

ADVOCACY FOR BETTER IMPLEMENTATION OF WOMEN'S RIGHTS IN NIGERIA

July 2002



WOMEN IN LAW AND DEVELOPMENT IN AFRICA (WiLDAF) NIGERIA PROFILE

The Women in Law and Development in Africa (WiLDAF) is a Non-Governmental and non-profit making Pan African Regional Network of individuals and Non-Governmental Organizations with headquarters in Harare.

WiLDAF was established in Harare, Zimbabwe in 1990 at a Regional Conference following a year long process of analysis, needs assessment training and planning by representatives of women's groups in Fourteen (14) African Countries. WiLDAF's mission is to bring together organizations and individuals using a variety of tools including law to promote a culture for the exercise of and the respect for women's Rights in Africa.

WiLDAF's pursues its mission by executing its objectives which are primarily:

- To establish and facilitate communication among network members in the areas of legal education, law and policy reforms and legal services.
- To clarify and provide effective ways of using law and other strategies as organizing and educational tools at the local, national and regional levels and
- To provide training and to advise local groups in designing and improving legal and other programmes and strategies.

Membership of WiLDAF has risen to twenty-six (26) countries in Africa and the organization enjoys a special category status granted by the ECOSOC committee of the United Nations.

WiLDAF (Nigeria) is a branch of the Regional Body with membership strength of over 70 organizations and hundreds of individuals spread across the country. The Organizational Structure of WiLDAF Nigeria consists of: the General Assembly (members) - the Advisory Committee (A Board of 8 females) - the National Coordinator (in charge of day to day administration) – Zonal Coordinators (for administration of the East, West & North Zones).

Over the years WiLDAF (Nigeria) has in furtherance of its objectives carried out several activities, notable amongst which, are the Annual 16 Days Campaign on gender violence, Emergency response activities and capacity building workshops.

WiLDAF (Nigeria) like its counterparts in other African Countries holds annually the 16 Days Campaign on gender violence from November 25th – 10th December each year.

In 1997, the campaign was in form of various activities by the network members at the Urban and Rural areas. Such activities included lectures, seminars, exhibitions and workshops on the various forms of violence against women. In addition, WiLDAF (Nigeria) held a joint programme, which started with a press conference, then a rally with participants wearing T-shirts, which bore slogans denouncing violence against women. The 16 Days Activism was concluded with a National Seminar and Exhibition in Lagos.

The 1998, 16 Days activism on gender violence was more elaborate than the preceding years. The programme, in addition to individual network members



activities, included production of a Radio Jingle which was aired throughout the 16 Days period. The organization also collected signatures on cloth banners at its zonal levels. This anti-violence against women signatures and slogans on cloths were displayed at a National Rally held in Lagos. The Rally was part funded by UNIFEM (Lagos Office). The activities enjoyed considerable publicity, which further raised the awareness of the public to the incidents and effects of violence against women in Nigeria.

The 16 days activism on gender violence in 1999 and 2000 were supported by the European Union Fund for West Africa WiLDAF in 1999 held a tribunal on tagged "The Court of Women", where testimonies on violence against women were given by witnesses.

The 2000 – 16 days campaign was the compilation and assessment of past activities on violence against women for an award presentation. The essence was to acknowledge and commend efforts of network members for their relentless campaign agent gender violence.

Apart from the 16 days activism, campaign, WiLDAF (Nigeria) like its member organization held activities to highlight various forms of campaign. One of such activity was the national workshop held in Owerri in 1999 on Silent victims of violence against women in tertiary institutions.

The visibility of WiLDAF (Nigeria) in the late 90s has been largely due to its commitment to the elimination of all forms of violence against women. The organization emergency response activity to issues concerning women especially those of violence has also been an effective method of achieving its goals. For example, WiLDAF (Nigeria) pioneered the protest on the brutal killing of a 19 years old female Nigeria deportee, Semira Adamu by the Belgian authorities which was effective in generating public governments positive reaction to the issue of violence against the deceased young female deportee.

To achieve its objectives WiLDAF Nigeria is mindful of strengthening its network members. Consequently, the organization has conducted various capacity building training workshops on management of NGOs, leadership, strategic planning, fund raising and proposal writing skills.

On the whole WiLDAF (Nigeria) enjoys the benefits of networking in that it creates an avenue for communication, exchange of materials and experience and training which will improve and strengthen women' s groups towards more result-oriented goals.

The organization is open to NGOs and individuals committed to Women's Rights.

WiLDAF (Nigeria) has been part of the organization in Nigeria, which campaigned against the sentencing to death by stoning of women by the Sharia Courts in the Northern States on account of alleged adultery committed by the women. The "Safiya Must Not Die" campaign was heightened by a rally organized in Lagos as part of the international women's day. 2002. Sensitization campaigns were taken to WiLDAF (West Africa) sub-region in Togo where the media was addressed and organization showed solidarity wearing the campaign scarves with inscription "Safiya Must Not Die". Regional and international support was mobilized through

initiation of petition signed by thousands of organization worldwide in the appeal against the stoning to death of Safiya and Amina Lawal another victim of death sentence by stoning by the Sharia Court.

WiLDAF Nigeria has also participated actively in the lobby for the adoption of the protocol to the African Charter relating to Women's Rights at the organization of African Union now African Union. The project is supported by the Canadian CECI/DCF fund for WiLDAF (West) African project.

As part of WiLDAF West Africa Sub Regional Project WiLDAF (Nigeria) has enjoyed the support of the European fund for West African in activities relating to access to justice by women mobilizing women for political participation and the sensitization of judicial and extra judicial stakeholders for the actualization of women's rights.

WiLDAF Nigeria is a member of the National Coalition against trafficking in person (NACATIP)

Foreword

“ADVOCACY FOR A BETTER IMPLEMENTATION OF WOMEN’S RIGHTS IN NIGERIA” was drafted by WILDAF/FeDDAF-NIGERIA under the supervision of the WILDAF/FeDDAF Sub-Regional Office for West Africa. It is designed within the scope of the **“Sensitisation and capacity building of judicial and extra judicial stakeholders for the effective implementation of the rights of women in West Africa”** project, which aims at contributing to improve the effectiveness of women’s rights in Nigeria as well as in Benin, Burkina Faso, Ghana, Mali, Senegal and Togo.

In an easy to understand manner, this document is designed first and foremost for medical doctors, traditional rulers and religious leaders, and will be useful during the national sensitisation and information days organised for them. We are counting on the trained stakeholders to in turn, circulate it among their peers. It can also be profitably consulted by Magistrates, lawyers, and police officers who constantly use the texts of the law in their daily activities, for a better understanding of women’s rights and appreciation of the gender implication when addressing the needs of women who solicit their services.

WILDAF/FeDDAF in producing this material, wanted people to understand and admit that today, the respect and effective implementation of women’s rights really contribute to the well-being of all and that every society must strive to achieve a human-faced and sustainable development with the effective participation of women. The acceptance of this vision is the fruit of the protests of women’s rights organisations that demanded and obtained recognition of the fundamental rights granted to every individual at the international and national levels. The evidence of this is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) adopted in 1979 and ratified by all West African States.

For over two decades now, this Convention has been implemented and successes recorded, however women in reality continue to face difficulties pertaining to the effective enjoyment of their rights. The analysis reveals that this situation does not solely depend on them and women’s rights organisations, but also, to a large extent, on other stakeholders who intervene in the legal or informal settlement of conflicts generated by the violations they suffer. These stakeholders are those targeted by the project in whose scope this document has been drafted.

By devoting a great part to the problems arising in the daily lives of women, this document advocates for the implementation of rights recognized by the various actors. It is hoped that it will not leave any reader indifferent but rather incite them to action along with other actors in their determination to take up this challenge for a society free of discrimination based on sex.

Our ultimate goal is a society working together for the well-being of all.

Kafui ADJAMAGBO-JOHNSON

Sub-Regional Coordinator of WILDAF/FeDDAF For West Africa

**Women in Law and Development in Africa/Femmes, Droit et
Développement en Afrique (WiLDAF/FeDDAF-NIGERIA)**

**13 Okesuna Street, Off Igboere Road ,Lagos
P.O.Box 54627 Ikoyi , Lagos. Nigeria
Tel/Fax: 234-1-2635300, 234-1-2635331
E-mail: wildafnig@yahoo.com , wildaf@skannet.com**

ACKNOWLEDGEMENTS

This document was developed as part of the project: **“Sensitisation and Capacity Building of judicial and extrajudicial Stakeholders for sustainable implementation of Women’s’ Rights in West Africa”**.

The **WiLDAF /FeDDAF-NIGERIA** is, especially, indebted to the European Commission for its financial support which enables WiLDAF to make available to judicial and extrajudicial Stakeholders, a valuable tool of sensitisation for non legal practitioners who participate in the implementation of women’s rights. WiLDAF also expresses its warm gratitude to all the people who, in one way or the other, contributed to the publishing of this *document*.

Consultants

**Prof. Jadesola Akande Phd.(Laws), (Lon). (FCUL) London
Bisi Olateru-Olagbegi LL.B (Hons), B.L. MCI (Arb.) U.K
Ugo Ezekwem LL.B (Hons), B.L. (Chief Magistrate)**

Type-setting

Bunmi Bamidele

Cover

**Conceptualised by: WiLDAF/FeDDAF WASRO
Drawn by: Aldus Informatique, Lomé, Togo**

Printed by

New Testament Printers-Lagos Nigeria

This document was prepared with the financial support of the European Union. The views hereby presented here are those of WiLDAF /FeDDAF and in no way reflects the official view of the European Union.

