bill rejecting women's right to inheritance as it is against Islam.

From the above, it is, therefore, understood that Nigeria experiences a mixture of social and cultural limitations on Women's rights. The Nigeria police force and other security agencies see women as being vulnerable, hence, they continue to abuse and intimidate women. It is noted that the Nigerian Legal system is a continuation of the old English Common Law system, hence, the country continues to promote patriarchal legal provisions that limit the right of women. Under section 211 of the Evidence Act, a woman who has reported a rape case is investigated if she has multiple sexual partners, therefore, creating a

³ Nigerian Police Act, 'Section 118 (8)' (Nigerian Police Act 2020)
<<https://placbillstrack.org/upload/Police%20Act,%202020.pdf>> accessed date: 7th November, 2021

⁴ Nigerian Police Act 2020, s 12.

⁵ Nigerian penal Code 1960, s 55.

position of victim-blaming where the victims get ashamed⁶. For this reason, rape is prevalent and most rape cases go unreported.

Under the constitution, women face a greater level of limitation as a Nigerian man married to a female foreigner is automatically eligible for citizenship. Section 26 of the Nigerian constitution requires a mere registration for a foreigner married to a Nigerian man before she can become a citizen, whereas, a man married to a Nigerian woman can only become a citizen by naturalization which takes over 15 years.

Regardless of the numerous local and international actions taken by the Nigerian government to ensure that women's rights are protected, the study argues that women are still discriminated against due to cultural practices as well as discriminatory legal provisions.

1.2 Purpose of the Thesis

From the above discussion, it is understood that despite being a member of the CEDAW and other UN women's right initiative, Nigerian women continue to face human rights abuse in all parts of the country. In addition to the foreign initiatives aimed at creating an equal right for women, the position of women in the country is continued as being below the man due to flaws in the Nigerian legal system. The Nigerian 1999 constitution has been amended over four times, however, women's rights continue to be unprotected.

Additionally, the Nigerian society is considered to be very patriarchal, for this reason, men are mostly considered as leaders while women are regarded as home bearers. Due to the patriarchal nature of Nigerian society, there are fewer women in political positions and even a significantly lower number of women in educational institutions. They are still regions in Nigeria where female education is considered a waste, this implies that the abuse of women rights in Nigeria could be traced even to the family setting.

This study aims to focus on the nature of women's rights in Nigeria, to research if there is truly such thing as women's rights or if it's a myth. To achieve these aims, the study makes ample use of available literature sources, legal sources, and electronic sources. From these available materials, the aim is to compare with what is obtainable in Nigeria with regards to

⁶ Nigeria Evidence Act, 'Section 211' (Nigerian Evidence Act 2011)
<<https://lawsofnigeria.placng.org/laws/E14.pdf>> accessed date: 12th November, 2021

women's rights. Additionally, in exploring legal sources, the study considers the impact of available legal or constitutional materials in protecting women's rights in Nigeria.

The study argues that women in Nigeria are indeed discriminated against and women are considered in a lower position when compared to men for cultural and legal reasons. To support this argument, the study highlights that the legal flaws in the Nigerian Constitution, Penal Code, Civil Code, Marriage Act, Labour Acts and other legal instruments which seemingly limits the rights of women in comparison to men.

The study is thus, inherently important to highlight how legal provisions in Nigeria has inhibited the protection of women's rights in the country.

1.3 Research Questions

The seeks to answer the following research questions:

1. To what extent has the ratified international treaties and arrangements influenced the nature of women's rights in Nigeria.
2. What are the judicial flaws highlighted in the Nigerian Legal System that affects women's right.
3. How has the various provisions in the Nigerian legal instruments influenced the nature of women's rights in the country.
4. What are actions were taken by the Nigerian government, foreign organizations and civil society to ensure women's rights are protected in Nigeria.

1.4 Outline of Thesis Chapter

Chapter 1: Introduction Chapter: This discusses the background of the study, the aim of the study, research question, purpose of study, and study methodology. The chapter provides a concise discussion of the nature of human rights in Nigeria before explicitly focusing on women's rights in the country. The purpose of the dissertation is to analyse the legal provisions in Nigeria which have managed to influence women's rights. Some examples of these provisions include; the Nigerian Constitution, the Penal Code, the Civil Code, Nigeria's Labour Act, and the Code of Conduct of government offices.

Chapter 2: This chapter analyses the available literature concerning women's rights in the world as well as in Nigeria. It also introduces the concept of Feminism as an important theoretical framework to consider when discussing women's rights in Nigeria. The chapter

also provides an exposition of the numerous foreign and regional arrangements concerning women's rights of which Nigeria is a signee. Some examples of foreign instruments include the Convention on the Elimination of the Discrimination against Women (CEDAW) as well as the United Nations Convention on Human Rights.

Regarding regional arrangements, since Nigerian is an African country, the African Union is the regional organization in which Nigeria is a member state. Nigeria has signed and ratified the Charter of the African Court of Human and People's Rights as well as the Protocol to the Court of Human Rights which is also known as the Maputo Protocol.

Chapter 3: The Nigerian Legal position concerning women's rights: This provides an extensive overview of the Nigerian legal system regarding gender equality. It highlights the position of the Nigerian Constitution and it discusses the provisions of the Constitution which discuss the nature of human rights in the country. Since the Nigerian Constitution is the main legal framework of the country, the chapter provides an extensive analysis of the nature of human rights and the Constitution. Similarly, in this chapter, the position of women in the Nigerian society is discussed, wherein, the problems, hardships, and gender norms placed on women were also analysed.

In addition to the position of Women in Nigeria, the Chapter also discusses the contributions made by the United Nations, CEDAW, as well as the African Union in protecting women's rights in the country. To ensure a thorough understanding of the position of women's rights in Nigeria, the chapter introduces some cases studies wherein women were discriminated against by judicial institutions in Nigeria. This then leads to the next chapter which supports the argument that women are discriminated against in Nigeria with poor protection of women's rights.

Chapter 4: The interaction between women's rights and the Nigerian Legal system: This chapter begins by discussing the problems faced in protecting women's rights in Nigeria. It takes into consideration, the shortcomings in the Nigerian Penal and Civil Code that has consistently been used to minimize the position of women in the country. Additionally, this chapter discusses the main argument of the thesis, arguing that women in Nigeria are faced with a wide range of discriminative policies that do not apply to men.

To support this claim and to solidify the argument, cases studies were provided in the chapter to show that women are indeed facing a high-level inequality in Nigeria in comparison to men. The case studies show how women's rights and dignity were abused

owing to the provisions in the Labour Acts, Penal Code, Civil Code, and in the various binding arrangements across the Nigerian workforce. To answer the last research question, the chapter discusses the current solution, as well as the steps were taken by the Nigerian government, NGOs and foreign offices in promoting women's rights in Nigeria, based on these discussion, an understanding of the efficiency of these arrangements, will be provided.

Chapter 5: This chapter provides a general conclusion of the overall thesis and makes a recommendation as to how to increase women's rights.

CHAPTER 2

THE NATURE OF WOMEN'S RIGHTS: A LITERATURE REVIEW

The discussion of women's rights under the law is present in all parts of the world, mostly due to the various and multiple problems that women face in all countries. In some societies, mostly in the Western World, where women's rights are considerably recognized, there are still pellets showing blatant disregard to women's position in the society which may also lead to the marginalization of women in such societies. It is no surprise that gender roles as a global phenomenon have significantly reduced the chances of women to grow and develop themselves in various aspects, hence, the need for a legal provision to ensure that women's rights are supported and protected.

In a contrast to the Western World where women's rights are increasingly recognized, third world nations, especially African countries have witnessed and continue to witness instances where women rights are constantly abused and are non-existent in practice. Women in African countries are usually introduced to a patriarchal society from birth, therefore, they are faced with a structural form of inequality that inhibits their career, educational, political, and social growth. To reiterate, the level of inequality faced by women in such regions is reflected in all aspects of their lives. This form of women's rights marginalization is very evident in Nigeria, and for this reason, the study explains in detail how women's rights in Nigeria are being protected.

Owing to the universal nature of the problems regarding women's rights, the literature review begins by first highlighting the discussion of women's rights in the international system. This introduces key legal provisions from the United Nations (UN), the African Union (AU), as well as other notable foreign intergovernmental organizations. Based on the discussion reached from the foreign legal provisions, the literature review shall then focus on the nature of women's rights under law in Nigeria. This allows for a focus on the case study as well as an easier understanding of the topic matter.

Since the study is focused on women's rights, the theory of feminism has been adopted as the theoretical framework for the study. Therefore, the available discussion of feminism in both the regional (African society) and international arena will be discussed in the latter stages of the literature review.

2.1 International Principles Regarding Women's Rights

The concept of women's rights has gained widespread popularity over the years and it has become a common global discussion. Since there are women in all parts of the world, it has become the goal of the international society to ensure that gender-based maltreatment and abuse is eliminated. As mentioned by Okolie⁷, there is widespread concern about the growing number of violations against women in the world, therefore, international and regional bodies are constantly having discussions and making laws to enforce the protection of women's rights in the world.

To fully understand the concept of women's rights, it is pertinent to first discuss what rights mean, therefore, transcending this to a cultural perspective. As defined by Okolie, "*a right is a power, privilege or immunity guaranteed under a constitution, statute or case law or claimed as a result of long usage*"⁸. Based on this definition, it is understood that for a privilege or opportunity to be considered as a right, it must have a constitutional value or it must be legally supported.

