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## Women and the Law in Nigeria: A Reappraisal

By Eghosa Osa Ekhaton<sup>1</sup>

### Abstract

Women in Nigeria face many challenges and discrimination under some extant laws. This paper will focus on some of these laws and their impacts on women in Nigeria. The first section will focus on a brief history of Nigeria as a background to the paper. Nigeria's unique legal system will be briefly highlighted. The second section of the paper will highlight aspects of Nigerian laws accentuating discrimination against women. Some of these laws will include the Labour Act, the Police Act, customary practices and sexual violence laws amongst others. The third part of the paper will focus on the reforms of the extant laws. Some of these reforms include judicial activism of judges in Nigeria, regional and international treaties which Nigeria has signed and ratified (and in some cases, domesticated), and the social activist roles of the Civil Society Groups or Non-Governmental Organisations (NGOs) in Nigeria. The fourth section will proffer some recommendations. The final section will be the concluding part of the paper.

*Key Words:* Women, Discrimination, Nigeria, Sharia

### Introduction

Nigeria is a federal state with a population of about 150 million. Women make up more than half of the population. Nigeria's legal system is pluralist. It is made of up of English common law, customary law, Islamic (Sharia) law and statutory law. Customary law is prevalent in the southern part whilst Islamic law is widely made recourse to in many of the states in the northern part.

The Nigerian society is inherently patriarchal. This is due to the influence of the various religions and customs in many parts of Nigeria. Here, women are seen as the 'weaker sex' and discriminatory practices by the State and society (especially by men) are condoned. Thus, it has been argued that "the traditions and culture of every society determine the values and behavioural patterns of the people and society...a culture that attributes superiority to one sex over the other exposes the sex that is considered to be inferior to various forms of discrimination" (Ngwankwe, 2002:143; Alemika, 2010).

Furthermore, Ibidapo-Obe (2005:262) contends that "human rights is flavoured by the culture within which it is to be invoked...the perception of human rights is conditioned, in space and time, by a combination of historical, political, economic, social, cultural and religious factors."

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Discrimination against women is endemic and was also highly prevalent in ancient societies such as Rome, Athens and Africa amongst others (Opata, 1989). Unfortunately, in some areas in Nigeria (even until present times), in some cultures women and children are regarded and treated as chattel or property (Akande, 1993). Thus, women are said to be among the vulnerable groups subjected to discrimination in Nigeria (Olubor, 2009).

### **Discrimination against Women in Nigeria**

Generally, many laws discriminate against women in Nigeria. Some of these laws include some aspects of customary law practices, the Labour Act, Sharia law and some constitutional provisions amongst others.

#### **Labour Issues**

Under 55(1) of the Labour Act herein a woman cannot be employed on night work in a public or any agricultural undertaking (with the exception in Section 55(7) of women nurses and women in management positions who are not engaged in manual labour section). Under Section 56(1) of the Labour Act women are prevented from engaging in any underground work in any mine. Furthermore, women are denied the opportunity of being accompanied by their spouses to their place of employment or posting in the service (Ashiru, 2010). This provision is not applicable to men.

By virtue of Section 34(1) of the Labour Act, 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”. Also there are some civil service rules in Nigeria that also accentuate discrimination of women. For example, Rule 03303 of both Kano and Kaduna States’ Civil Service Rules provides that “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 agreement to refund the whole or part of the cost of the course in the event of her course being interrupted on ground of pregnancy” (Imasogie, 2010:15).

#### **Discrimination against Women in the Police Force and Other Similar Para-Military Services in Nigeria**

By virtue of Section 127 of the Police Act, married women are prevented from seeking enlistment in the Nigerian Police Force. Under section 127, when an unmarried police woman is pregnant, she would be discharged from the police force. She can only be re-instated on the approval of the inspector general of police.

Under Regulation 124 of the Police Act, a woman police officer who is interested in getting married must initially apply in writing to the commissioner of police for approval (Imasogie, 2010). Furthermore, it has been contended that the Air Force Act, wherein ‘airmen’ is used to refer to both female and male officers, is discriminatory (Imasogie, 2010).

The Nigerian Drug Law Enforcement Agency (NDLEA) Act also accentuates the discrimination of women in some of its regulations. Some examples will suffice. Under Article 5(1) of the NDLEA Order, 2002, “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.” 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.”