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ADVOCACY FOR A BETTER IMPLEMENTATION OF WOMEN'S RIGHTS IN NIGERIA

INTRODUCTION

The struggle for women's rights has gained momentum during the past two decades. Beginning with the 1975 International Women's Year (IWY) World Conference and the IWY Tribune in Mexico City, continuing through the women's world conferences and NGO Fora of 1980s (Copenhagen) 1985 (Nairobi) and the series of agenda-setting UN World Conferences and NGO fora of 1990s that culminated in the 1995 Fourth World Conference on Women in Beijing. Women have developed and discovered new skills and tools that they are now using to leverage for change on behalf of women's rights at global, country and community levels.

Unfortunately a large proportion of women themselves are ignorant of many of their rights and the laws, which protect them. Yet, the knowledge of these Instruments is perhaps the most powerful tool. Society has already stereotyped gender roles, which hinder the recognition and enforcement of women's rights.

The issue of gender inequality has of recent come to the fore in the struggle for women's empowerment and emancipation in Nigeria. Nigeria is a mainly patrilineal society where gender relations are based on the patriarchal point of view.

The traditional role of a woman is that of a child bearer, home keeper, comforter, and cook for her husband, children and larger family. This pre supposes the propagations of the male as the superior sex for purposes of inheritance, marriage and family relations, political participation and power relations including family and social decision- making.

Social values, which regard women as inferior to men, are the critical factors in shaping behaviours to women.

Traditional practices regarding widows and the female child lend weight to the marginalisation of women. Domestic violence is accepted as a way of calling erring women to other. Societal values and perception, which regard women as inferior to men, are the critical factors in shaping behaviors to women.

Over the years and with civilization not much has changed. The capitalist economic system acquired during colonization equally adversely affected the status of women because women were disadvantaged in entering the changing economic market due to the dominant role of men in public affairs. The patriarchal system and societal stereotype of the woman as solely for domestic or home keeping has reduced the influence of women and their role in public affairs and decisions which will affect their life's and well being. It goes without reasoning that those who make policies and make decisions that are predominantly men, will do what is more beneficial to them.

In reality the practice of early marriage household work and child bearing within the communities hinder women's contribution on economic and political spheres. In many societies the women carry out those activities which can be seen as an extension of their services in the home such as care for the sick (nursing), feeding and processing of food, petty trading, agriculture and sewing.

In effect, women cannot actualize their rights themselves, without the active support and participation of other stakeholders in the society such as the Police, Magistrates, Judges, the lawyers, the community leaders, the traditional rulers and medical Doctors who can play various roles in the promotion and enforcement of women's rights. These roles sometimes complement each other.

The police for instance are usually the first official point of contact of a victim whose rights have been violated consequently they need to appreciate gender equality and handle women's complaints with the same seriousness as they do their male counterparts. Lawyers on the other hand need to understand the laws available for the protection of the rights of women and provide necessary assistance for the enforcement of women's rights bearing in mind their economic conditions. Judicial officers have a vital role in the promotion of women's rights consequently they need to understand the laws and decided cases which support the rights of women.

In order to achieve maximum enjoyment of women's rights however, the traditional rulers who are the custodians and gatekeepers of customs and traditions need to be educated and sensitized to those customs and practices, which deprive women from actualizing their rights. Harmful and obnoxious traditional practices need to be reformed to conform the human rights of women.

Furthermore medical practitioners who also play significant roles especially in cases of violence against women need to complement the work of law-enforcement officials to ensure that justice is done to redress the human rights abuses against women and promoter the rights and well being of women.

This manual is therefore directed not only at women but also at all the other stakeholders as a training, reference and advocacy Document. The Document will be used to develop the capacity of the stakeholders in improving the effectiveness of women's rights and thus close the gap between the theory and actual implementation of human rights that women should enjoy. This Manual, aims to encourage and inform the continuing struggle for women's human rights.

There are three main sections beginning with rights guaranteed by International Instruments and the Nigerian Constitution since the Constitution is the basic law of the land from which all other legislation derive their legality; followed by rights in family law, in particular rights under marriage; then, rights under criminal law which will include violence against women and finally the gender dimensions to women's rights cutting across all sections.

The roles of each of the specific stakeholders mentioned will be clearly highlighted as a guide in their day-to-day activities to promote and enforce the rights of Women. This Manual will also serve as reference and tool for women and the various actors in the society towards the better implementation of women's rights in Nigeria.

PART ONE

PROTECTION OF WOMEN'S HUMAN RIGHTS

1.1 INTERNATIONAL INSTRUMENTS & THE CONSTITUTION

INTERNATIONAL BILL OF RIGHTS

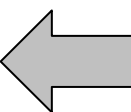
The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is perhaps the best known of the International Conventions relating to women's rights but it is by no means the only International Law that holds promise for women's human rights. Nigeria is a signatory to CEDAW as well as to other Conventions which guarantee a wide range of rights, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) the International Covenant on Civil and Political Rights (ICCPR). These two conventions together with the original Universal Declaration of Human Rights (UDHR) collectively make up what is known as the International Bill of Human Rights.

Some human rights Conventions have Optional Protocols or further agreements, added to the main Conventions. These Protocols may increase the human rights protection covered by the Convention or set up additional means of enforcement and complaint procedure.

The legal act by which a country that has signed a Convention or Protocol agrees to be bound by its provisions is called ratification. This requires that the national legislative body passes a law agreeing to be bound by the Convention. If a country merely signs a Convention, it indicates that the country supports the purposes of the document but it is not legally committed to comply with the provisions until the country's legislature officially ratifies it.

Ratification does not, however, make the Convention legally binding until the legislature (Law making body) of that country has specifically made it part of the laws of the country.

Nigeria has signed and ratified the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). Nigeria is in the process of making CEDAW part of its local laws as CEDAW is being debated at the National Assembly the highest Legislative House for Nigeria



1.2 REGIONAL CHARTER ON HUMAN RIGHTS

The African Charter on Human and Peoples' Rights, which was adopted by member nations of the Organization of African Unity (OAU) in June 1981 in Nairobi, Kenya, is a practical response to the human rights concerns at the time on the African Continent. The African Charter is said to be the most comprehensive and innovative of all regional human rights instruments. Unlike others, this charter in a single document, covers civil and political rights on the one hand and economic, social and cultural rights, on the other hand. The so-called third generation rights, collective or group rights were also incorporated. The charter is also said to be so different from other Regional charters because it

deals with the responsibilities of the individual to the family, community and nation. This is in line with the traditional communal life of the African society. However the Charter does not address issues of women's rights in a comprehensive manner thereby failing to meet with contemporary challenges facing women. Consequently to meet the gaps there is in existence a Draft Protocol to the African Charter relating to women's Rights initiated by the African Commission on Human and Peoples Rights in collaboration with Non Governmental Organisations such as WILDAF. The Protocol is in the process of negotiations for adoption by the African Countries comprised in the OAU now African Union (AU)

The African Charter on Human and Peoples Rights has been made part of the Nigerian Law by virtue of the African Charter on Human and Peoples Act (Cap 10: Laws of the Federation of Nigeria 1990).

It is obvious that some of these rights are already in the Nigerian Constitution but even if they were not, they would be available to all citizens, both women and men, because the charter is now part of Nigerian law. The application of the African Charter to a domestic case was tested in the case brought by Gani Fawehinmi (a lawyer) against Sanni Abacha ¹the then Nigeria Military Head of State where the Court decided that the African Charter is part of the laws of Nigeria and domestic law of the land.

The African Charter can be used as a tool to defend the Rights of women guaranteed by the Charter even where the local laws are silent or against discriminatory practices and customs.

It is important to understand the provisions of the African Charter and its implications on the rights of women.

The African Charter has 68 Articles, four chapters and could be divided into three parts: Part one dealing with the rights an of the Individual, Part two with family and people's rights and the third Part with duties of individuals.

INDIVIDUAL RIGHTS

Articles 3-17 are the combination of civil and political rights economic, social and cultural rights. The rights guaranteed are:

Equality before the law and equal protection under the law – *Art 3*

Inviolability of human beings – *Art 4*

Respect for human dignity, recognition of status and prohibition of slavery, slave trade, torture, cruel, inhuman and degrading punishment and treatment – *Art 5*

Right to liberty and security – *Art 6*

Right to fair trial – *Art 7*

Right to participate freely in government – *Art 13*

Right to Property – *Art 14*

Right to work under equitable and satisfactory condition and equal pay for equal work – *Art 15*

Right to enjoy the best attainable state of physical and mental health – *Art 16*

¹ Fawehinmi v Abacha (1990) 9NWLR pt 366.

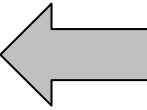
Right to Education and Freedom to take part in the cultural values of the society
– Art 17.

RIGHTS OF THE FAMILY

Art .18² provides for the elimination of discrimination against women and for the protection of the rights of women and children as stipulated by international conventions. The rights of the aged and the disabled are also included.

This provision in effect means that all International Conventions providing for the protection of women and children automatically apply in Nigeria. Although this has not been tested in court for interpretation, the Article nonetheless means that women would be automatically protected by all the international Conventions and Declarations, which protect women and children whether or not Nigeria signed it.

Article 18 is useful for Police, Lawyers, Magistrates and Judges as a tool for enforcing all International Instruments for the protection of women's rights.



PEOPLES' RIGHTS

The rights protected under this category include: -

Equality of all peoples (Art 19)

People's right to existence, right against foreign domination and to assistance for liberation (Art 20)

National and International peace and security (Art 21)

General satisfaction in an environment favourable to development (Art 24)

DUTIES OF INDIVIDUALS

Articles 27-29 spell out the duties of individuals. These include

Towards the family, society, state and other legally recognised community (Art 27)

Respect for fellow human beings without discrimination

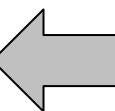
Safeguarding mutual respect and tolerance

1.3 DOMESTIC PROTECTION OF WOMEN'S RIGHTS

THE NIGERIAN CONSTITUTION

The Nigerian Constitution is the supreme Law of the Country and is superior to all other laws. If any law is not consistent with the provisions of the Nigerian Constitution then that law is void to the extent of that inconsistency. Therefore the provisions of the Nigerian Constitution, which protect women should be held supreme to all other laws and customary practices.