In the international arena, numerous organizations are concerned with the discussion of human rights, however, one very common principle regarding global human rights is the Universal Declaration of Human Rights. This declaration was adopted by the UN, under the auspices of the United Nations General Assembly with the main aim of securing human rights for all and ensuring that every human is protected under the laws of their various countries⁹. According to the Universal Declaration of Human Rights, the human must be protected and their rights upheld by the state, therefore, a judicial approach in understanding the nature of human rights is provided, wherein, those who go against the provision of such rights are punished.

⁷ Okolie. E Q. 'Critical Analysis of State of Women's Rights in Nigeria' [2016], International Journal of African and Asian Studies, p. 53

⁸ Ibid 55

⁹ Adekile, K. 'Property Rights of Women in Nigeria as Impediments to Full Realisation of Economic and Social Rights' [2010]. Working Paper Series, p. 5

To further highlight the concept of human rights according to international standards, Article 1 of the Universal Declaration of Human Rights states that “*All human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*”¹⁰. Judging from Article 1 of the Universal Declaration of human rights, it is right to infer that human rights apply to all individuals as they are free-living from birth. Concerning gender, the Universal Declaration of Human Rights out rightly stated in Article 2 where highlights that no one shall be discriminated against based on status at birth, sex or any other distinction, this article goes thus;

*“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”*¹¹

Based on the provisions listed in the Declaration of Human Rights, it could therefore be mentioned that women’s rights are indeed fundamental human rights that are internationally recognized. This, therefore, introduces the discussion of the protection of women’s rights which are regarded under international law. Similarly, the judicial element is introduced in this position, highlighting that abuse of women’s rights constitutes a breach of fundamental human rights.

In support of the provision highlighted under the Universal Declaration of Human Rights, the Global Funds for Women posits that women’s rights are indeed fundamental human rights, however, these rights are breached in all parts of the world¹². This explains why it is inherently important for international conventions and treaties to continue advocating for the protection and respect of human rights. The United Nations has continued

¹⁰ United Nations General Assembly, ‘Art, 1’ (Universal Declaration of Human Rights, 1948) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed date: 12th November, 2021

¹¹ Universal Declaration of Human Rights, s 55

¹² Global Fund for Women, (Women’s Rights, 2021)

<<https://www.globalfundforwomen.org/womens-human-rights/#.Wx-tnNUzBIU>> accessed date: 12th November, 2021.

to be very vocal in its preservation of women's rights, therefore, shortly after the introduction of the Universal Declaration of Human Rights, the UN Commission on Human Rights drafted two important human rights treaties: the International Convention on Civil and Political Rights (ICPR), as well as the International Convention on Economic, Social, and Cultural Rights¹³.

Similar to the Universal Declaration of Human Rights, Article 2 of the ICPR prohibits discrimination against women's rights, this article states that:

*“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status”*¹⁴.

Similar to the ICPR, article 2 (2) of the International Convention on Economic, Social, and Political Rights explicitly requires all member parties of the convention to ensure that every individual irrespective of gender shall have equal rights and opportunities in society¹⁵. The support towards the protection and provision of women's rights by the international community has created a precedent for nations around the world to follow and to ensure that women's rights are protected in their countries.

Since the legal provisions mentioned above are usually encompassing all forms of human rights, the international community sought to particularly provide laws that are specifically aimed at improving women's rights. As mentioned by Banaszak, the rise of feminism and the growing interest of women in politics and social life led to various international regulations to ensure the security of women¹⁶. Similarly, Englehart and Miller posit that the structure of global and domestic politics which is mostly patriarchal was the

¹³ International Convention on Civil and Political Rights, (ICPR 1976) <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed date: 13th November, 2021

¹⁴ ICPR Art. 2

¹⁵ International Convention on Economic, Social and Cultural Rights, 'Art.2(2)', (ICESCR 1976) <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>, date accessed: 15th November, 2021

¹⁶ Banaszak Lee Anne, *The Women's Movement Inside and Outside the State* (New York: Cambridge University Press, 2010) 56

major reason why the international community became a vehement supporter and protector of women's rights¹⁷.

The notion of women's rights cuts across all parts of society and the discrimination against women is visible in all areas of life. To support this claim, Butterfield in a study about universal rights and gender politics mentions that women are highly discriminated against in places of political position and public offices¹⁸. Additionally, Childs and Crook explain the position of women in society as being viewed in a derogatory manner, where women are seen as assistants or helpmates for men, rather than independent beings that can take decisions for themselves and others¹⁹. The various negative attributes directed at women continue to diminish their position in society and makes way for all sort of discrimination against women, for this reason, the international community sought to provide viable solutions that are specifically targeted to focus on women's right in the international arena. The most important being the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

2.1.1 CEDAW and Global Women's Rights.

Owing to the increased need for women rights in the world, especially in newly formed post-colonial states, the United Nations adopted the Declaration on the Elimination of Discrimination against Women in 1967 to check women's rights abuses and to ensure that women are protected in all parts of the world²⁰. According to Article 2 of the Declaration, discrimination against women is abolished as stated thus;

“All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

¹⁷ Englehart Neil A and Miller Melissa, 'The CEDAW Effect: International Law's Impact on Women's Rights' [2014] *Journal of Human Rights*, 24

¹⁸ Butterfield Jo Ella, 'Gendering 'Universal' Human Rights: International Women's Activism, Gender Politics and the Early Cold War, 1928–1952 (PhD Diss. in History, University of Iowa 2002).

¹⁹ Childs Sarah and Krook Mona Lena, 'Analysing Women's Substantive Representation: From Critical Mass to Critical Actors' [2009] *Government & Opposition* 127

²⁰ Cole Wade M, 'Government Respect for Gendered Rights: The Effect of the Convention on the Elimination of Discrimination Against Women on Women's Rights Outcomes, 1981–2004' [2013] *International Studies Quarterly* 239

a. The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

b. The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable”²¹.

Additionally, per the provisions of the Declaration on the Elimination of Discrimination against Women, gender-based discrimination is viewed to be against human dignity and as such is unjust and intolerable under international law²². Based on the provisions of the Declaration, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights with men. The Convention articulates the nature and meaning of sex-based discrimination and lays out State obligations to eliminate discrimination and achieve substantive equality.

Synonymous to other international human rights treaties, the Convention holds states responsible for ratification and obliges states to address not only discriminatory laws, but also practices and customs, and discrimination against women by private actors. Therefore, the Convention holds the state guilty for actions that were committed by private entities. In line with these general principles as an overarching framework, the specific obligations of states to eliminate discrimination against women in political, social, economic and cultural fields are explicitly highlighted in the Convention.

According to Baldez, women are faced with discrimination in civil, political-economic, social and cultural rights in all parts of the world²³. Hence, CEDAW is increasingly important in ensuring the protection of women’s rights around the world and holding governments responsible. In these regions where women discrimination is increasingly high, there is an increased nature of violence against women, trafficking, and inequality that continues to reduce the value of women in such places. Through the introduction of CEDAW, states are obliged to protect and respect the rights of women, fight

²¹ Convention on the Elimination of Discrimination Against Women , (CEDAW Art. 2 1969)

²² CEDAW 1969, Art 5

²³ Baldez Lisa, *Defying Convention: US Resistance to the UN Treaty on Women's Rights* (Cambridge, UK: Cambridge University Press, 2014) 34

against abuse, marginalization, cruelty and coercion of ladies, especially in areas that limit their human rights.

It is pertinent to note that the main aims of CEDAW are to ensure the privileges of women are provided, and abusers of women rights are reprimanded and prosecuted according to civil and criminal law procedures. Additionally, the provision of CEDAW demands states to annul any segregation laws that discriminate against humans based on their sex. For Cole, women in most parts of the world are faced with gender-specific discrimination which makes women's rights more of a myth than a reality²⁴. Therefore, the introduction of this convention in such regions is essential for the growth of all citizens, both male and female.

In regions such as Africa, where trafficking is very high and women are faced with an ever-growing patriarchal society, the introduction of CEDAW has been extremely influential in ensuring that women are not only aware of their rights but they can hold their government accountable for women's rights abuse. Since abuse of women's rights occurs in every place, there is numerous regional judicial arrangement that has been made by the government in various regions to ensure the support and protection of women's right in their region. For this study, the contribution made by the African Union is discussed which will then form the building block in understanding the notion of women's rights in Nigeria.

2.2 The African Answer in Fighting Women Rights Abuses

Numerous regional provisions have been established by regional organizations in providing increased rights for the women in their regions. Since the thesis is centred on Nigeria, the African Union will serve as an example to understand the nature of women's rights in the country.

The African Union has established numerous courts and various enforcement strategies to ensure that women's rights are respected and provided in the continent. A notable example of this is The African Charter on Human and Peoples Rights (ACHPR) which highlights that all humans, irrespective of their sex and status must be treated with equity, fairness, and justice. Part I of the Charter explicitly discusses the rights and duties of all humans, whereby Article 2 discusses particularly women's rights. This article states that:

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such

²⁴ CEDAW 1969, Art. 6

as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status”²⁵

According to this article, women are granted explicit right to partake in the same position as men in issues regarding social, political, career, and economic life. Additionally, the Charter makes numerous provisions relating to women’s rights wherein it discusses the right of equality before the law in Art. 3²⁶, freedom and integrity in Art. 4²⁷, and most importantly Art. 5 which states that:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”²⁸.