### **Sexual Violence Laws that Discriminate against Women in Nigeria**

There are three variants of criminal codes in Nigeria, and they are the Criminal Code operational in the southern part, the Sharia Penal Code operational in about 12 states in the northern part of Nigeria and the Penal Code which is operational in the non-Muslim majority states in the North (Alemika & Alemika, 2005).

Originally the Penal Code (which dealt with Islamic personal or civil matters) was operational in all the states in the North. However, recently some northern states have extended the remit of the Penal Codes to criminal matters.

Violence against women can be defined 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” (Paragraph 113 of the Beijing Platform for Action in Ashiru, 2010:97).

Rape against women is a major ill plaguing the Nigerian society and one of the least reported crimes in Nigeria. This is due to the societal stigma attached to it in Nigeria (Ashiru, 2010; Fagbongbe, 2010; Alemika & Alemika, 2005). It is mainly perpetuated by men against women. It is said to be a “sex-specific offence which can only be committed by men on women” in Nigeria (Imasogie, 2010:14).

Section 357 of the Criminal Code Act 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 representation as to the nature of the act, or, in the case of a married woman, by impersonating her husband, is guilty of an offence which is called rape.

A major hindrance in rape cases in Nigeria is the rules of evidence which are stacked up against the victims in courts. For example, Section 211 of the Evidence Act states thus:

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

This passage is based on the old English common law maxim where the general bad character as to the sexual morality of the prosecutrix is relevant, not only to her credibility as a witness, but also to the issue (Aguda, 1998; Ashiru, 2010).

The Penal Code has similar provisions to the Criminal Code as per the offence of rape in Nigeria. However, in Nigeria, a husband cannot be guilty of the offence of ‘rape’ of his wife.

This is because Section 6 of the Criminal Code defines 'unlawful carnal knowledge' as carnal connection which takes place otherwise than husband and wife.

The basis of this law is founded on the culture and religious antecedents of the Nigerian society. Also, it can also be localised in the erstwhile English common law. In the case of *R v Roberts*, the court held 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."

The exceptions under common law (also applicable in Nigeria) include where a decree of divorce is in existence, where the parties are living separately under a separation order of a court, where the husband has given an undertaking not to return to the wife, where a party has filed or started divorce proceedings, where there is a separation order agreed upon by the parties and where there is a court order prohibiting contact with the wife (Imasogie, 2010).

This provision goes against the current worldwide trend in legislating against marital rape in other jurisdictions. It also contrary to a plethora of international treaties which Nigeria is party to, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples Rights and the Protocol on Rights of Women in Africa amongst others.

Under the Sharia Penal Code, a husband cannot be guilty of marital rape. Section 127 of the Zamfara harmonised Sharia Code states:

A man is said to commit rape if he has sexual intercourse with a woman in any of the following circumstances: (a) against her will (b) without her consent (c) when her consent has been obtained by putting her in fear of death or hurt (d) with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married (e) with or without her consent when she is under fifteen years of age or of unsound mind. (Oyelade, 2007-2009:266)

This provision is similar to the Penal Code.

Furthermore, "under Islamic law, a husband may be liable for injury caused or occasioned by forced sex with his wife, but he can never be liable for rape so long as there is a valid subsisting marriage between them" (Oyelade, 2007-2009:266). This is similar to the provision of the Criminal Code. Evidence shows that women who accuse men of rape are subject to judgement of their character and there is no recognition of marital rape, thus there is limited protection for women in Nigeria (Anaba, 2007). Here, the victims (who are mostly women) have to rely on the provisions in the Criminal Code on common assaults in cases of 'marital rape' occasioned by the activities of their husbands.

In terms of sentencing both the Penal and Criminal Codes prescribe life imprisonment as punishment for offenders. Under the Sharia Penal Codes, rape is form of 'zina', that is, illicit sexual intercourse (Ashiru, 2010). To prove the offence of 'zina', a confession of four witnesses is essential; otherwise, the victim could be liable for defamation where a confession cannot be procured from the offender. (Ashiru, 2010). Also, the victim could be prosecuted for the offence of rape, where the required number of witnesses (four) is absent.