The human Rights of women are an inalienable integral and indivisible Part of Universal Human Rights.



² Article 18 (3) African Charter on Human and People's Rights provides as follows:

"the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in International Declarations and Conventions."

Fortunately, ever since the 1993 World Conference on Human Rights in Vienna “Women’s rights are human rights” become a rallying cry for women all around the world. Thus, since women are humans, what applies to humans applies to women hence all the rights guaranteed by the Nigerian Constitution to “every person” applies to women.

The Nigerian Constitution³ guarantees certain basic Rights to every Citizen irrespective of their sex. These rights are called fundamental human rights. Thus women have the same political, social and civil rights as men do. These rights are also similar to those guaranteed by the Universal Declaration on Human Right, The African Charter on Human and People’s Rights and Articles 2 - 6 of the CEDAW.

1.4 WHAT ARE THE FUNDAMENTAL RIGHTS PROTECTED?

Right to Life

No one can take a woman’s life except by a judgement of court. Therefore it is an abuse of a woman’s right to be killed by her husband or male partner. There are many cases of Male violence (wife beating, acid bath or assault) within family relationship, which has resulted in the death of the women (femicide) and the men responsible are not brought to justice.

Traditional Rulers and the Police should treat reports of violence against women seriously before it escalates to the loss of life of the women. When a woman is killed such cases should be treated like murder cases of male victims. Those responsible for the loss of life of women should be arrested and prosecuted in the spirit of the Constitution.

Lawyers Magistrates and Judges should acknowledge and enforce the right of the woman to life as guaranteed by the constitution by ensuring that appropriate punishments are meted to those men be they family members who take the lives of women.

Recognize that the Supreme law of the Land the Constitution does not condone the killing of the wife by a husband or partner.

Human Dignity

The Nigerian Constitution guarantees the right to dignity of the human person;⁴ consequently no person should be tortured, put into inhuman or degrading position, or forced into labour or held in slavery or servitude. Women being humans are entitled to this right to Dignity equally as the men

Similar protection of the dignity of women is contained in the African Charter, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Declaration on the Elimination of all forms of Violence against women (1993) and the Universal Declaration on Human Rights (UDHR)

³ Sections 33-44 of the Constitution of the Federal Republic of Nigeria 1999.

⁴ Section 34 Nigerian Constitution.

In practice Nigerian women suffer inhuman treatment and loss of dignity in many ways such as female circumcision or genital mutilation, dehumanizing widow hood practices, servitude, trafficking in women under exploitative and slave-like conditions, which are violations of human dignity. Some of the perpetrators of these degrading treatment are women as for examples the enforcement of de-humanising widowhood practices are women (e.g. *“the Umuada⁵”* in the Ibo culture)

The recent introduction of the Sharia Islamic law by some States in the Northern part of Nigeria which permits sentencing of women to stoning for adultery, or awards corporal punishment of canning degrades the dignity of women and is contrary to the rights guaranteed by the Nigerian Constitution.

Traditional Authorities/operators and Religious leaders should ensure that the implementations of their traditional or religious practices and laws do not violate the rights of women to dignity guaranteed by the Supreme law of the Land the Constitution.

Lawyers need to challenge some of these practices by taking the perpetrators to Court to redress the injustice to women and where appropriate to seek compensation for the violations of the women’s human right.

Judicial actors such as Magistrates and Judges should be bold in upholding the Constitution to protect the rights of women in their decisions on cases of infringement brought before them. Even where there are no specific provisions in the constitution, courts can use the African Charter which has been domesticated and through it the CEDAW and other international treaties and declaration.

Freedom and Security of Person

Women cannot be detained without trial or imprisoned without good reason. Torture is not allowed violence, cruel punishment or inhuman treatment is not allowed. This Provision should stop men abusing their wives or even parents abusing their children. Slavery, Servitude and Forced Labour are not allowed.

Personal Liberty – Some women are prevented by their husbands from going out to work. No woman can be deprived of her personal liberty. A woman may not be arrested and held without good reason. If charged with a crime, one has the right to be presumed innocent until proven guilty.

Sec 35 Constitution

Right to Privacy

A woman cannot be searched or have her home or possessions searched without legal authority. Her correspondence, telephone conversations and telegrams are protected

(Sec 37 Constitution, Art 12 UDHR, Art 17 Political Rights Covenant)

⁵ The daughters in the family of the dead husband.

Freedom of Religion, Belief and Opinion

Every woman can believe or think whatever she wants. Follow any religion she chooses. State Institutions (like school) can follow religious practices but they cannot force her to participate in a particular religious practice.

(Sec 38 Constitution; Art 18 UDHR)

Freedom of Expression and Press

Women have the right to freely express themselves, that is, say what they want and the press can say what they want too. But they may be prevented by law from spreading hate or encouraging people to violence. This is the law, unfortunately by customs and traditions, a woman is to be seen not heard. Indeed a woman who is very vocal in public is viewed with degree of odium.

(Sec 39 Constitution, Art 19 UDHR, Art 20 ICCPR, CEDAW)

Peaceful Assembly and Association

There is the right to gather peacefully and associate with others in public or private. No one can force anyone to join any group if she does not wish to do so. A citizen can only join a registered political party if he/she wants to participate in partisan politics, however, it is common knowledge that husbands forbid their wives to take part in partisan politics and make life difficult for them if they insist on doing so. In many cases, this leads to the marriage being broken.

Freedom of Movement

Everyone can go to or move about anywhere freely throughout Nigeria and to live anywhere they want in the country. One can even leave Nigeria if one wishes and come back at any time if one is a citizen. However the immigration insists that a married woman cannot obtain a passport without the written consent of the husband. Many women trade across borders and they must have valid traveling documents. Thus the action of insisting on the husbands written consent for a passport is a violation of the constitution and surely the fundamental right of women.

(see Art 13 UDHR Art 12 ICCPR & CEDAW)

Freedom from Discrimination

The Constitution provides as a fundamental right equality of all persons irrespective of sex, ethnic affiliation, place of origin, and religious or political opinion. This Right to equality is very central to the promotion of other rights of women. International and Regional Instruments such as CEDAW, UDHR, ICCPR, and African Charter also guarantee this right to equality. Consequently women are guaranteed freedom from discrimination on account of their sex.

Religious laws also recognize the equality of men and women before God For instance the Holy Qur'an in Chapter 49:13 says;

"O people, we created you from the same male and female, and rendered you distinct peoples and tribes, that you may recognize one another. The best among you in the sight of God is the most righteous. God is Omniscient, ..."

Again the Holy Qur'an declares equality of both sexes before the Almighty Allah in Chapter 2 verse 228 says **".....And women shall have rights similar to the rights against them according to what is equitable."**

The rights of women were further emphasized when the Holy prophet Mohammed (PBUH) in his last sermon stated

'O People, it is true that you have certain rights with regard to your women but they also have rights over you'.

Similarly The Holy Bible does not make a distinction between men and women when it narrates God's creation of human being and gave them dominion over all creatures. According to Genesis 1 Verse 26-27 particularly Verse 27 states as follows ;

"So God Created man in his own image, in the image of God created he him; male and female created he them."

In reality women suffer discrimination in almost all sphere of human endeavour. Most of the discrimination are due to age-long cultural practices and religious beliefs influenced by our perceptions in a male dominated society or patriarchal system. Some of the Religious laws have been interpreted from our cultural background which makes them discriminatory to women..

Despite the fact that the Islamic Religion recognizes equality for work done as evidenced in Holy Qur'an 3:195 which says:

"I never fail to reward any worker among you for any work you do, be you male or female—you are equal to one another."

Contrary to this provision the interpretations of the Holy Quran contained in some of the Hadiths (*Teachings of Islamic Scholars*) sometimes contradict the equality guaranty for women. For instance an Islamic scholar Bukhari wrote as follows "Women are naturally, morally and religiously defective". Unfortunately many prefer the teachings through the Hadiths because they are sometimes in consonance with the age long traditional practices and beliefs.

Adhering to the basic principles enunciated by the Holy Qur'an itself and examine the Hadiths from the historical background of the scholar will remove some of the contradictions since the Holy Qur'an does not permit any changes or deriving injunctions from any other source as stated in Chapter 18:27" ***"You shall recite what is revealed to you of your Lord's scripture. Nothing shall abrogate His words, and you shall not find any other source beside it.*** Despite these Constitutional and Religious guarantee of equality of both sexes there appears to be direct or indirect discrimination against the women in the Constitution and the operation of laws, religious and cultural practices.

Discrimination against women under the Constitution, customary and religious Laws and practices

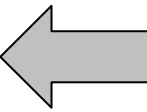
Examining the Constitution itself there are areas of discrimination against women

First the language of the Constitution indirectly discriminates against women by the use of the masculine term to describe both female and male.

The section on citizenship gives only men right to acquire citizenship for their foreign wives and no reciprocal right for women to pass on their citizenship to their foreign husbands. This negates the provision of the Constitution for equality as Women have the right to be treated as men.

Contrary to the Constitutional guarantee of freedom from discrimination, Women suffer discrimination under the guise of customs and religious practices. Women from birth throughout their lifespan until old age suffer various forms of discrimination. For example at birth the female child is not as welcomed as the male child because of the traditional preference for male children, resulting from the patrilineal system. This negates the Islamic injunctions which frowns at the rejection of birth of female children. The Holy Quran says;

"To Allah belongs the dominion of the heavens and the earth. He creates what He wills. He bestows female children to whomever He wills and bestows male children to whomever He wills" (42:49).