As mentioned by Worugii and Ugbe, the provisions introduced by the Charter creates enforcement of its rules in the member states that have ratified it²⁹. Similarly, this has influenced the actions of member states to ensure that women’s rights are provided in their country and to ensure that these rights are protected according to their judicial arrangements. Similarly, states are obliged by the ACHPR to under Article 18 (3) which states that: “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women.”³⁰ Additionally, Article 19 discusses the notion of equality between every citizen where it mentions that equal and should be treated in the same manner with all rights provided and full dignity³¹.

The AU also introduced the Optional Protocol to the African Charter on Human and People’s Rights, otherwise known as the Maputo Protocol, where it further discusses the importance of equality and fair treatment to everyone, irrespective of their sex, status, or political affiliation. Similarly, the Protocol explains the need to treat women in similar regard and respect as men, especially in the provision of political offices, public offices, and in

²⁵ African Charter on Human and Peoples’ Rights, (ACHPR, 1986) Art. 2

²⁶ ACHPR 1986, Art. 3

²⁷ ACHPR 1986, Art.4

²⁸ ACHPR 1986, Art. 5

²⁹Worugji I and Ugbe R, ‘The Supreme Court has Cleared the Customary Law Inhibitions on the Inheritance Rights of Women in Nigeria’ [2016], International Journal of Law 27.

³⁰ CEDAW 1969, Art. 18(3)

³¹ CEDAW 1969, Art. 19

society. Article 2 (1) of the Optional Protocol to the ACHPR discusses in detail the elimination of all forms of discrimination against women and this states that:

“States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

a) Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;

b) Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practises which endanger the health and general well-being of women;

c) Integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

d) Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

e) Support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women”³²

From the above submission, it is seen that the African continent followed the pathway of the international society to provide policies and regulations that will vehemently combat all forms of discrimination against women and set women on higher pinnacles of power in the society. In the discussion of the rights of African women in Africa, Ekhaton discusses that African women have sought to increase their level of political participation and to gain position in the Echelons of power since it is believed that they can close the inequality gap when placed in politics³³. For this reason, African women sought an increased position in political power, hence, participating in the world conference on women in Beijing which

³² Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, ‘Art. 2(1)’, (Maputo Protocol, 2003) <<https://www.ohchr.org/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf>>, accessed date 8th November, 2021

³³ Ekhaton E O, *Protecting and Promoting Women's Rights in Nigeria: Constraints and Prospects*, (Abuja 2019), 18

aims to increase the position of women in politics and to mobilize support for women's political participation.

The Beijing Platform for Action was held in 1995 which provided fix quota for governments to be reserved especially for women³⁴. This aimed to increase the number of women in politics and by doing so, increase the propensity for female leaders or the passing of pro-women bills in the legislature. African countries signed the Beijing Platform for Action in their numbers, of which Nigeria is one of there. Therefore, it shows the level of seriousness that is put into gender equality from the African continent. The increased need for women to join politics and gain equal rights as men stem from the concept of Feminism which makes up the conceptual framework of the study.

2.3 Feminism: A Conceptual Framework.

The Feminist concept can be easily summarized as a theoretical framework aimed at providing equality between men and women, especially in places where women are faced with discrimination and constant gender-based abuse. As discussed by Molyneux. The feminist concept started in the late 19th Century as an answer to women's rights and benefits and this gained widespread popularity in the 20th Century to include the demand for equal participation and opportunities³⁵.

For Lukose, feminism relates to the struggle for political authority and for seeking women's rights in social, economic, and career sectors³⁶. Additionally the high presence of patriarchy in many nations at the start of the 21st Century motivated increased support of the feminist movement across the world. It is no news that there is still a wide gap between men and women in society³⁷. In some instances, women are paid lesser than men for doing the same jobs or are refused promotions simply because they are women. This resonates with all

³⁴ UN Women, (Fourth World Conference on Women, 1995) <<https://www.un.org/womenwatch/daw/beijing/platform/>>, accessed date: 15th November, 2021

³⁵ Molyneux Maxine, 'The Battle over Gender Ideology', *International Politics and Society*, (2017) 4 <<https://www.ips-journal.eu/regions/latin-america/article/show/the-battle-over-gender-ideology-2472/>> accessed date 13th November, 2021

³⁶ Lukose Ritty, *Decolonizing feminism in the #MeToo era*, (*The Cambridge Journal of Anthropology* 36(2), 2018) 28.

³⁷ Inglehart Ronald and Pippa Norris, *Trump, Brexit and Authoritarian Populism*, (Cambridge: Cambridge University Press, 2019) 54.

the provisions introduced by international and regional bodies against discrimination against women.

It is important to note that gender inequality is recorded in all parts of society, hence, the discussion of feminism continues to increase to ensure that people are aware of the level of inequality faced by women across the world. It is pertinent to note that irrespective of the country's financial status, location, or level of development, women in all parts of the world are faced with a significant limitation in their career, business, politics, social life, and even in the family life.

Regarding our case study, gender inequality is present in Nigeria, more so in increasing values when discussing the Northern part of the country. This could be tied to the notion of culture and tradition that continues to place women under men. As mentioned by Nkomo and Ngambi, although gender inequality and abuse of women rights can be found in all parts of the world, the African situation is however below average and women are constantly faced with blatant discrimination in public places³⁸.

According to the submissions of Blay, women in most parts of Africa constantly face oppression and abuse, and this has significantly increased the need for female social action and feminism. The Nigerian society from birth accords more rights and respect to the man, while the woman is mostly treated as a secondary figure with very little opportunity for development. This explains why there is still a discussion to encourage girl-child education in Nigeria, even at this time of civilization.

Gender norms in Nigeria also trigger the fast-rising nature of feminism in Nigeria as more women are becoming increasingly aware of their position and their power, despite the constant opposition and abuse that they receive from men. As discussed by Igube, women who face a significant abuse of rights in Nigeria are granted lesser opportunities in politics, despite the Beijing Platform for Action of which Nigeria is a signatory³⁹. It then becomes important to mention that women's rights in Nigeria is bound on the principle of feminism and not solely on the numerous legal provisions that governments are signed into.

³⁸ Nkomo S.M and Ngambi H, 'African women in leadership: Current knowledge and a framework for future studies' [2009] *International Journal of African Renaissance Studies - Multi-, Inter- and Transdisciplinarity*, 54

³⁹ Igube R B, *Women and Gender Studies* (Sir Kaf Ventures Nigeria Company: Abuja, 2004)
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This explains the importance of understanding the position of feminism in Nigeria before discussing the notion of women's rights in the country and how these can be improved over time.

Conclusion

The international society has introduced a wide range of regulations, policies, and laws to ensure the protection and provision of women's rights in the world. It is no doubt that women in all parts of the world are constantly faced with constant abuse in the family, workplace, politics and society. This further increased the need for the international community to adopt numerous legal instruments under which member states are obligated to ensure the protection of women's rights.

The study introduces the position of the UN as an integral member in the discussion of women's rights globally. The UN General assembly initiated the Universal Declaration of Human Rights as well as the Convention on the Elimination of all Forms of Discrimination against Women. These policies aim in ensuring support for women's rights in not only the local arena but also in the global arena. Additionally, the international society through the Beijing Platform for Action sought to increase women's participation in politics, in hopes that the higher the number of women in politics, the higher the support for women's rights.

Similarly, as discussed above, the African community through the African Union also introduced numerous regional provisions aimed at safeguarding women's rights in the continent. Major examples of the provision made by the AU is the African Charter on Human and People's right as well as the Maputo Protocol. These provisions thoroughly discuss the importance of women's right and vehemently fights against discrimination against women, however, the situation in Nigeria is still far from stellar.

Relating to the Nigerian situation, the study adopted the Feminist theory as the main theory for discussion where it was found that the Nigerian society is still controlled by a high amount of cultural affiliation which has made women's rights very difficult to attain and constantly puts women below the man. Based on these discussions, the next chapter provides

an analysis of the Nigerian position on women's rights and how this has influenced the position of women in the country.

CHAPTER 3

The Nigerian Legal Position Concerning Women's Rights

There are numerous legal provisions regarding gender equality and women right in Nigeria. Similar to other democratic nations under the rule of law, the Nigerian society has provided numerous judicial enforcement such as the penal code, civil code, the Constitution, as well as other judicial provisions and arrangements which are all targetted to acknowledging and promoting women's rights in the country.

As a result of the patriarchal nature of Nigerian society, it became increasingly important for the government to make numerous constitutional amendments and judicial arrangements that will back up the already existing legal provisions in the country. Women in Nigeria are continually faced with problems in society, especially in the home and at work. This explains why having legal provisions to support the rights of women in Nigeria is important in reaching equality and gender protection.