Furthermore, the Sharia Codes provide for discriminatory punishments for married and unmarried offenders (usually women). Here "married offenders are liable to stoning to death

while unmarried offenders are liable to the lenient punishment of only one year imprisonment and caning with lashes up to a maximum of one hundred” (Alemika & Alemika, 2005:89-90).

These provisions of the Sharia Codes are unconstitutional and go against various provisions of the Constitution prohibiting degrading treatment of people, freedom of religion and protection against discrimination amongst others. However religion is a highly politicised issue in Nigeria, and this is a stumbling block to promotion of women’s rights in some parts of Nigeria, especially in the North.

### **Indecent Assault Laws**

Generally, in Nigeria, indecent assaults committed against males and females carry different punishment. Here, the punishment for an indecent assault committed on a female is lighter than that of a male (Ashiru, 2010). Under Section 353 of the Criminal Code, a person who unlawfully and indecently assaults a man is guilty of a felony and liable to imprisonment for three years. However by virtue of Section 360 of the Criminal Code, a person who unlawfully and indecently assaults a woman is guilty of a misdemeanour and is liable to imprisonment for two years.

### **Laws Accentuating Wife Battery in Nigeria**

Section 34(1) of the Nigerian Constitution bestows on an “individual respect for dignity of his person.” However, a plethora of laws encourage wife brutality in Nigeria. Some of these laws will be highlighted in this section.

Under Section 55 of the Penal Code, husbands are permitted to chastise their wives. Here, under Subsection 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...” Thus, under the Penal Code, a husband can beat his wife insofar it does not lead to serious injuries or grievous harm. In essence, the Penal Code condones domestic violence against women (Ashiru, 2010). Under Section 241 of the Penal Code, “grievous hurt includes emasculation, permanent loss of sight, ability to hear or speak, deprivation of any member or joint, destruction or permanent impairing of the powers of any member or joint, facial disfigurement, bone fracture or tooth dislocation.”

Similar provisions permitting wife battery are in the Sharia Codes. In northern Nigeria, wife beating is not a crime insofar as it does not inflict grievous bodily harm on the woman. This provision is archaic and is an example of state sanctioned brutality against women. It can be contended that it is one of the reasons why many women decline to institute cases of assault and brutality against their husbands in Nigerian courts. The law is skewed to the advantage of the male sex and women are at the mercy of their husbands and the law.

### **Citizenship Status of Foreign Men Married to Nigerian Women under the Nigerian Laws**

Other laws discriminating against women in Nigeria include those in respect of citizenship. Section 26 of the constitution provides that the president may confer Nigerian citizenship on “any woman who is or who has been married to a citizen of Nigeria” (Falana, 2013). Under this provision, the president is not empowered to confer Nigerian citizenship on “any man who is or has been married to a citizen of Nigeria” (Falana, 2013). Thus, women cannot transfer their Nigerian citizenship to their spouses (Imasogie, 2010). Here “the foreign spouse of a Nigerian woman can only acquire citizenship by naturalisation, which is a much longer process (at least 15 years). Whereas a foreign spouse married to a Nigerian man, becomes

a citizen by mere registration” (Imasogie, 2010:15). The injustice in such discriminatory practice was manifested in the deportation of Dr. Patrick Wilmot, a Jamaican, from Nigeria by the Ibrahim Babangida military regime notwithstanding that the wife of the radical don is an indigene of Sokoto State in Nigeria (Falana, 2013).

### **Consent before Marriages**

By virtue of Section 18 of the Marriage Act the written consent of the father of either party to an intended marriage is required if he or she is under 21 years of age. It is only if the father is dead or of unsound mind or absent from Nigeria that the written consent of the mother may be required. This provision is discriminatory, and the mother’s consent is sought only if the father is dead or where he is of unsound mind.

### **Nigerian Women and Passport Applications**

Although the Immigration Act does not provide for discrimination, married women applying for Nigerian passports are required to submit the written consent of their husbands. “A person whose mother is a Nigerian but whose father is a foreigner is not entitled to a Nigerian passport” (Falana, 2013).

### **Customary Practices/Law and Women in Nigeria**

Some customary practices also discriminate against women in Nigeria. For example, “Customary laws of several communities impose conditions that make women access land only through male relations. More often, women are regarded as property and therefore cannot own property themselves” (Olubor, 2009:15). However, this customary practice is not universal in Nigeria. For example, in many communities women can own property. In Benin Kingdom in the southern part of Nigeria, many women own property distinct or separate from their spouses (Attah, 2012).