The discrimination continues throughout the life cycle of the woman from childhood where she faces overwork in home, then at adolescent subjected to forced or early marriage. She is married out at early ages. Sometimes the married child bears children which may be injurious to her health making her have the health problem of Vesico Vagina Fitula (VVF) a condition which subjects a child to the lack of control of the victims urinary and excreting organs. As a result of which the young child drains uncontrollably of feaces and urine causing further health problems.

In the home the girl child is over burden with work doing household chores while her male counterpart is allowed to play. At marriage the woman faces physical and sexual assault in form of wife beating or domestic violence, rape including Marital Rape.

In the unfortunate death of the woman she suffers obnoxious widowhood practices. Some of which practices involve the shaving of the widow's hair, the denial of basic hygienic practices for periods as sign of mourning, and in some places the forcible drinking of the water used to bath the corpse of the disease as proof of her innocence in the death of the husband.

At old age especially if the woman is childless she is branded a witch and may be stoned to death. At each stage the woman goes through experiences that diminish her humanity starting from rejection for being female to genital mutilation to lack of equal opportunity to education, heavy workload in the household and unequal treatment with male siblings.

In the religious participation the women are relegated to the background and are not permitted to take leadership roles. First women are denied entry into places of worship while menstruating by most Religions. Contrary to the express provision of the Holy Quran which does not state that women shoul not go to the place of worship when doing their menstration, women are forbuidden from going to the mosque when menstruating. The Holy Quran in fact stated as follows;

"O you who believe, when the Congregational Prayer (Salat Al-Jumu`ah) is announced on Friday, you shall hasten to the commemoration of God, and drop all business. This is better for you, if you only knew. ⁶

The Holy Quran did not say only men should go the place of worship to worship Almighty Allah.

Similarly the woman is considered "unclean" during her menstruation by the Christian Religion.

The Holy Bible provides:

"When a woman has her regular flow of blood, the impurity of her monthly period will last seven days, and anyone who touches her will be unclean till evening. Anything she lies on during her period will be unclean, and anything she sits on will be unclean. Whoever touches her bed must wash his clothes and bathe with water, and he will be unclean till evening. Whoever touches anything she sits on must wash his clothes and bathe with water, and he will be unclean till evening. Whether it is the bed or anything she was sitting on, when anyone touches it, he will be unclean till evening"⁷.

"As in all the congregations of the saints, women should remain silent in the churches. They are not allowed to speak, but must be in submission as the law says. If they want to inquire about something, they should ask their own husbands at home; for it is disgraceful for a woman to speak in the church."⁸

The denial of the right to freedom from discrimination hampers women's equal development with their male counterparts despite the fact that the women constitute about half the total population. The effect is a reduced development rate of the Country. Obstacles or traditions and practices, which promote discrimination, need to be removed by all stakeholders.

Traditional and religious authorities should promote the respect of the right of women to freedom from discrimination through the reformation of laws and practices that are discriminatory against women.

Lawyers should test cases of the infringement of women's fundamental right to freedom from discrimination in court through free legal Aid where needed.

Judges and Magistrates should be vigilant and exercise their judicial powers to ensure that women's rights under the Constitution are enforced. Previous supportive cases decided in the Competent Courts in the Country should be used in enforcing women's rights in the constitution and International Instruments.

⁶ Quran Chapter 62 verse 9.

⁷ Lev.15 19-23.

⁸ Corinthians 14 34-35.

For example in *Mojekwu's*⁹ case the judge of the Court of Appeal had this to say

"In my humble view it is the monopoly of God to determine the sex of a baby and not the parents..... For a custom or customary Law to discriminate against a particular sex is to say the least an affront almighty God himself..... On my part I have no difficulty in holding that the "Oli-Ikpe" custom of Nnewi is repugnant to Natural Justice Equity and Good Conscience.".... Per Justice Niki Tobi Judge of the Court of Appeal in MOJEKWU Vs Mojekwu

Right to Property

One's property can only be taken away by the government if:

- the law dealing with this applies to everyone
- it is going to be used for a public purpose or in the public interest and if so, is entitled to adequate compensation.

Sec 43, 44

Fair Trial for Arrested and Accused Persons

This section sets out the rights, which people have who have been arrested and accused of committing a crime. They include the right:

- to keep silent;
- not to be forced to make a confession;
- to be taken to court within 24 hours of your arrest;
- to be released, either on warning or on bail;
- unless there is a good reason to keep you in jail;
- to have a lawyer of your choice

If the government gets evidence against a citizen by going against one of these rights, this evidence will not be allowed in court if it would be unfair, or if it would damage the administration of justice.

Education

The Constitution guarantees the right to Education, regardless of whether male or female. This constitutional guarantee is re-iterated in the Convention for the Rights of the Child which has been ratified by Nigeria. A female child should not be denied education merely because she is a female. Parents should not deny the girl children from acquiring education merely because they will get married and move to their husband's house. It is a violation of the rights of the girls-child which will hamper the development of such children.

The Government has a program for the provision of basic literary Education for all both boys and girls and this opportunity should be available for the female

⁹ Augustine Mojekwu Vs Caroline Mojekwu 1997 7 NWLR (Part 512) at 283.

children. People can set up their own schools, universities or technical colleges at their own expense. These cannot discriminate against students.

Language and Culture

Everyone can use the language and follow the culture that they choose but they must respect others' human rights when they do so. The recognized official languages are English, Yoruba, Igbo and Hausa for the time being.

Political Participation and Governance

Women have a right to take part in the government of the country. Women can vote and be voted for so long as they are adults and not disqualified according to law. An adult is anyone above the age of 18 years. (Art 21 UDHR CEDAW 7 & 8)

In reality women do not take part in decision-making in the families, private and public sectors as a result of the patriarchal and male dominated societal values. In the public life the woman is denied equal participation in decision and policy-making bodies. Above all the socio –economic status and the customs and traditional practices hamper the women's equal participation in the development process.

On the political arena for instance, women represent less than 4% of the elected officials and are indeed more marginalised in decision-making process at all level both private and public.

Statistically, although Nigerian women are almost 50% of the population, out of a total of 36 elected State Governors none is a woman, only one female deputy Governor in the whole country, from a total of 765 Local Government Chairmen only 9 are women. Out of 867, Councillors Nationwide 143 are women. From a total of 978 State House Assembly members 12 are women. From a total of 106 senators only 3 are women and from 347 members of the House of Representatives only 13 are women.

Men dominate the Governance of the country contrary to the Constitutional guarantee for equality in Political participation. Although women form the higher number of voters at elections they do not stand for elections because of their level of poverty, violence and societal perception of women as inferior to men and stereotyped to stay in the Home and not public.

Religious practices such as purdah and Traditional practices are used as the reasons for denying women from equal participation in politics and Governance. However a lot of Landmark strategies have been put in place to redress this discriminatory situation. One of such is the Beijing Declaration which enjoins all States Parties including Nigeria to ensure that there is at least 30% representation by women in political posts as an affirmative action. **This affirmative action has been adopted by the Nigerian Government in the National Policy for women.** NGOs are clamouring for the full implementation of the affirmative action in the representation of women in political posts, both in party hierarchy and elective posts. Women also clamour for representation on policy-making bodies in all sectors of the society.

Some of our traditional institutions recognise the vital role of women in the decision making of the Traditional Bodies For Instance the Yorubas have positions for women in the traditional Councils some of which are very powerful like the post f the "IYALODE". It is therefore not contrary to Nigerian culture to allow participation of women in decision making bodies. Traditional and religious aAuthorities should support the participation of women in traditional, religious and government institutions.

Do People Have To Obey Only These Provisions?

The fundamental human rights work to stop the government from abusing the rights of the people. Sometimes the provisions say which rights work between the government and the people and which rights work between people as well. For example, the section on Equality clearly says that people cannot discriminate against one another. If the provision does not say this, it is usually left to the courts to decide which rights work between people.

Who Can Take A Case Involving Fundamental Rights To Court?

Anyone can take a case involving the fundamental human right infringement. The woman whose rights are violated, someone else related to the woman can bring actions to enforce the rights of the victims. Organizations Or Group can also take the case of the violation of the fundamental right of others to Court.

Lawyers are very vital to the enforcement of human Right because the filing of such cases in Court is technical and needs special expertise that only lawyers can provide. Lawyers should take cases on the violation of women's fundamental Rights to Court.

The cases on Fundamental human rights violation are to be filled in State High Courts in the Country.

The constitution further provides¹⁰ that financial assistance should be provided for indigent citizens whose fundamental rights have been infringed for legal Aid Lawyers should use this provisions by Government for free legal assistance to women victims of violation of their human rights.

¹⁰ Section 46(4) (b) Constitution of the Federal Republic of Nigeria 1999.

PART TWO

MARRIAGES

2.1 DEFINITION OF MARRIAGE

Marriage is the union between a man and a woman. Marriage is recognized all over the world and is deeply rooted in the laws of the State, religions and culture. Marriage is the root of the family and society. It can only retain or possess validity and command if such laws reflect the moral values, economic conditions and religious beliefs of the people to which the law applies.

FORMS OF MARRIAGE

In consonance with the plural nature of the legal system in Nigeria, three forms of marriages are legally recognised in the country. These are the **Statutory or Act** marriage, **Customary** Marriage and **Islamic** marriage. The constituent elements necessary for the validity of each marriage are different and so are the attendant consequences.

The Formalities, consequences and rights guaranteed for women will be discussed for each form of marriage.

2.2. THE STATUTORY MARRIAGE OR ACT MARRIAGE

It is otherwise known as marriage under the Act. This is a marriage contracted in conformity with the provisions of the Marriage Act ¹¹. This type of marriage is monogamous in nature and is therefore the voluntary union of a man and a woman for life to the exclusion of all others. It may be celebrated either in the ecclesiastical manner or in the civil manner as prescribed i.e. in the church or the Registry. Provisions also exist, which provide that the marriage may be contracted by special licence, none the less it must be celebrated by the marriage Registrar or recognised minister of a licensed place of worship.