This has posed difficulty in reaching an equilibrium level of gender participation in politics. Aina-Pelemo and Jesutoye explain that despite the numerous reasons for the discrimination against women in Nigerian society, culture is famously known as one major factor for gender the chapter begins by discussing Nigerian society and the interaction between women's rights and society in Nigeria. It then moves to analyse the nature of women's rights in the Nigerian Constitution. In this section, an understanding of whether women protection is provided or

not is discussed, and this will examine the nature of women rights in the country. The chapter also discusses the position of women's rights in the country through discussing the various code of conduct and regulations of different federal government agencies that are against women's rights.

3.1 The Nigerian Society and Women's Rights

As a post-colonialist country in Africa, the Nigerian society is explicitly traditional and this is deeply rooted in the social, economic, and religious interactions in the country. As mentioned by Ette, the Nigerian woman is faced with a strong structural limitation which is caused by the interaction between various political and non-political actors⁴⁰. It is no doubt that Nigerian woman when compared to women in other Western nation is continually treated unequally and this has further created gender inequality in the country.

According to Abdul, et al., the cultural nature of the Nigerian society has created a basis for an increased discussion about gender inequality and this introduced the concept of feminism in the country, wherein, women constantly strive to achieve similar social, political, and economic benefits as men⁴¹. There is no doubt concern about the position of women's rights in the country, especially seeing that women account for over 52 per cent of the 213 million population in Nigeria⁴². Considering the higher number of women in the country, it would be expected that women's rights should be one of the most practised rights, however, this is not the situation in the country.

As mentioned by Bakir, the constant disregard for women's rights has led to numerous inhumane treatments against women such as female genital mutilation, denial of inheritance, rape, gender-based violence, job discrimination, education discrimination

⁴⁰ Onyewere Joshua, 'Women and Governance: A Case Study of Nigerian Women' (B.A Thesis, University Of Tallinn, 2017).

⁴¹ Abdul, M. M and others, *Analysis of the History, Organisations and Challenges of Feminism in Nigeria*, (Nigerian Group. 2011) 9

⁴² Bakir M, 'Violence against women must stop; five stories of strength and survival' (United Nation 2021), <<https://news.un.org/en/story/2021/11/1106322>> accessed date 19th November, 2021

amongst others⁴³. Additionally, the ratio of women in politics when compared to men is significantly low and inequality in Nigeria⁴⁴.

The notion of culture in Nigeria is largely dependent on gender roles which continuously divides the tasks and responsibilities between men and women. Women are often seen as helpers whose major task is to take care of the home, make kids and watch after kids, whereas, men are seen as the head of the home with explicit powers to decide over their wives. The nature of gender roles in Nigeria has increasingly affected women's rights in the country since women are structurally placed in a position of discrimination.

The current Nigerian society and its interaction with women's rights are dependent on the power relations that are established between men and women. Consequently, these power relations are organized based on a derogatory position for women which has greatly reduced their socioeconomic and cultural values⁴⁵. Women's right in Nigerian society is affected by numerous factors and this strengthened the position of feminism in the country as women struggle to protect and maintain their rights.

According to News and Views, in order to protect and uphold the rights of women in Nigeria, feminism gained wide popularity in the country. The major role of feminism in the nation is to lobby the government to ensure maximum participation of women in politics, ensure that women's rights are protected and reduce the inequality between men and women. The feminist movement has helped in increasing the level of education and knowledge amongst the Nigerian society and it has further increased awareness of the problems that women face and how the government may intervene in fighting against gender-based discrimination.

Owing to the societal implications of women inequality in Nigeria, feminism and women's rights has, over time, been championed by various social groups and movements, most of which includes; National Council of Women Society (NCWS), Market Women Association, Widows Associations, Federation of Muslim Women Association of Nigeria

⁴³ Varella Simona, 'Population of Nigeria in selected years between 1950 and 2021' (Statista 2021), <<https://www.statista.com/statistics/1122838/population-of-nigeria/>> accessed date 21st November, 2021

⁴⁴ Aina-Palemo A D and Jesutoye T A, 'Women's Right and Feminism under the Law in Nigeria', [2021], OAU Journal of Public Law, 149

⁴⁵ Uchenna Nympha Nkana, 'The Impacts of the development of Feminism in the Present-day Nigerian society', [2019], International Journal of Academic Research and Reflection, 34

(FOMWAN), and Women Wing of Christian Association of Nigeria (WOWICAN). These associations are mostly targeted at increasing the living standards of women in the country while providing education and skills aimed at women building. According to Orisadare, members of such associations are guided by a code of conduct and based on the principles of these organizations, legal assistance may be provided to women who are faced with legal battles from their spouses⁴⁶.

The growing cases of gender-based violence and discrimination against women in society led to the creation of the Women in Nigeria (WIN) national conference. The conference outlined its goals as protecting Nigerian women in the work-life, increasing the number of women in the parliament, helping women in issues of family decision making, and making women access more rights in the society⁴⁷. Due to the women in Nigeria congress, a strong feminist wave started in Nigeria, and bills aimed to increase the standard of living for women were presented in the legislature.

According to Madunagu, the Women in Nigeria (WIN) network began strongly and caused a great impact in the Nigerian society regarding women's rights, however, this movement quickly lost its power due to its universal membership policy and as a result of the lack of education to what feminism means⁴⁸. Most members were male and uneducated, therefore, they saw feminism as a theory that advocates for female supremacy, rather than equality, hence, the WIN became less effective.

Owing to the ineffectiveness of the WIN, the Nigeria Feminist Forum was launched in 2008 which was created as a result of the African Feminist Forum (AFF)⁴⁹. According to the AFF, the definition of feminism and patriarchy is outlined in the Charter of the AFF which goes thus:

“As African feminists our understanding of feminism places patriarchal social relations structures and systems which are embedded in other oppressive and exploitative structures at the center of our analysis. Patriarchy is a system of male authority which legitimizes the oppression of women through political, social, economic, legal cultural, religious and military institutions. Men's

⁴⁶ Orisadare Monica Adele, 'An Assessment of the Role of Women Group in Women Political Participation, and Economic Development in Nigeria', [2019], *Frontier in Sociology*, 13

⁴⁷ Aina-Palemo A D and Jesutoye T A (n 44) 152

⁴⁸ Madunagu B, *The Nigerian Feminist Movement: Lessons from Women in Nigeria (WIN)*, (Abuja Press, 2010), 35.

⁴⁹ Aina-Palemo A D and Jesutoye T A (n 44) 163

*access to, and control over resources and rewards within the private and public sphere derives its legitimacy from the patriarchal ideology of male dominance. Patriarchy varies in time and space, meaning that it changes over time, and varies according to class, race, ethnic, religious and globalimperial relationships and structures*⁵⁰.

From the Charter of the AFF, it could be understood that the feminist seeks to not only change the current state of discrimination against women but also fight against future patterns of patriarchy which can only be done through judicial means. As mentioned by Madunagu, feminism and women's rights in Africa can only be supported when the government introduces the right judicial steps and legislative control to enforce such rights. Therefore, the major aim of the AFF is to encourage African states to join international and regional women's rights treaties as well as to enforce the protection of women's rights in their countries⁵¹. Despite the numerous works of feminism in Africa as well as in Nigeria, the rights of women are still under-represented and women's rights are constantly abused, regardless of the numerous laws and judicial arrangements in the country.

The next section highlights a few of the laws that are obtainable in Nigeria in regards to women's rights. This section focuses mainly on the constitution of the country and briefly talks about various international and regional arrangements in the country.

3.2 Domestic Legal Instruments Concerning Women's Rights in Nigeria

Since Nigeria is a democratic state, the country is bounded by the rule of law which is outrightly stated in the Nigerian Constitution⁵². The Nigerian Constitution was ratified in 1999 and this has become the major legal instrument that assigns the powers of the various arms of government as well as bestows the various rights that pertains to every citizen in the country. Chapter IV of the Nigerian constitution highlights the fundamental rights of the citizens, wherein, these rights apply to all citizens irrespective of their sex, age, ethnic group or any other personal characteristics that may differentiate one person from the other⁵³.

⁵⁰ The African Feminists Charter, 'African Women's Development Fund'(AWDF 2006) <<https://awdf.org/wp-content/uploads/AFF-Feminist-Charter-Digital-%C3%A2%C2%80%C2%93-English.pdf>>, accessed date 19th November, 2021

⁵¹ Orisadare Monica Adele (n 49) 5

⁵² Constitution of the Federal Republic of Nigeria 1999, Art. 1

⁵³ Constitution of the Federal Republic of Nigeria 1999, Chapter IV

Under Section 33, the Constitution talks about the right to life for every citizen irrespective of sex. Section 34 of Chapter IV of the Nigerian Constitution highlights individual dignity and respect, Section 34 (1) state that:

*“Every individual is entitled to respect for the dignity of his person, and accordingly - (a) no person shall be subject to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour”.*⁵⁴

In comparison to the situation obtainable in Nigeria, Olarenwaju submits an opposing case to this section, stating that women are disrespected in the Nigerian society, and are discriminated against from working in particular sectors.

Section 35 (1) of the Nigerian Constitution talks about workers liberty and in this section, it is discussed that everyone is free and is entitled to personal freedom and liberty⁵⁵. Although this could be related to including women, in theory, the story that is obtained in practice is completely different. Since Nigeria is a patriarchal society, women’s liberty in most areas are dependent on the man, hence, a woman is expected to do and perform as her husband says which is against her liberty and freedom. Additionally, there are situations where women are compelled to do as the man pleases, despite her opposition to the man’s opinion⁵⁶.