With respect to property rights, “Women married under the [Marriage] Act have their property rights protected by the Act thereby making them entitled to a share in the matrimonial property, including the husbands’ property, and the jointly owned and acquired property” (Olubor, 2009:15).

Women married under customary law have little or no rights over their spouse’s property. Here women “are more often entitled to kitchen utensils and whatever their husbands may give to them as gifts made *inter vivos*” (Olubor, 2009:16).

There are a plethora of other laws discriminating against women which are not analysed in this paper. They include Taxation, Maternity and Wills Act amongst others.

### **Extant Reforms**

Fortunately, reforms have been initiated by government, NGOs and internationally to mitigate the effects of the aforementioned laws. In respect of marital rape in Nigeria, the government has organized workshops on the issue. For example, in 2008, a Workshop on the Reform of Law Relating to Rape and Other Sexual Offences was held in Nigeria (Daily Independent Newspaper website, 2008). The consensus of the conference was that marital rape should be criminalised in certain situations.

Also, there is the Violence against Women (Prohibition) Bill which protects women from all forms of violence and is yet to be passed into law by the National Assembly. NGOs have initiated many workshops and conferences informing women on their rights and avenues for

seeking redress if such rights are breached (Ifemeje, 2011). Governments have enacted laws protecting and promoting the rights of women in Nigeria. For example, in Enugu State in Nigeria, the Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law 2001 to protect women from discriminatory customary inheritance practices was enacted (Adekile, 2010:19).

There is promotion of the girl-child education in Nigeria. Primary education is free and compulsory in Nigeria. Women are very influential in the Nigerian polity. They occupy sensitive political positions in Government. Also, recently, the first female Chief Justice of Nigeria was appointed. Hopefully, she will use her office and effect changes in some of the laws discriminating against women in Nigeria.

Due to the advent and deepening of democracy in Nigeria (after many years of military rule), courts are becoming quite activist, pronouncing on the legality or otherwise, of some of the discriminatory laws against women. For example, recently, a federal high court in case of *WELA v Attorney-General of the Federation* (unreported) Suit No: FHC/IKJ/CS/M128/2010 held Regulation 124 of the Police Act to be illegal and unconstitutional (Falana, 2013). The regulation states that "A woman police officer who is desirous of marrying must first apply in writing to the commissioner of police for the state command in which she is serving, requesting permission to marry and giving name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years." The court relied on the provisions of the African Charter on Human and Peoples' Rights (ACHPR) and the Nigerian Constitution to nullify this offending provision (Ekhaton, 2013).

A similar decision was reached in *Dr. (Mrs.) Priye Iyalla-Amadi v Nigerian Immigration Service (NIS)* case (Okeke, 2010). In the case of *Mojekwu v Ejikeme*, the Nigerian Court of Appeal relied on the provisions of the ACHPR to nullify a customary practice (law) that prevented daughters of a deceased man from inheriting his property. Here, Justice Niki Tobi stated thus:

Nigeria is an egalitarian society where the civilised society does not discriminate against women. However, there are customs, all over which discriminate against the womenfolk, which regard them as inferior to the menfolk. That should not be so as all human beings, male and female are born into a free world and are expected to participate freely without any inhibition on grounds of sex. Thus, any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy. The Oli-ekpe custom, which permits the son of the brother of a deceased person to inherit his property to the exclusion of his female child, is discriminatory and therefore inconsistent with the doctrine of equity. (Ukhun & Inegbedion 2005:143-144)

Recently, in 2010, a high court in Port Harcourt Judicial Division in Nigeria in the case of *Mrs Esther Sunday & Ors v Victor Menenyorwika & Ors* relied on the ACHPR to hold a group of policemen liable for injuries inflicted on the applicants (plaintiffs). Here, the defendants (respondents) were ordered by the court to pay to the defendants 40 million naira (about \$250,000).



Furthermore, there has been an upsurge in cases on discrimination of women in Nigeria. The Nigerian courts have been creative and relying on international conventions and the ACPHR (in addition to Section 42 of the Nigerian Constitution) in abrogating some of these discriminatory practices.