- A statutory marriage is valid where:
 - Both parties are of marriageable age. Age here is in accordance with the act i.e. 18 years.
 - There is no other marriage in existence.
 - Both parties agree/consent to the marriage
 - Both parties are mentally fit to be married.

VOID MARRIAGES:

A marriage under the Act is said to be void or of no effect where;

- Consent was obtained by duress or fraud.
- Both parties are under age.
- One of the parties is insane.
- One of the parties is not single i.e. already married to someone else under any other form of marriage whether customary, Islamic or statutory.
- There is affinity and consanguinity between the parties (i.e. relationship by

¹¹ Marriage Act Cap 218 Laws of the Federation of Nigeria 1990 and Matrimonial Causes Act CAP 220 laws of the Federation 1990.

Note that it is illegal to marry two different women under the Statute and under customary Law. The latter marriage is void and the man may be found guilty of the criminal offence of Bigamy an offence which carries a penalty of seven years imprisonment.

Aman can however convert a marriage under customary court to Marriage under the Statutes with the same woman.

Case Study¹²

Husband had contracted a customary law marriage according to the Ilesha native law and custom. There was an issue of this marriage. The husband subsequently traveled abroad to England, where he met another Nigerian lady and they both contracted a marriage according to the rites of the Church of England. Years later on the demise of the husband, a question arose as to the validity of the subsequent union. The Western State Court of Appeal held that since the first customary law had not been dissolved the husband lacked the capacity to enter into another marriage under the statute with another person.

FORMAL REQUIREMENTS OF A MARRIAGE UNDER THE ACT

The parties must give notice of their intended marriage to the Registrar of marriages in the marriage district in which one of them resides, by completing the required form and paying the prescribed fee. The Registrar will then enter the details contained in the form into the marriage Notice Book.

After 21 days display of notice, the Registrar may issue the couple proposing to marry, a Registrars Certificate. This certificate is a licence to celebrate the marriage either in the Marriage Registry or in a licensed place of worship such as licensed churches. After the solemnization of the marriage, the Couple and their witnesses must sign the Marriage Register either in the Registry or the place of worship.

MARTINS Vs. ADENUGBA¹³ (Case Study Marriage Contracted By Fraud)

There was a successful action for breach of promise of marriage and fraud according to the Plaintiff, she and the Defendant agreed to be married under the Act and that this marriage should be followed by a ceremony of blessing in the church. In September 1942 the Defendant informed the Plaintiff that he had completed all necessary preliminary arrangements for the civil arriage, which he added, had been fixed for the 17th of that month. On that day, they both went to the Marriage Registry at the Magistrate Court, St. Anna, Lagos, and on getting there the Defendant went inside and left the Plaintiff outside. On the same day he informed the Plaintiff that they had been validly married later they went to ST. Peter's Church, Lagos where a clerk in Holy Orders performed a ceremony by which an customary marriages were blessed, and they were given a Certificate which was not in the form prescribed

¹² AgbejaVs Agbeja 1985 3NWLR11.

¹³ (1946) 18 NLR 63.

by the Marriage Act. The parties lived together until 1945 when the plaintiff detected for the first time that the so-called marriage was sham and she instituted the aforementioned proceedings. Held, inter-alia that as regards the subsequent ceremony in the church both parties know that this did not constitute and did not intend it to constitute a valid marriage under the Act. Secondly it would be ridiculous and astonishing to regard the fact of standing outside a Marriage Registry with the intent to be married as amounting to a Statutory marriage.

CONSEQUENCES OF A MARRIAGE UNDER THE ACT

- A monogamous union is created by a Marriage under the ACT.
- Both parties are not allowed to enter into another marriage during the subsistence of the Marriage¹⁴. *t.*
- The legal rules of evidence relating to the competence and compellability (cannot be forced) of a spouse to testify against the other spouse in proceedings applies to parties to such marriage¹⁵. A Statutory Marriage gives the parties a status unknown to customary law, therefore on the death without a will of either party, property devolves in accordance with any of the following:
Common Law Rules on intestacy, Statutes of general application in England e.g. *Intestates Estates Act 1677*.
Local legislation e.g. *Western Region Administration of Estates Law 1959* as variously adapted by the states carved out of the defunct Western Region.

2.3 DIVORCE

STATUTORY OR ACT MARRIAGE

The law regulating dissolution of statutory marriages is provided by the *Matrimonial Causes Act*. By virtue of the provisions only one ground for dissolution is recognised namely the irretrievable breakdown of Marriage. This ground has to be proved by establishing such facts as:

- Willful refusal to consummate,
- Adultery and the fact that petitioner finds it intolerable to live with the respondent.
- Conduct which the petitioner cannot reasonably be expected to bear and the respondent does not object to the divorce being granted;
- Desertion for one year
- Living separate and apart for a period of three years.
- Death of either party.

There is a general prohibition against the presentation of a petition for divorce within two years of the marriage. Perhaps to encourage the spouses to work at the initial difficulties encountered.

Divorce Petition for an Act marriage can only be filled before a State High Court and no other Court.

¹⁴ Sections 46 and 47 of the Marriage Act.

¹⁵ See Section 160 of the Evidence Act, Cap 77 L.F.N, 1990.

Unlike in the previous laws on marriage, the Court no longer considers who is at fault in deciding to dissolve a marriage so long as one or more of the facts stated above are proved. Women get discouraged from filing divorce petitions because of their inability to meet the high cost of litigation.

Many women suffer a lot of financial hardship during the divorce proceedings because of the failure of Judges to award ancillary relief to women while the case is pending. Many women thus get frustrated with protracted divorce cases during which they are unable to support themselves.

Lawyers need to present claims for financial support for women who are in a lower financial status than their husbands during the divorce proceedings to ensure that the women enjoy the life they were used to during the Marriage.

In addition the Lawyers should ensure that the husbands are made by order of court to pay for the cost of the Divorce so as not to force women to a bad marriage on account of lack of finance to file Divorce Petition.

Judges need to understand the rights of the spouses to a Marriage irrespective of their sex. Judges should therefore award the necessary financial relief to women with lower financial capacity than their husbands while the divorce petition is pending.

Custody: In disputes relating to custody of children of Statutory Marriages the court may make any of the following orders.

- 1 Care and residence order or care and control order.
- 2 Sole Paternity custody
- 3 Sole Maternity Custody order
- 4 Joint Custody

Custody of children of statutory Marriage by law puts the interest of the child as the paramount consideration therefore the best interest of the child should be considered in awarding custody but this is not so because the judge who is a stranger to the parties decides what is best for the child. Custody is usually awarded to the man leaning basically towards culture.

Afonja Vs. Afonja¹⁶

The Trial judge had awarded legal and actual custody of the 7 year old daughter of the marriage to the father purportedly for the following reasons:

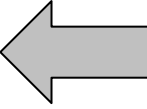
- a. The father, a Medical Doctor had a good job and could thus provide all the material needs of his daughter.
- b. The child's mother, because she had not adhered to her Anglican upbringing and had not done enough to prevent the break-up of the marriage did not deserve custody of the child. On appeal the Court held that custody was not a penal order and should not be used as a penal instrument to punish parent for supposedly bad conduct during her the marriage. Reversing the decision of the trial judge custody of young

¹⁶ (1971) 1ULR 105.

children, secondly the arrangements made by the father in which care of the child was left to his sister based in another town was not ideal.

Oyelowo Vs. Oyelowo¹⁷

On dissolution of the marriage, custody of the two boys of the marriage, aged 7 and 9 who had been living with their mother since the parties separated, (about 2 years before the divorce was finally granted) was awarded to their father in spite of the fact that during the period of separation their father had not made any attempts to see the children nor had he made any financial contribution towards their upbringing. The trial judge was convinced that since they eventually take the position of "Dawodu" in the family custody, actual and legal must be with their father.



2.4 PROPERTY RIGHTS OF WOMEN IN MARRIAGE AND DIVORCE

STATUTORY LAW

All single women have a right to hold and deal in property, real or personal. Since 1882, by virtue of the Married Women's Property Act (a Statute of General Application in England) all impediments against married women have been removed. So that a married woman has the right to acquire deal and hold property, real or personal as a femme sole. During the continuance of marriage, all self acquired property belongs to party responsible for the financial acquisition of such property. Where both spouses contributed to the financial acquisition of the property in question, then both parties are joint owners in proportion to the contributions made. Where the property is acquired by the spouses during the marriage any agreement entered into in respect of the property would be binding.

At the termination of the marriage, the law provides that a "Settlement of Property Order" may be made to redistribute the matrimonial property as between spouses. The major area where discrimination manifest itself is when it involves joint property or property acquired during the Marriage. Although the laws give a woman beneficial interest in the property of the marriage, in reality however the Courts are usually reluctant to award half of the property to the wife on a break-up of the marriage. The Courts usually insist that the woman proves the facts of actual contribution to the acquisition of the property.

This is discretionary, and the courts are expected to do what is fair and just in the circumstances. A settlement of property order may be made in respect of property owned by a party to the marriage for the benefit of the other spouse and children of the marriage below the age of twenty-one years.

The High Courts seem to now recognise the non-financial contribution of a spouse, especially the wife to the acquisition of economic resources by the family, thus at termination of the marriage, this invisible contribution is sometimes recognised by the payment of a lump sum award.

Where a wife claims financial contribution to any property acquired in the husband's house she must be prepared to prove this in court by tendering evidence, documentary or otherwise. A failure to do this satisfactorily, is damaging to her claims

¹⁷ (1982) 2NWLR 239.