According to section 42 of the Nigerian Constitution, the rights of the citizens are stated as follows;

“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, religious 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, religious or political opinions;

⁵⁴ Constitution of the Federal Republic of Nigeria 1999, Section 34 (1)

⁵⁵ Constitution of the Federal Republic of Nigeria 1999, Art. 35

⁵⁶ Akande J, *Women in Law Lagos*, (Southern University Law Centre, 1993), 43

(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 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”⁵⁷.

According to the 1999 Constitution of the Federal Republic of Nigeria, women’s rights are strongly protected through the various mentions of fundamental human rights for all citizens and in regards to the protection of dignity and respect to personal life. Additionally, the constitution allows for the right to form associations and unions, which has created a major basis for the formation of feminist movements in the country⁵⁸. Based on the arrangements of the Constitution, every citizen has the freedom of expression to choose between different modes of living which also adds to further protection of women’s rights⁵⁹. For every Nigerian, the Constitution is created as an instrument with the main aim of improving and protecting their rights and this serves as a reference that is used by all during legal proceedings in Nigeria.

In addition to the rights and obligations highlighted in Nigeria’s Constitution about Women’s rights, Section 12 of the Constitution allows for the ratification of international laws and treaties by the parliament to be adopted as domestic laws in Nigeria⁶⁰. This has created an avenue whereby the government introduces vital laws and legal principles such as the Convention on the Elimination of Discrimination against Women (CEDAW) and other international treaties in support of women’s rights.

Since women’s growth and development is of utmost importance in Nigerian society, various labour unions aim to support women’s right and add to the productivity that women bring into society. For example, in Nigeria’s Labour Act, some certain provisions and regulations aim to support and protect women’s rights in the country. Chapter 54, paragraph 1(a) of Nigeria’s Labour Act states that:

⁵⁷ Constitution of the Federal Republic of Nigeria 1999, Art. 42

⁵⁸ Onyemelukwe C, ‘Legislating on Violence against Women: A Critical Analysis of Nigeria’s Recent Violence Against Persons (Prohibition)’ [2016] DePaul Journal of Women, Gender and the Law, 33

⁵⁹ Constitution of the Federal Republic of Nigeria 1999, Art. 16

⁶⁰ Constitution of the Federal Republic of Nigeria 1999, Section 12.

“In any public or private industrial or commercial undertaking or any branch thereof, or in any agricultural undertaking or any branch thereof, a woman-

*(a) shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;”*⁶¹.

A special example of this provision in the Labour Act was the case between *Mrs Folarin Oreka Maiya v Incorporated Trustees of Clinton Health Access Initiative Nigeria*, where the applicant was discriminated against on account of current or future pregnancy⁶². Mrs Folarin had submitted to the court that she was forced to continue working by her employer, despite her status of being heavily pregnant. In this case, the Court held inter alia, that no woman shall be discriminated against because of being a woman or subjected to any form of disability otherwise, it will amount to a breach of such woman’s fundamental right⁶³.

The Labour Act also refuses women to work the night shift or to work in mines. Chapter 55 (1) of the Labour Act states that: *“Subject to this section, no woman shall be: employed on night work in a public or private industrial undertaking or in any branch thereof, or any agricultural undertaking or any branch thereof”*⁶⁴. While this provision makes an exception to nurses and other emergency workers working a night shift, many women have faulted this supposed protection of women as discrimination which is against the fundamental human right of freedom of expression and right to work. There are however many cases where the Labour Act has been used to ensure the protection of women in their workplace, a typical example is a case between *Miss Yetunde Zainab Tolani v Kwara State Judicial Service Commission and Ors*.

In the case of *Tolani v Kwara State Judicial Service Commission and Ors*, the appellant (Tolani) was employed as a Magistrate in Kwara State who was later accused that she lied about her marital status, claiming she was single, whereas she was married⁶⁵. The appellant vehemently refuted these accusations, however, she was fired from her place of duty. Aggrieved by the decision, Miss Tolani took the case to the Appeal Court who then reinstated the appellant and directed all benefits to be duly awarded to her.

⁶¹ Ibid 1, Chapter 54, Paragraph 1(a)

⁶² *Mrs Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative*, [2012] Nigeria & 2 ors, case 346

⁶³ Ibid

⁶⁴ Nigerian Labour Act 2004, Chapter 55(1)

⁶⁵ *Miss Yetunde Zainab Tolani v Kwara State Judicial Service Commission and Ors*, [2009]

In a show of disbelief, the Judicial Service Commission submitted the matter to the Supreme Court, where the Supreme court did not only express their dissatisfaction at the persistent nature of the Judicial Service Commission in promoting such injustice, but the Supreme court also upheld the judgement of the Appeal Court in line with the respect of private life and family as highlighted in Nigeria's Constitution⁶⁶. This case goes to show how many hurdles a woman will have to cross in ensuring that her labour rights are protected in Nigeria.

In addition to the domestic arrangements that are outlined by the Nigerian government in ensuring the protection of women's rights, it is necessary to highlight that the Nigerian Constitution highlights human rights in three main distinctions which are Civil, Political, and Socio-economic rights. As highlighted by Aina-Palemo and Jesutoye, the major criteria for this distinction are based on the justiciable nature of the rights, wherein, civil and political are justiciable, while socio-economic rights are not but are only regarded as "Fundamental Objectives and Directive Principles of State Policy"⁶⁷.

Justiciable in this context relates to an action that may be deemed admissible in the court of law, and since socio-economic rights are usually non-justiciable, it makes the protection of women's rights increasing difficult in Nigeria. Therefore, to ensure the government's effort in the protection of women's rights, the Nigerian government has ratified a couple of international treaties and regional treaties, some of which are discussed below.

3.3 International Legal Instruments Concerning Women's Rights in Nigeria

As highlighted in the previous chapter, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was enforced in 1981 to ensure the protection of women against discrimination and gender inequality⁶⁸. CEDAW was introduced to fight against abuse, marginalization, cruelty and coercion of a woman to engage in actions that limit their human rights. According to CEDAW, the main purpose for the formation of the foundation of the Convention is highlighted in Article 2 which states thus:

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

⁶⁶ Ibid

⁶⁷ Aina-Palemo A D and Jesutoye T A (n 44) 151

⁶⁸ CEDAW 1981, 241

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) To repeal all national penal provisions which constitute discrimination against women”⁶⁹*

From the above, it could be noticed that the essence of CEDAW is not only to promote women’s rights but to also hold the government accountable to ensure that offenders of human rights are reprimanded and prosecuted. Nigeria ratified CEDAW in 1985 without reservation and has since tried to implement the principles of CEDAW in the country. It is essential to note that CEDAW is not ratified in all states with notable examples such as the US and Saudi Arabia.

Nigeria in 1991 recognized and acknowledge the Universal Declaration of Human Rights (UDHR) which seeks to ensure equality for all irrespective of their sex, gender, status and other defining personal characteristics. States that recognized the declaration are expected to follow the purpose of the UDHR which is highlighted in Article 2 as follows:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether

⁶⁹ UDHR 1948, Art. 2

it be independent, trust, non-self-governing or under any other limitation of sovereignty”⁷⁰

Article 2 of the UDHR was the judicial reference that was used by the Supreme Court in the *Yetunde Tolani v Kwara State Judicial Service Commission and Ors* case in 2005.⁷¹

Concerning the regional arrangement, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) is the main regional arrangement that mainly highlights the protection of women’s rights in Africa. The main aim of this Protocol is highlighted in Article 2 which is as follows:

“States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures: In this regard they shall:

a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;

b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those 5 harmful practices which endanger the health and general well-being of women;

c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women”⁷².

Nigeria has signed and ratified the Maputo Protocol, hence, granting citizens the right to submit individual cases to the court and to ensure that the Nigerian government can be held responsible in cases of breach of the protocol or injustice.

Considering the domestic and international arrangements made by the Nigerian state to ensure the protection of women’s rights, numerous provisions in the Nigerian legal instruments signifies a limitation to the rights of women in the country. These provisions and limitations are explicitly discussed in the next chapter.

⁷⁰ UDHR 1985, Art. 2

⁷¹ Ekhiator E O, ‘Women and the Law in Nigeria: A Reappraisal’, [2015] *Journal of International Women’s Studies*, 287

⁷² Maputo Protocol 2003, Art. 2

Conclusion

The position of women's rights in Nigeria is supported by many domestic and international arrangements of which Nigeria has ratified. The Nigerian Constitution has explicitly discussed the nature of human rights which applies to all irrespective of their status, sex or affiliation. The rights of each citizen as discussed in the Constitution includes the freedom of expression, respect of privacy and family life, the dignity of all, as well as the freedom of expression and political affiliation. This has led to the increase of the Feminist movement in the country which has further increased the need for women's growth in the country.

In addition to the domestic legal instrument, Nigeria has ratified and adopted CEDAW, Maputo Protocol and has recognized and acknowledged the UDHR. Whilst other international and regional treaties aim at promoting women's rights, these three main legal agreements are seen as the most important, especially for an African state such as Nigeria. Hence, this shows the interest put forth by the Nigerian government in ensuring that women's rights are protected and supported. Additionally, the chapter discusses the rise of the feminist movement as a strong catalyst in ensuring the growth of the women's movement as well as a constant awareness of the problems faced by women in Nigerian society.