Section 42 of the Nigerian Constitution states:

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:
  - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
  - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
- (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

It can be contended that Section 42(3) of the Nigerian Constitution indirectly promotes the discrimination of women under the Constitution (Ashiru, 2010). This sub-section of the Constitution is said to “preclude one from challenging laws which are discriminatory with respect to any office under the State, in the armed forces, the Nigerian Force or a body corporate established directly by any law in force in Nigeria” (Ahiru, 2010:94). With due respect, the above view is wrong and represents the traditional view held by academics and lawyers in Nigeria. The ACHPR, other sections of the Constitution such as Section 17(1)(2), Section 42(1)(2) and other international treaties or conventions which Nigeria has signed and ratified have served as bastions in invalidating some of these state-sanctioned discriminatory practices in Nigeria.

In the case of *Timothy v Oforika*, the Nigerian Court of Appeal held that no law or custom that stands in the way of our constitution should be allowed to stand no matter the circumstances. In *Yetunde Tolani v Kwara State Judicial Service Commission & Ors*, where the Court of Appeal held that the appointment of a female magistrate that was terminated on the basis of her ‘single’ status was illegal and void and ordered her immediate re-instatement.

Nigeria has signed and ratified many international and regional treaties promoting and protecting the rights of women in Nigeria, including the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Nigeria signed and ratified the CEDAW in 1985. The optional protocol to the CEDAW was ratified by Nigeria in 2004. The CEDAW urges

countries to condemn discrimination against women in totality and set in motion (without delay) a policy of eliminating discrimination against women by localising the equality of sexes in their various constitutions (Anaba, 2007).

Notwithstanding the ratification of CEDAW and its protocol by Nigeria, under Nigerian law, international treaties are not part of national law unless domesticated by virtue of Section 12 of the Constitution. However, the CEDAW has persuasive influence in Nigerian law; courts may refer to it during judgements. And NGOs have used it as a basis of their activism in holding the government responsible for the inertia in women's rights promotion in Nigeria. Furthermore, Nigeria has ratified and signed the African Charter on Human and Peoples' Rights (African Charter) (Ekhaton, 2014). The Protocol on Women's Rights in Africa has also been signed and ratified in Nigeria.

The African Charter has been domesticated into Nigerian law and it promotes women's rights in many of its articles. Article 3 of the Charter enjoins countries to combat discrimination against women via legislative, institutional and other means.

On the one hand, the Protocol, "represents the first time that an international human rights treaty has explicitly articulated a woman's right to abortion when pregnancy results from sexual assault, rape or incest; when continuation of the pregnancy endangers the life or health of the pregnant woman; and in cases of grave foetal defects that are incompatible with life" (Aniekwu, 2009:28). However, the protocol has not been domesticated in Nigerian law and this hinders its applicability in Nigeria.

## **Recommendations**

NGOs should use the machinery of justice in the African Charter to improve the plight of women in Nigeria. Here women activists should take a cue from the strategies and activities of NGOs in the oil and gas industry in Nigeria that have improved access to environmental justice to victims of the activities (accruing from the operations of oil companies) inherent in the oil and gas industry in Nigeria (Ekhaton, 2014).

Notwithstanding the non-domestication of the Protocol to Women rights in Africa and the CEDAW in Nigeria, it can be argued that the Protocol and CEDAW are applicable in Nigeria (Ayeni, 2012; Viljoen, 2007). The reason is that the African Charter is domesticated and part of Nigerian laws. Section 18(3) of the African Charter states that "the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions." Thus, Nigerian courts in construing the applicability of the CEDAW and the Protocol on women's rights can make allusions to the provisions of African Charter by holding that they are applicable by virtue of Section 18(3).

The Sharia criminal (penal) system in northern Nigeria should be abolished because it is unconstitutional. However, due to the volatile nature of the Nigerian polity, this will be difficult to achieve.

## **Conclusion**

Women are discriminated against in Nigeria. However, the tide is changing. Many Nigerians have access to education and the re-orientation of Nigerians (with respect to women's rights) has been improving. Democracy has improved the position of women in Nigeria.

However, some cultures and communities are still stuck in the past. Such communities need to be 're-educated' on women's rights in Nigeria.

Also, with the advent of democracy in Nigeria, many laws have been promulgated in Nigeria to improve the status of women under the law. For example, many states in Nigeria have enacted laws proscribing domestic violence against women.

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