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Compare these cases

Case 1

Egunjobi Vs. Egunjobi, the wife gave evidence of actual contribution and exhibited receipts for the construction of a building, the High Court awarded her a third of the property. However on appeal the Western State Court of Appeal held that her contribution made the husband a trustee for the wife and himself consequently, she was awarded half of the property.

Case 2

Adeyemi Vs. Adeyemi ¹⁸ decided on 30th May 1988, the Court held that the failure of the wife to show receipts to prove her contribution to the property acquired during her marriage did not entitle her to the property.

Case 3

Sodipo Vs. Sodipo

A twenty-three old marriage was dissolved on the wife's cross petition of adultery and probability and the fact that the husband has behaved in such a way that she cannot reasonably be expected to live with him.

The financial resources of the husband was put at a conservative Ten Million Naira. It includes vast real estate at home and aboard. A lump sum amount of Two Hundred Thousand Naira was awarded to the wife as maintenance. Especially in view of the fact that she was a businesswoman herself. She however claims that she is almost 60 and thus her energy and zeal to chase contracts are waning secondly the only property she has is an uncompleted building were virtually ignored by the judge.

ACTIVITY

Discuss the above cases.

i Identify the key Rights of women in the cases .

ii Were the Judges Right in the decisions of

iii Case 1 ? Case 2? Case 3?

iv How should the cases have been decided?

v What will you do if faced with such a situation in Case1, Case 2 and Case 3

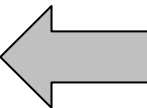
¹⁸ (1985) Suit No CB/354D/85.

vi Justify your actions from what you have learned

It should be noted that since the settlement of property is entirely a discretionary power some judges have exercised such discretion in favour of women while others have perpetrated further injustice against women.

Some judges have held that a woman's contribution need not be financial in nature. This is in line with contemporary English practice and similar to the provisions of the Matrimonial Causes Act¹⁹.

"The fact that the wife took care of the husband and the family and that the husband had the peace of mind to acquire the property gives the wife an interest in such property." This was the decision of the High Court which was affirmed by the Court of Appeal in the case of **Kaffi Vs. Kaffi**²⁰



NOTE that the rights of divorced women need to be enforced to guarantee equitable and equal treatment of both husband and wife in the marriage.

2.5 CUSTOMARY LAW MARRIAGE

This is the marriage contracted in accordance with the customary laws of the place the marriage is been contracted. Unlike the monogamous form of marriage, it is the union of two or more families.

REQUIREMENTS FOR CUSTOMARY MARRIAGE

Customary law marriage may be polygamous in nature. Basic constituent elements of a customary law union have been judicially recognised to comprise the following: (ethnic variations do exist).

- Parental consent to the union.
- Bridal consent
- Payment and acceptance of the bride price or dowry.
- Handing over of the bride to the groom's family.

Marriage under customary law is invalid where:

- the parties are blood relations,
- Where there's no consent by the two families

For instance, in the case of OSAMWONYI Vs. OSAMWONYI, the High Court decided that a girl should not be forced to marry a man without her consent even if he man has paid her bride price as it would be repugnant to natural justice, equity and good conscience.

CONSEQUENCES OF A CUSTOMARY / MARRIAGE

Customary Marriages are marriages contracted in accordance with Native law and custom which vary from place to place. Customary marriage is potentially polygamous as the husband has the legal capacity to marry other wives under the customary or Islamic law.

¹⁹ Sec.73 Matrimonial Causes Act 1970.

²⁰ (1986) 3 NWLR pt 2 pg.175.

It is possible to convert a potentially polygamous union into a monogamous union provided the parties to the marriage are the same parties converting their marriage Statutory / Act Marriage.

The Rules of evidence relating to the competence and compellability of spouses do not apply to parties married under native law and custom.

CUSTOMARY LAW MARRIAGE

Although extra judicial dissolution are permitted, the customary courts established by the various state customary court laws are the courts with competent jurisdiction to hear a petition for the dissolution of customary law marriages. Appeals however lie from the customary courts to the High Courts. The president of the customary court is a legal practitioner, and the parties may have legal representation.

Since 1958, the applicable laws regulating the dissolution of customary law marriage has been regulated by local legislation, namely the Marriage, Divorce and Custody of Children Adoptive By-Laws Order 1959 applicable in the states carved out of the now defunct Western Region of Nigeria. Section 7 of the above legislation contains an exhaustive list of the grounds on which dissolution can be sought. These include inter-alia:

- Betrothal under the marriageable age;
- Refusal of either to consummate the marriage;
- Harmful diseases of a permanent nature, which may impair fertility of the woman or virility of the man;
- Impotence of the husband or infertility of the woman;
- Ill-treatment, cruelty, neglect;
- Lunacy;
- Adultery;
- Leprosy contracted by either party;
- Desertion for a period of two years or more.
- Witchcraft
- Childlessness
- Lack of male children

It appears however that no divorce shall be ordered in where the applicant/petitioner is;

- The wife who is still nursing a child under three years;
- A wife with three children or more by the husband unless there are special reasons for making dissolution order.

Case study

In the case of **MUSIRATU ABEKE VS. JOSEPH SODIYA** - Habitual drunken state of the husband coupled with physical violence towards the wife was held to be a valid ground for divorce.

In another case of **YESOLA ABAKE VS. OMOLAGBE** -Divorce granted on the ground that the respondent was weak and impotent.

HOW TO BREAK UP A CUSTOMARY MARRIAGE

The two families can agree to dissolve the marriage and refund the bride price to the husband. The village head can break the marriage. Customary marriage can

also be broken in the customary court. It is important to note that a woman cannot by herself take out a..... for dissolution of customary marriage it has to be done through a male relative, same goes for return of dowry.

Custody under Customary Laws

As a result of the patriachial system there is a general belief that children belong to the Father. This notion has been outlawed by the provision of the Customary courts Laws of the various States constituting the old Western Region. This provision provide that:

“in any matter relating to the guardianship and custody of children the interest of and welfare of of the child shall be the firsty and paramount consideration”.

In practice the customary courts headed mostly by men usually award custody of children to the men particularly the male children. So also are decisions made by Traditional Rulers in adjudicating over such matters in their domain do not follow the law as laid down in Customary Courts Laws. However there are now cases where the courts have decided issues of custody based on the welfare and interest of the children being of paramount consideration.

Below are cases for Comparison

Okwueze Vs. Okwueze ²¹

A highly contested custody suit, which started in the Ondo Customary Court and ended in the Supreme Court. There were 5 issues of the marriage all under the age of 16, custody of the children had been awarded by the customary court to their father, irrespective of the fact that the customary court laws applicable in Ondo State provided that “in any issue relating to the custody or guardianship of children, the welfare of the children shall be the paramount consideration”. About seven years later when the appeal finally arrived at the Supreme Court it was held that the welfare of the children was a question of fact to be determined by a consideration of many factors such as means of the parties, wished of the children, conduct of the parties etc. A failure to consider all these factors means that the Court had not done justice to the case, consequently the Supreme Court order a retrial of the custody issue in order to ascertain where the best interest of the children lay.

Omodion Vs. Fasora and Anor. ²²

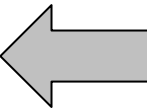
A customary marriage can only be decided by the customary not by the high court. The following were also considered to be the rules of thurns:

- a. Where the child is unweaned, interim custody is awarded the mother even if she is the guilty party in the divorce.
- b. Where the child has attained the age of about 5 years the courts will consider who can best take care of the child.

²¹ (1989) 3 NWLR 33.

²² (1960) WRNLR 27.

- c. A party with no independent means of income is unlikely to obtain custody.
- d. The sex of the child is also taken into consideration, a female is considered more comfortable with the mother and a son with the father.
- e. The Court may refuse to grant custody to either parent if the court is convinced that none of them is capable of giving the child the best care. In such a case the court may award custody to a guardian usually a relative.



2.6 ISLAMIC MARRIAGES

Islamic marriages are marriages contracted in conformity with Koranic injunctions. Such marriages are potentially polygamous as the Islamic laws allows marriage of a maximum of four wives.

ESSENTIAL REQUIREMENTS OF AN ISLAMIC MARRIAGE

The Requirements are as follows:

- A marriage guardian who speaks for the bride. The order of priority of marriage guardians is as follows: The woman's son; father; grandfather; brother.
- The payment of dower, traditionally calculated to be ¼ of a Dinar. (Saudi Arabian Currency).
- Marriage witnesses, at least two adult male of sound mind.
- Both parties must be Moslems; or have converted to Islamic faith.
- Maximum number of wives allowed is four.

CONSEQUENCES OF AN ISLAMIC MARRIAGE:

- The husband has a right of correction and chastisement of the wife.
- Child marriages even at infancy are permitted, although the marriage must not be consummated until the child/bride has reached the age of puberty.
- The husband has a right to demand full obedience to all his orders and instructions provided it does not conflict with the wife's obedience to Allah.
- The wife cannot go out without the husband's permission.
- Where the husband has more than one wife he is expected to love, treat them equally and spend equal time with the wives.

ISLAMIC LAW MARRIAGE

Termination of marriage in Islamic law is allowed as a final and inevitable solution for irreconcilable marital feuds. A marriage could be dissolved by either the husband or the wife or by mutual consent of both parties or by the court.

There are four categories of divorce under the Islamic law:

- Approved divorce which is referred to as Talaq-us-sunnat, this is where a husband makes a simple pronouncement of divorce in a period of tuhur i.e. purity, when the woman is free from her menstrual period. During this period, the woman must abstain from sexual intercourse and remain under the maintenance of her husband until the end of the period.

- There is the Undesirable Divorce. Though this is forbidden by sharia, it becomes effective when pronounced e.g., 'I divorce you' as many times as the man can.
- Irrevocable divorce is the form of divorce where the marriage is broken without a chance to reconsider the question.
- Revocable divorce is where a divorce has been made and the husband takes back the woman without a new marriage.