The chapter views the Nigerian society as a patriarchal one where male domination is considered normal and women subordination is viewed as cultural. Hence, despite the numerous actions taken by the government to ensure that women are of equal position with men, there are still numerous cases and conditions wherein women were faced with an increased level of discrimination, especially in rural areas. Therefore, there is a need for the Nigerian state to improve the status of women's protection in the country.

CHAPTER 4

THE INTERACTION BETWEEN WOMENS RIGHTS AND THE NIGERIAN LEGAL SYSTEM

4.1 An Overview of Women's Right in the Nigerian Society

Nigerian society is an increasingly patriarchal society where women are constantly faced with challenges regarding women's rights. As a traditional society, there are numerous customs and traditions in Nigeria that limits the rights of women and exalts the position of men. Similarly, women are viewed as properties in some parts of Nigeria and are customarily considered to be lower than men. This has increased the problems associated with women's status in society and has consistently made the position of women to be lower than men in the society, despite the numerous legal provisions that the Nigerian government has established.

The chapter argues that omen's rights in Nigeria are discriminated against and women are increasingly faced with a lower level of respect from men and in society. It is no doubt that the Nigerian Constitution as mentioned in the previous chapter highlights that all Nigerians are equal under the law and have the freedom of expression. Similarly, the Constitution highlights that every Nigerian irrespective of their gender or status should be treated with dignity and respect, whereas, this is not the case in reality as women as argued in this chapter are treated with disdain and second-class citizens.

The chapter begins by discussing the various provisions under the Nigerian legal instruments that continue to limit the position of women in the country. Referring to the Labour Act, Penal Code, Civil Code and other customary laws in the country, an argument about the current position of women in the country is discussed. Similarly, case studies to support that women's rights in Nigeria are indeed abused are provided in the study. As a comparison, the chapter provides important few cases where the rights of women were upheld in the Nigerian court, however, the study concludes by showing instances where

women were faced with blatant cases of human rights abuse simply because of their gender and because the Nigerian society allows it.

4.2 Discrimination of Women under the Nigerian Law

The patriarchal nature of the Nigerian society as mentioned by Ekhiator is widely influenced by various religions and customs that are obtainable across Nigeria⁷³. Owing to the influence of customs and traditions in the country, women are viewed in a weaker position as compared to men, hence, allowing for a wide range of discriminatory policies against women in society. In agreement, Alemika highlights that the cultural and social nature of the Nigerian society has influenced the legislative and judicial arrangements of the nation where society has defined the behavioural patterns of the gender and women are seen to be inferior⁷⁴.

The legal nature of women's rights in Nigeria as mentioned by Ibidapo-Obe is influenced by culture which unfortunately views women's rights as secondary rights that are not as essential as the rights of men in Nigeria⁷⁵. This explains why Olubor in the discussion of women in Nigeria highlights that the position of women in Nigeria is vulnerable and they are the least protected gender under the law in the country⁷⁶.

It is important to highlight that the discrimination of women in Nigeria is supported by some laws in the country, this shows the influence of the patriarchal culture that is embedded in the legislative nature of the country and this continues to fight the efforts put forward by feminists in the protection of women's rights in Nigeria. Notable examples of such laws that are practised in Nigeria are; Customary Law practices, Labour Act, Sharia Law and some Constitutional provisions and others.

⁷³ Ekhiator E O (n 71), 289

⁷⁴ Alemika E, 'Family Practices and Violations of the Rights of Women', [2010] University of Maiduguri Law Journal, 34

⁷⁵ Ibidapo-Obe, A, *Synthesis of African Law* (Concept Publishers: Lagos, 2005) 13

⁷⁶ 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', (Nigerian Law Guru, 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 date 1st December, 2021

4.2.1 Discrimination of Women Concerning Labour Laws

There is significant discrimination against women in the Nigerian labour sector which constantly limits the efficiency of women and continues to put them in a less economic position when compared to men. For example, Section 55(1) of the Labour Act states that:

“Subject to this section, no woman shall be: employed on night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof”⁷⁷.

Although Section 55 (2) makes an exception for women working in the health sector as health workers or women in management positions, there are numerous jobs in Nigeria where salaries are higher when work is done overnight. For example, the oil industry in Nigeria is seen as the highest paying industry in the country, however, working in this sector is mostly done off-shore and this will require night shift working, therefore, women are structurally disadvantaged from working in such places due to the provision on the Labour Act.

Additionally, under Section 56(1) of the Labour Act women are prevented from engaging in any underground work in any mine, therefore, women cannot have a career in the mining industry, despite their expertise or interest in this field⁷⁸. Despite the Nigerian Constitution which highlights the freedom and expression of family life for all citizens under Article 37, women working in Nigerian offices are denied the right of having their spouse join them in their place of work or area of posting. It is pertinent to note that this provision does not apply to men working in Nigeria as can be seen in Section 34 (1) of the Labour Act which states that *“men who are employed in the public service in Nigeria are permitted to be accompanied to their place by such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him”⁷⁹.*

In discussing the nature of civil service rules and how this negatively influences the position of women working in Nigeria, Rule 03303 of both Kano and Kaduna States’ Civil Service is an important reference in this regard. Rule 03303 states thus:

“Any woman civil servant, married or unmarried who is about to undertake a course of training of not more than six months duration shall be called upon to enter into an

⁷⁷ Nigerian Labour Act 2004, Section 55(1)

⁷⁸ Nigerian Labour Act 2004, Section 56 (1)

⁷⁹ Nigerian Labour Act 2004, Section 34 (1)

agreement to refund the whole or part of the cost of the course in the event of her course being interrupted on the ground of pregnancy”⁸⁰

The discrimination against women in the workplace is also reflected in the Nigerian Police Force as well as in other Para-Military Services in Nigeria. Using the Nigerian Police Force as an example, Section 127 of the Police Act holds that married women are not enlisted to join the Nigerian Police, therefore, any woman joining the police force has to be single at the time of enlistment⁸¹. Additionally, when a single woman in the Nigerian Police becomes pregnant, she is automatically relieved of her duties, only if the Inspector General approves of her to be re-instated⁸². It is pertinent to note that none of these laws applies to men, mostly because the cultural belief of the society already requires women to stay at home and take care of the family while the husband goes out to work.

Under Section 124 of the Nigerian Police Act, a female police officer who wishes to get married must firstly in writing, send an application letter to the Commissioner of Police for approval before she can continue with the marriage⁸³. Therefore, in an instance where the Commissioner of Police refuses to grant his approval, the female police officer may either choose to forfeit the marriage plans or resign from the Police.

Therefore, based on the provisions in the Nigerian Police Force as highlighted above, men, irrespective of their marital status or child status are allowed the right to enrol under the Nigerian Police, whereas, women cannot do so. This further increases the employment inequality between men and women in Nigeria and answers for why there is a considerably lower number of female police officers when compared to men in Nigeria⁸⁴.

Imasogie highlights that the recognition of all Nigerian Air Force officers as “airmen” is inherently discriminatory to women as the noun Airmen applies to both men and women irrespective of their gender⁸⁵. The Nigerian Drug Law Enforcement Agency (NDLEA) Act also accentuates the discrimination of women in some of its regulations as highlighted below.

⁸⁰ Imasogie M O, ‘OIDA’ [2010] International Journal of Sustainable Development, 13

⁸¹ Nigerian Police Act 2020, Section 127

⁸² Ibid

⁸³ Ibid Section, 124

⁸⁴ Oluwafemi M O, ‘Gender Inequality in Nigeria Police Force’ [2019] International Journal of Research and Innovation in Social Science (IJRISS), 432

⁸⁵ Imasogie M O (n 80) 14

Article 5(1) of the NDLEA Order, 2002 states that “*All female applicants shall be unmarried at the point of entry, and shall upon enlistment remain unmarried for a period not less than two years*”⁸⁶. Furthermore, Article 5(2) provides, “*All unmarried female members of staff that wish to marry shall apply in writing to the Chairman/Chief Executive, asking for permission, stating details of the intended husband*”⁸⁷.”

4.2.2. Sexual Violence Laws that Discriminate against Women in Nigeria

It is pertinent to highlight the three main variants of criminal codes in Nigeria which are the Criminal Code in the Southern part of Nigeria, the Sharia Penal Code operational in the northern part of Nigeria and the Penal Code which is operational in the non-Muslim majority states in the North⁸⁸. Alemika & Alemika highlights that the differences in criminal codes in different regions of the country are due to the influence of various cultures in different parts of Nigeria that is visible in the law systems⁸⁹. Hence, since it has been earlier discussed that the Nigerian culture is inherently patriarchal, the discrimination against women is also reflected in the various criminal codes in the country.

Paragraph 113 of the Beijing Platform Act defines violence against women as “*any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life*”⁹⁰. Ashiru mentions that rape which is mostly committed by a man against a woman is regarded as one of the most popular offences in Nigeria, however, it is one of the least reported crimes due to the stigma attached to rape victims⁹¹. Rape is defined in Section 357 of the Criminal Code Act which states that:

“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

⁸⁶ Ekhiator E O (n 71) 291

⁸⁷ Ibid

⁸⁸ Alemika E E and Alemika E I, *Criminal law provisions on sexual violence and deviance in Nigeria*, (Abua Press, 2005), 2

⁸⁹ Ibid, p. 4

⁹⁰ Nigerian Criminal Code 1916, paragraph 113

⁹¹ Ashiru M O, ‘A Consideration of Nigeria Laws which are Gender Insensitive: the Female Gender in Focus’ [2010], University of Benin Journal of Private and Property Law, p. 92

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”⁹².

An important reason why rape cases are least reported in Nigeria is due to the evidence act which limits the admissibility of a rape case in court. Section 221 of the Evidence Act states that

“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”⁹³.

According to the Evidence Act, a pattern of victim shaming is seen, where the sex offender which is usually a man may be exonerated if the rape victim is not of a good character, therefore, the credibility of the victim is firstly tried under law before considering the rape case. It is worthy to note that the Penal Code has similar provisions to the Criminal Code in issues regarding rape in Nigeria. For example, a husband cannot be guilty of rape against his wife, as per the offence of rape in Nigeria. However, in Nigeria, a husband cannot be found guilty of rape against his wife, a law that stems from the culture and religious affiliation of Nigeria.

For example, in the case of *R v Roberts*, the court concluded that *“the status of marriage involves that the woman has given her consent to her husband having intercourse with her during the subsistence of the marriage...she cannot unilaterally withdraw”⁹⁴* This provision of rape in the Nigerian law goes against the current worldwide trend in legislating against marital rape, especially as mentioned in CEDAW and the Maputo Protocol of which Nigeria is a member.

The Sharia Penal Code as highlighted above is predominantly practised in the Northern part of the country and under this legal provision, a husband cannot be found guilty of marital rape. Hence, the consent of the wife is not important during sexual intercourse with

⁹²Nigerian Criminal Code 1916, Section 357

⁹³ Ibid 6, Section 221

⁹⁴ *R v Roberts [1966] Criminal Law Reports 188*

her partner. As mentioned by Oyelade, under Islamic law, the husband may be held responsible for injuries sustained by the wife during forced sex, but he can never be held for rape with his wife⁹⁵. Furthermore, Alemika and Alemika highlights that the treatment of women under the Sharia Codes are very discriminatory, especially how single women are treated in comparison with married women⁹⁶. This is based on the cultural belief that the married female is more responsible since she has a husband while the single woman is irresponsible.

4.2.3 Indecent Assault Laws

In Nigeria, the punishment for an indecent assault is significantly different, with the woman gaining higher punishment in comparison to the man. In section 353 of the Criminal Code, anyone who assaults a man is charged with a felony and may be imprisoned for three years, whereas, section 360 of the Criminal Code may charge an offender who assaults a woman of misdemeanour and liable for two years of imprisonment⁹⁷.

Regarding wife battery, it is pertinent to note that although Section 34(1) of the Nigerian Constitution highlights the respect for individual and dignity for all Nigerians, laws are being practised in Nigeria which encourages wife battery. For example, Section 55 of the Penal Code, gives husbands the right to punish or physically harm their wives for wrongdoings⁹⁸. According to Section 55(10), “*nothing is an offence which does not amount to the infliction of grievous harm upon a person and which is done by a husband for the purpose of correcting his wife...⁹⁹*” Similarly, it is worthy to note that the Sharia Codes being practised in the North supports wife battery, mainly due to the cultural beliefs and practices of the inhabitants in this region.

4.2.4. Citizenship Law

The Nigerian citizenship laws also discriminate against women. Under Section 26 of the Nigerian Constitution, the President has the power to confer Nigerian citizenship on “any woman who is or who has been married to a citizen of Nigeria” and may not do so on any

⁹⁵ Oyelade O, ‘Women’s Right in Africa: Myth or reality’, [2006], University of Botswana Law Journal, 100

⁹⁶ Ibid 89, p. 5

⁹⁷ Nigerian Constitution 1999.

⁹⁸ Nigerian Penal Code , Section 55

⁹⁹ Ibid Section 55(10)

man who is or has been married to a citizen of Nigeria, therefore, a woman cannot transfer her Nigerian citizenship to her foreign husband¹⁰⁰.

Additionally, in the discussion of citizenship by naturalisation, the foreign spouse of a Nigerian woman may become a Nigerian citizen after a minimum of 15 years of being married and living in Nigeria, in comparison to a foreign spouse of a Nigerian man that may easily acquire citizenship by simple registration¹⁰¹. A typical case study was the deportation of Dr. Wilmot a Jamaican who was married to a woman from Sokoto State¹⁰².

Regarding passport applications, a Nigerian wife is required to submit a written letter of consent from her husband before applying for a passport, also, children born of a Nigerian mother to a foreign father is not entitled to a foreign passport, this law, however, does not apply to persons born of a foreign mother to a Nigerian father¹⁰³.

Regarding father and mother relations, Section 18 of the Marriage Act highlights that the written consent of the father of either party must be received in the event where a spouse is 21 years or below, this means, the written consent of the mother is invalid and can only be valid if the father is dead or of an unsound mind¹⁰⁴.

4.2.5 Customary Practices/Law and Women in Nigeria

There are numerous discriminatory customary practices against women in Nigeria that are visible in all parts of society. In most parts of the Nigerian society, especially in the Eastern part, women cannot have access to landed properties either through inheritance or through marriage. Similarly, according to property rights, women who are married may have access to their matrimonial property, however, women that are married in some regions under customary law exercise minimal rights over their spousal property.

Property rights under customary laws are also very gender-based in Nigeria, wherein, women are entitled only to kitchen items that are acquired during the marriage¹⁰⁵. This,

¹⁰⁰ Fagbongbe M, 'Reconstructing Women's Rights in Africa using the African Regional Rights Regime: Problems and Possibilities', (PhD Thesis submitted to the University of British Columbia, 2010).

¹⁰¹ Ibid (n 53), Section 27 (1).

¹⁰² Falana F, '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 date 3rd December, 2021

¹⁰³ Ibid (n 53), Section 27(2)

¹⁰⁴ Nigerian Marriage Act 1990, Section 18

¹⁰⁵ Ibid (n 77), p. 8

therefore, means that a woman's role only belongs to the kitchen and she is not entitled to any other item at the home. In addition to these discriminations against women in Nigeria, there are significant legal restrictions on women concerning maternity laws and inheritance.

As an answer to the numerous restrictions on women mentioned above, the Nigerian government made some reforms and organized some initiatives to the legal systems as discussed below.

4.3. Reforms and Measures Taken by the Nigerian Government to Promote Women's Rights

Concerning marital rape, the Nigerian Government organized a workshop in 2008 which was titled "Workshop on the Reform of Law Relating to Rape and Other Sexual Offences"¹⁰⁶. This workshop led to the creation of the Violence against Women (Prohibition) Bill which seeks to protect women from all forms of abuse from men. However, this bill has not yet been passed into law, hence, women are still viciously attacked in society.

Additionally, there are numerous influences from Non-Governmental Organizations (NGOs) to create awareness concerning gender-based violence as well as provide legal support for women going through such gender-based attacks, especially from their spouses. It is pertinent to note that there is a vibrant civil society in Nigeria, therefore, it is not uncommon to find NGOs in all sectors of society.

Regarding customary laws, Governments of most Eastern States such as Enugu introduced a law in 2001 which is known as the Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law 2001 in a bid of ensuring that widows enjoy inheritance rights from their spouses¹⁰⁷. There have also been numerous cases in Nigeria where women's rights were publicly supported by the judges under law. For example, in the *WELA v Attorney-General of the Federation* (unreported) Suit No: FHC/IKJ/CS/M128/2010, it was seen that Regulation 124 of the Police Act was illegal and unconstitutional since no woman should require permission from the Commissioner of Police before she can get married¹⁰⁸.

¹⁰⁶ Ibid (n 72), p. 288

¹⁰⁷ Ibid 9, p. 5

¹⁰⁸ *WELA v Attorney-General of the Federation* (unreported) Suit No: FHC/IKJ/CS/M128/2010, 2010

Additionally, owing to Nigeria's membership in the ACHPR, there are cases where the Nigerian courts have managed to promote women's rights under the provision of the African Court. In the *Dr. (Mrs.) Priye Iyalla-Amadi v Nigerian Immigration Service (NIS)* case, the court reached that under the Maputo Protocol, women have the right to dignity and self-expression, hence, they can marry who they choose to provided they attained the legal age which is 21¹⁰⁹.

Additionally, the ACHPR served as a precedent to nullify a customary practice (law) wherein, daughters cannot inherit the properties of their late father. In the case of *Okonkwo Timothy vs. Matina Oforika*, the court held that Oforika had the right to inherit her late father's properties, hence, denying Timothy of his aim of acquiring his brother's properties¹¹⁰. A similar judgement was passed in the case of *Mrs Esther Sunday & Ors v Victor Menenyorwika & Ors*, wherein, the court held that Mr Esther had the right to inherit her father's properties and the Nigerian Constitution bestowed on all citizens irrespective of their sex and status at birth, respect and dignity¹¹¹.

As mentioned by Aniekwu, Nigeria, has signed and ratified the Maputo Protocol which is increasingly introduced in the domestic court as a basis for judicial settlements¹¹². However, despite the intervention of foreign legal instruments, the position of women in Nigerian society is continually reduced owing to the discrimination of women in the different legal instruments in the country and due to the religious practices in the country.