Grounds on which an Islamic marriage may be dissolved include:

- Impotency of the husband;
- Premature ejaculation;
- Other sexual defects of the husband;
- Repudiation by the wife married at infancy, on reaching the age of puberty;
- Failure of the husband to maintain the wife;
- Failure of the husband to treat the wives equally;
- Frigidity in the wife and
- Leprosy.

HOW TO BREAK UP AN ISLAMIC MARRIAGE

A husband has the power to divorce his wife by saying 'I divorce you' called talaq.

Two persons, one from the wife's family and the other from the husbands who are appointed to settle a dispute between them have the power to dissolve the marriage, where an agreement to settle the dispute fails.

A sharia court can also break the marriage. The law permits a wife to ask for judicial divorce where she is being physically or psychologically abused and she cannot bear it, eg, severe beating, nagging, left without food or abandonment.

Note: In the last case it must be proved by means of witnesses before a court or by the husbands confessional statement and where the judge cannot reconcile the husband and the wife, the marriage can be broken.

Note: The failure to have a judicial pronouncement for divorce in cases of the talaq works injustice on women, as it is only the husband who has the right.

ISLAMIC LAW

During marriage the husband is expected to provide for the wife and children. Where the woman engages in any economic activity to produce wealth she is entitled to ownership of such property in her name.

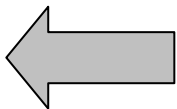
At the dissolution of an Islamic Union, and on completion of the Idda, waiting period, the wife is entitled to take her own belongings along with her including any gift items, moveable or real estate given to her by her husband. **The Quaran** warns against seizure of any of the wife's belongings by the husband. Quaran Chapter 4:20. Where there is dispute concerning the ownership of certain items in the household the Quaran dictates that the husband should be given what amongst those things normally belongs to men and the wife gets what normally belong to women!! As for the items commonly used by hymen and women, these would be divided equally between the partners.

Women still remain in purdah and some cover their faces.

It is a ground for divorce under sharia for a man to assault his wife even though a man has the right to admonish his wife. The instrument used must be symbolic with a toothbrush or chewing stick and must not leave a mark on her body. Beating will be an example of injury and discord between husband and wife. She will need to prove assault by calling a witness. In a divorce granted under the condition, the woman does not need to return the gifts (or mahr) given to her in the course of the marriage.

Shari a law allows the man to withdraw maintenance from the wife if she denies him sex but the law generally forbids marital rape.

It is unfair for marriage to be dissolved by mere pronouncement or refund of dowry without going to court. This practice usually leaves the woman with no benefit and should be discouraged as it is a subjugation of women.



2.7 INHERITANCE RIGHTS OF WOMEN IN NIGERIA

The inheritance rights of women under a marriage depend on the form of Marriage and the respective laws relating to such Marriages. Women married under customary laws are left to grapple with the customary laws which differs from place to place and are unwritten. These customary laws most often discriminates against women. The devolution of estate of a person who dies intestate (without making a will) in Nigeria is according to the personal law of the deceased. Where the deceased made a will, the provisions of the will is enforced.

The personal law of a person is determined by way of life of the deceased or the type of marriage he had. The practice in most cases is the resort to native law and custom regardless of the form of marriage

Statutory Law

Widows and daughters of statutory marriages have rights to inherit under statutory law devolution of estate is according to the received English law. The general position is that the widow is entitled to 1/3 of her husband's estate where she has an issue, while the remainder goes to her children in equal share irrespective of sex. If there are no children, she gets 1/2 of the estate and her husband's next of kin gets 1/2.

Where a woman dies intestate her estate goes to her husband. This is also a discriminatory law infringing the fundamental right to equality and freedom from discrimination.

Some women still loose out completely from their husband's estate due to ignorance and wrong application of the laws as a result of prejudices against women which have been tainted by traditional practices. Some, out of the fear that going to court would be costly and time wasting others because they are afraid of societal stigma.

Despite the provision against discrimination in CEDAW, the African Charter on Human and peoples' rights and indeed the Nigerian Constitution the reality is

that women are still denied equal opportunity to own property. This is an obstacle to women getting credit facilities and works to impoverish women. Even in cases where inheritance rights are assured by statutory and Islamic laws, women still shy away from establishing their claim due to fear and ignorance.

- ❖ Women should be assisted by lawyers to go to court and claim their inheritance where such rights are being denied.
- ❖ Judges should be courageous and give judgment that uphold women's rights as was done in the cases of **Mojekwu Vs Mojekwu** and **Mojekwu Vs Ejikeme**.
- ❖ The provision of CEDAW, the African Charter, and the repugnancy doctrine should be used to challenge those customs, which deny women of their rights to inheritance.

Customary Law

Nigeria is a patrilineal society where inheritance is by the male descent. There are however a few variations here and there. For example, in some parts of Nigeria like the Yoruba speaking areas, women can inherit from their father's estate.

In most other parts such as the Ibos, the native law and custom excludes women from inheriting property especially land from their fathers estate. Where there are no male relatives in many cultures, the property reverts to the larger family.

By the custom of some areas, the woman herself is property and can be inherited. The payment of bride price equates the woman to a purchased item to be inherited.

For example despite the advancement of the Yoruba culture which permits the female child to inherit on equal basis the position of the female as a wife is quite discriminatory as she is not permitted to inherit from her deceased husband's estate.

In the case of *Akinubi Vs Akinubi*²³, Mrs. Rufus Akinubi was married under the Yoruba Customary Law and blessed with 5 children. Her husband died without writing a will. The deceased owned a storey building, which was let to Owena Bank. The deceased brother applied for and obtained letters of administration which the wife opposed and sought an injunction to restrain them from functioning as administrators of her husband's estate. The trial court ruled that the wife had no locus to institute the action, she being under customary law herself a part of her husband's estate. She appealed to the Court of Appeal which dismissed the appeal. On further appeal to the Supreme Court, it was held:

"it is a well settled rule of native law and custom of the Yoruba that a wife could not inherit her husband's property. Indeed, under Yoruba Customary Law, a widow under an intestacy is regarded as a part of the estate of her deceased husband to be administered or inherited by the deceased family, she could neither be entitled to apply for a grant of letters of administration nor appointed as co-administratrix"

²³ (1997) 2 NWLR 144.

Note This decision is against the right of women to the fundamental human right of equality guaranteed by the Constitution, CEDAW, UDHR African Charter and other International instruments signed by Nigeria. It shows the cultural bias that women are not to be treated equally.

Under the Ibo Culture a woman who has no male child is considered childless and as such can “marry” another woman who will bear children for her from any man of her choice but in an unmarried situation to those men. Her male children are regarded as the children of the childless woman and can inherit from the family’s Estate . This is called the “Nрачи Nwanyi’ custom of the Ibos.

This custom has been declared to be contrary to the fundamental rights of women..

CASE STUDY

Mojekwu V Ejikeme²⁴

Facts:

The case tested the ‘Nراحی Nwanyi’ custom of Nnewi in South East Nigeria, which enables a man keep, one of his daughters in his family to raise male issues to succeed him. Once the traditional custom is performed, the daughter is regarded as a wife or son of the man and her children can inherit as children of the man. The custom is performed by the presentation of a goat, four gallons of wine and eight kolanuts to his larger family by a man who has no male issues. Reuben Mojekwu performed this ceremony for his daughter- Comfort.

Sarah and Reuben Mojekwu had three children Samuel, Comfort and Virginia. Samuel predeceased his father in 1938. Reuben died in 1966. Comfort died in 1967 unmarried and childless. The remaining child Virginia, a female gave birth out of wedlock to Chinwe in 1954 and Uzoamaka.

Virginia later got married in 1957 to one Mr. Eze. When she got married, Chinwe and Uzoamaka remained with parents until their deaths. Chinwe was unmarried but gave birth to Izuchukwu Mojekwu 2nd appellant. Uzoamaka also while unmarried gave birth to the 1st appellant. Uzoamaka is the 3rd appellant.

The respondents who are distant cousins of the deceased claimed

That the lineage of the deceased became extinct due to the fact that he had no surviving male children.

- ***That the Nراحی ceremony was not performed by the deceased for Virginia and so she was not positioned to inherit as a man. Her children were thus not “legalized” to inherit from her father through her.***
- ***That the ceremony was performed by Reuben for his daughter comfort who died childless. That they are entitled to inherit the estate of Reuben who had no male heir and who died intestate.***
- ***That they being distant male cousins are entitled by the Oli-Ekpe custom of Nnewi. To inherit the properties of Reuben to the***

²⁴ 2000 5 NWLR 3.

exclusion of his daughters, because they are sons of Bennet a distant cousin of Reuben.

The appellants as plaintiffs sued and claimed that as heirs and direct descendant of Reuben Mojekwu being their grandfather and great grandfather, they were exclusively entitled to his estate by virtue of Oli-Ekpe custom of Nnewi.