It is important to note that Nigeria's membership in the various international and regional organizations has led to partnership for domestic events and programs channelled towards the promotion of women's rights in the country. For example, the Women in Nigeria (WIN) is supported by the African Court of Human and People's rights which is under the African Union. Moreso, as a result of Nigeria's membership in the Maputo Protocol, judicial proceedings concerning women's rights in Nigeria are closely followed by Representatives from the Maputo Protocol.

¹⁰⁹ *Dr. (Mrs.) Priye Iyalla-Amadi v Nigerian Immigration Service (NIS)* [2009]

¹¹⁰ *Timothy v Oforika* [2008] 9 NWLR (pt. 1091) CA.

¹¹¹ *Ibid* (n 53), Section 12

¹¹² Aniekwu N, 'The Additional Protocol to the African Charter on Human and People's Rights: indications of capacity for African municipal systems Law, [2009] *Democracy & Development*, 29.

Ekhiator highlights that a majority of women's conferences and initiatives organized in Nigeria receive huge support from the UN Women as well as from CEDAW¹¹³. As mentioned above, the provisions from CEDAW as well as those from Maputo Protocol are introduced in the Nigerian court to enforce the protection of women's rights in Nigeria. Similarly, as a result of Nigeria's membership in the United Nations, the UN Women organization is very influential in partnering with numerous governmental and non-governmental organizations in Nigeria to empower women. For this reason, women, especially those in rural areas are now granted the opportunity to access adult education and increase their economic values.

Additionally, the African Union through its Women, Gender and Development Directorate continues to influence the position of women in Nigeria by establishing development programs, skill acquisition programs for women, and ensuring that African states provide the necessary conditions for the growth of women in their countries. For this reason, women's rights in Nigeria is supported by the regional and international organizations of which Nigeria is a member.

Conclusion

From the above discussed, it is seen that women's rights in Nigeria are inherently discriminated against due to various domestic laws such as the Labour Acts, Property Rights, Police Service Acts, Penal and Civil Code, and the Sharia Codes amongst others. Women are required to seek consent from their bosses before they can get married, married women are not granted entry into the Police and other para-military forces, women under the sharia codes are increasingly punished higher than men, and in instances where a woman becomes a widow, she cannot inherit the properties that were acquired with her husband due to customs.

¹¹³ Ekhiator E O (n 71) 278

The Nigerian society is a very patriarchal system that has reduced the dignity of women in Nigeria since custom is of a strong influence in Nigeria. As a result of culture and religion, women are seen as secondary citizens with a lower amount of rights when compared to men. The chapter analyses how women's rights are legally discriminated against in areas such as family life, work-life, citizenship life, socio-economic life, and even customarily. It then draws to mind the difficulty in ensuring equality for women in the Nigerian society, especially, since these women are constantly faced with a patriarchal society. The study highlights that when a person born of a Nigerian woman to a foreign father is not entitled to citizenship, neither can a foreign spouse of a Nigerian woman be granted a Passport, except through naturalisation. Additionally, the study mentions the discriminative provisions of the Nigerian legal instruments regarding women's rights.

In the last part, the chapter highlights some mechanisms, initiatives and cases wherein women's rights were protected by the court, however, these are just a select few of the numerous cases concerning gender-based violence and work abuse that women go through daily in Nigeria. Additionally, the amendments bill concerning violence against women has not been passed by the Nigerian legislative house, and most steps taken by the government to ensure gender equality are mostly talks and conferences with no significant efficiency.

CONCLUSION AND DISCUSSION

The concept of women's rights is widely discussed across the world, and this has gained higher traction in current times. The thesis discusses that women are indeed highly marginalized and discriminated against across the world, however, with varying degrees depending on the place. In regions such as Africa where a strongly patriarchal culture is still in place, it is pertinently difficult to obtain a high level of women's rights since the culture of the society already limits the position of the woman.

Making references to the global concept of women's rights, the thesis analyzes that the level of discrimination amongst women differs from place to place and there are global arrangements all aimed towards increasing the position of women across the world. The usefulness of international instruments such as the United Nations and the African Union were two major international instruments that were firmly discussed in the study. The study focuses on the concept of Feminism in discussing the global rights of women and it was seen that feminism as a concept seeks to provide similar rights enjoyed by men to women and to increase gender equality.

A major focus of the thesis was aimed at viewing the steps taken by the international arena to increase women's rights in the global sphere, however, the case is different in Nigeria since there are limitations to women's rights which are supported under the Nigerian legal system.

About the Nigerian case, the study mentioned that even though women are greater in number when compared to men, there is a lower representation of women in social, family, economic, and political life. Regardless of Nigerian's members in the CEDAW and ACHPR, the position of women in the Nigerian society is still discriminated against in comparison to men. To support this claim, the study uses the legal instruments in Nigeria in analyzing how these instruments are anti-women rights.

Focusing on the Nigerian Constitution, the thesis highlights that on the paper, the Constitution states that all citizens are equal and should be treated equally with no discrimination. However, taking the citizenship rights as an example, foreign spouses of male citizens can get their Nigerian citizenship by a mere registration, whereas, foreign spouses of female citizens may either receive approval from the president or through a minimum of 15 years of naturalisation. Hence, it is seen that male citizens are not treated equally as men. Additionally, persons born of male citizens by foreign mothers are entitled to Nigerian passports, whereas, those born of female citizens to foreign fathers are not entitled to Nigerian passports.

In the discussion of discrimination against women, the thesis also uses the Nigerian Labour Act as a study. Under the Labour Act, women cannot work nightshift jobs, except health caregivers, hence, this provision reduces their chances of employment in the oil sector which mostly operates offshore at night, women also cannot work in mines, and a woman cannot request for any bonus in an event where she has to bring her husband to her new

region of work. It is pertinent to note that these practices do not apply to men as a man is viewed as ahead of the home who must always have his wife by her side.

Additionally, according to the Nigerian Police Act, a woman cannot join the Police Force if she is married, and in an event where an unmarried female Police Officer is pregnant, she is automatically terminated from her job, except the Inspector General gets her re-instated in the force. Should a female officer decide to get married, she must write to the Commissioner of Police in her region for permission, and until permission is granted, she cannot marry. This form of treatment is also obtainable in other para-military organizations in the country, hence, women are not treated with dignity and they are discriminated against, especially since the same policies do not apply to men.

The study also discusses the Nigerian Penal Code as well as the Civil Code which discriminates against women in terms of family life and marital rape. Due to the influence of culture and religion in Nigerian society, marital rape against women has not been considered an offence and the husband under the Penal Code has the right to punish his wife provided there is no serious bodily harm done to her.

The stigmatization attached to rape victims has caused a reduction in reported cases and the Evidence Act as mentioned in the thesis has further deterred people from speaking out in instances where they are raped. Additionally, since most rape victims are women, the Evidence Act significantly limits women's right to obtaining justice.

The nature of culture in the society has also influenced customary practices in the country, therefore, women in some parts of the nation are not entitled to the property of their spouse or the properties of their father. Hence, the customary practices make it difficult for women to be treated equally with men in society.

Despite the numerous practices by the Nigerian Government to ensure that women's rights are supported and protected, the domestic legal instruments stand as a stumbling block in achieving valuable progress. Similarly, the thesis mentioned some cases wherein the ACHPR was used as a source of law in reaching decisions, the CEDAW has not been adopted by the Nigerian state as domestic law, hence, and there is a significant inefficiency in highlighting the influence of foreign legal provisions. Additionally, the Beijing Action Plan sought to increase the number of women in politics, however, there is a considerably lower number of women in the Nigerian legislative arm, hence, and bills sponsored to ensure the

protection of women's rights are often not passed into law. A typical example of this is the Violence against Persons Prohibition Act which has not yet been passed into law.

Therefore, regarding the research questions, it is seen that although the ACHPR has been ratified by the Nigerian government and has been used as a precedent in the Nigerian court, the CEDAW has not been adopted into the Nigerian domestic law, neither has the Nigerian government met the 30 per cent quota for women political participation which was agreed upon in the Beijing action plan. Additionally, women in Nigeria still face institutional abuse of their rights, hence, the provisions of the Universal Declaration of Human Rights are not visible in the country.

The thesis showed numerous judicial flaws which range from the sexual assault law, labour law which limits women's employment in night jobs, the citizenship law which makes citizenship difficult for foreign spouses of female citizens, the passport law which requires a woman to secure the consent of her husband before she can be granted a passport and many other flaws in the Sharia Codes which discriminates against women.

Concerning the third research question, it is seen that the provisions in the Nigerian legal instruments are influential in the discriminatory treatment of women in Nigeria. The fourth and final question on the initiatives taken by the government only shows that the government continues to have workshops and seminars which do not create any solid changes in the nature in which women are treated. Attempts to pass the Violence against Persons Prohibition Bill has been met with strong opposition from the male-dominated Legislative arm, neither has there been any significant changes to the Penal and Civil Code which significantly limits the rights of women.

Therefore, to boast of any value changes in the protection of women's rights, it is essential that the government makes necessary amendments to the legal provisions which discriminate against women and the government must consider adopting the Beijing Platform for Action which will increase the number of women in politics. Additionally, the patriarchal nature of the nature-society can only be changed through education, therefore, awareness of the rights of women should be made.

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