The high court held upholding the custom:

- ***Reuben's lineage became extinct on the death of his daughter comfort for whom Nrachi was performed the appellants are not heirs (cannot inherit) to Reuben and therefore not entitled to succeed him or his estate. Since Nrachi ceremony was performed for Virginia and her children were not direct issues of late Reuben, they were not entitled to inherit his estate. Since Reuben lineage became extinct, Bennet Ejikeme should inherit the estate through Oli-Ekpe custom***

The appellants appealed the decision at the court of appeal where it was held that:

- ***The Nrachi custom discriminates against women as a daughter with the custom performed on her has upper hand over the others without it she can inherit her fathers property while the others cannot.***
- ***Is against the dictates of equity and good conscience***
- ***Is not worthy of application it enforceable in the judicial realm and no court of record should countenance or take judicial notice of it.***
- ***Is in consistent with public policy, repugnant to natural justice equity and good conscience.***
- ***Is Otiose, as it is absurd and fantastic in the main, it is a force and sort of window dressing designed to oppress and cheat women folk.***
- ***It is no longer of the moment. It is irrelevant. It is no longer worthy of application with modern day trends.***
- ***No elite would agree that it should be performed on his daughter as at now when the making of a will, can readily take care of situations calling for care. Nrachi Custom is rendered otiose, as it is absurd. It subjects Virginia to disabilities or restriction, which the provisions of section 42(1) of the Constitution and articles 2 and 5 of CEDAW forbid.***

Note

While the court outlawed Nrachi custom the fact remains that Virginia was not contesting to inherit her father's property rather her daughter and grandsons were claiming as children of Reuben through Virginia. What is the status of the biological father of those children? It has been held in Edet V Esien that a custom which denies the Natural or biological father of his child's repugnant to National Justice, equity and good conscience. But

the judgment is a giant leap forward in the struggle for women's rights.

2.8 Inheritance Under Islamic Law

The inheritance rights of Moslem women are as laid down in the Quran with the injunction that on no account should daughters, wives, and mothers be excluded.

The ratio is as follows:

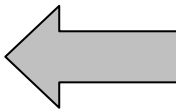
- | | |
|--------------------------|------------------------------|
| ❖ Daughters | ½ the share of male children |
| ❖ Only daughter | ½ the estate |
| ❖ Widow | ¼ of husband's estate |
| ❖ Mother and grandmother | |

Where there is land it is usually partitioned so that all those entitled get their quota.

The only disturbing aspect is that the share of the female is usually half of what the male gets. This is discriminatory but is better than the customary practices whereby women inherit nothing at all.

NOTE

Some of these discriminatory practices in the inheritance by women can be avoided if the deceased makes a will. A muslim Man or a Man married under the customary laws can make wills which will be implemented and overrides the customary and Islamic practices. Men are to be encouraged to make wills for the protection of the inheritance rights of women.



PART THREE

WOMEN'S RIGHTS UNDER THE CRIMINAL/PENAL CODE

3.1 DEFINITION OF TERMS

OFFENCES: Means any act against any enactment or laws in force in a state which are punishable by sanctions including, fines, imprisonment, death, probation etc.

CRIMINAL CODE: A code of laws regarding offences in force in the southern states of Nigeria.

PENAL CODE: A code of laws in force in the northern states of Nigeria and the Federal Capital Territory.

BAIL: A surety or undertaking for the appearance of an accused person in court on a certain day and time to answer to a court of Law for trial. Bail is free and where a deposit is required to be made for bail it is properly receipted and returned at the end of the trial.

Both men and women are permitted by Law to stand surety for bail, but it is still difficult for police to accept a female surety, for example the son of a very successful woman was questioned for dangerous driving, the police refused to grant him bail with the mother as surety but allowed the mother's driver. The reluctance is based on their perception that it requires physical strength to produce a reluctant accused and a female will not have the strength.

CRIMINAL RESPONSIBILITY: liable to punishment for an offence.

UNLAWFUL CARNAL KNOWLEDGE: Means sexual connection which takes place otherwise than between husband and wife.

3.2 PROTECTION OF WOMEN: SPECIFIC OFFENCES

The criminal code of the South and the Penal code of the northern part of Nigeria have several provisions to protect women from harm or sexual abuse and exploitation. Examples of such protection under the Criminal Code include (a) indecent treatment of girls under 16 years (section 222) (b) Abduction of girls under 18 years with intent to have carnal knowledge of her (see 225) (c) Rape (section 357, criminal code and sec 282 of the penal code) (d) indecent assault (sec 350 and 363) (e) defilement.

Examples are:

(A) Indecent treatment

Indecent treatment of girls under thirteen, Indecent and unlawful dealing with a girl under thirteen years is a misdemeanour punishable with imprisonment for two years. "Deal with" includes doing any act, which if done without consent could constitute an assault. Causing or encouraging the seduction, unlawful carnal knowledge, commission of indecent assault of or prostitution of a girl under thirteen is an offence punishable with two years imprisonment. But prosecution must begin within two months after the offence is committed.

Evidence In some cases a person cannot be convicted on uncorroborated testimony of one witness.

(B) ABDUCTION S361 & 362 Criminal Code

Any person who with intent to carnally know a female of any age or to cause her to be married or carnally known by any other person takes her away or detains her against her will commit an offence punishable with imprisonment for seven years.

It also an offence to take an unmarried girl under the age of sixteen years out of the custody or protection of her parent or guardian. The offence is punishable with 2 years imprisonment.

For this offence it is immaterial:

- (a) That the offender believed the girl to be of or above the age of sixteen years
- (b) That the girl was taken with her own consent

Abduction of an unmarried girl under eighteen from the custody of her parent or guardian against the will of such parent or guardian is an offence punishable with two years imprisonment. (section 225 CC)

Defence: If the accused believed on reasonable grounds that the girl was above the age of eighteen years.

Problem with this Law

Is the consent of the girl herself not necessary? What are reasonable grounds?

Sec 273

Whoever abducts or kidnaps any person shall be punished with imprisonment for a term of up to 10 years and will also be liable to fine.

Essential elements of the offences

Offenders may be arrested without warrant.

Offence is not usually bailable.

Penalties are stiffer than in the criminal code.

Consent is not maternal except in the case of a girl under 18 and a woman under 21 who has been imported from another country where consent is immaterial.

In *Ellison Ibo Vs. Zaria Native Authority*²⁵ The high court held while considering a charge under section 275 that where a girl was procured for sexual intercourse with the procurer and not a third party the procurer could not be convicted.

(C) RAPE: The most serious kind of sexual assault S. 357CC

Rape is defined in gender specific language as "carnal knowledge of or sexual intercourse with a woman or girl without her consent or under duress.

Rape is defined as having unlawful carnal knowledge of a woman or girl without her consent or with her consent if such consent is obtained by force or by means

²⁵ 1962 NNCN30.

of threat or force or intimidation or by fear of harm or by means of force of fraudulent mis-representation or in the case of a married woman impersonating her husband. Rape is punishable with imprisonment for life attempt to rape is punishable with imprisonment for fourteen years. To prove rape there is a requirement of penetration and corroboration. By Nigerian law a husband cannot be guilty of raping his wife

The manner in which rape trials are conducted in open court and the nature of evidence required by section 211 of the evidence Act cap 112LFN1990 exposes women to indignity making it a man's trial and the woman is portrayed as a temptress. The requirement for corroboration is onerous and unnecessary. Furthermore, the law does not recognise marital rape. To prove the offence of rape, the survivor must prove the following:

- Penetration
- Lack of consent
- Capacity of male age above 12
- Corroboration
- Societal attitude to rape and sexual violence expose women to HIV/AIDS and other sexually transmitted diseases.

Rape Within Marriage is not yet recognised as a crime under the Nigeria Laws, but may amount to assault where force is applied. The Customary laws fails to recognize the possibility of Rape within marriage as a woman is by virtue of marriage under customary law deemed to have given a blanket consent to sex during Marriage. The same notion is applied for other forms of Marriages even where in Countries with similar forms of Statutory Marriage, Rape within the Marriage is an offence.

Incidents of marital rape abound in several cases especially with violent, abusive or habitual drunken husbands where women are forced to sex by their husbands. Women consequently, suffer a lot of physical and psychological trauma in such relationships for which the customary laws do not redress the violation of the women's rights. This situation of marital rape negates the provisions of the Criminal and Penal Codes which define rape as sex without the consent of the woman. In cases where women do not consent to sex whether or not within a marriage, such acts qualify as rape and is contrary to the criminal laws. In some countries marital rape is an offence punishable under the criminal Laws.

Note that sexual abuse of girl child between ages 11 to 13 is merely a misdemeanour punishable with 2 years imprisonment. Boys are however protected up to 14 years. Prosecution must be commenced within 2 months of the offence.

CARNAL KNOWLEDGE: As defined in the criminal code is vague e.g. that the element of carnal connection is complete upon penetration.

The criminal and penal code while seeming to protect women against sexual offences and assault makes the proof of these offences very difficult and sometimes impossible. For example: Most of the offences require corroboration which in sexual assault is hard to come by. No one invites witnesses when planning to rape. The strict requirement for corroboration in rape and other

sexual offences should be purged from our laws. Especially the provision that the evidence of only the victim is not sufficient to ground a conviction. Even though the rule is that there should be no conviction on the uncorroborated evidence of the complainant the court may warn itself and convict if satisfied with her evidence – Sunmonu Vs. Police 1957WANC23 ant P24, R V. Ekelagu 1960 58SC217

(D) INDECENT ASSAULT

Sections 350 and 363 of the criminal code lower the offences of indecent assault but provides for punishment of two years imprisonment where the offender is a female and three years where the offender is a male. This is discriminatory.

Consent is a defence. In Alawusa V. Odusole the man shaved his wife's pubic hairs. Charged of indecent assault but convicted of simple assault because such assault between husband and wife cannot be characterized as indecent. But on a charge of rape or defilement contrary to S.218 or 221 an accused can be convicted of indecent assault. See Sec 175 & 176cc

(E) DEFILEMENT OF GIRLS UNDER 13

Any person who has unlawful carnal knowledge of a girl under the age of eleven years is guilty of a felony punishable with imprisonment for life, with or without whipping .Any person who attempts to have unlawful carnal knowledge of a girl under 13 is guilty of a felony punishable with imprisonment for 14 years.

A house owner or occupier of a premises who induces or knowingly permits a girl of such age to be carnally know by a man is guilty of an offence:

If the girl is above eleven and under thirteen years of age he is guilty of a misdemeanour punishable for two years. If the girl is under eleven years he is guilty of a felony punishable with life imprisonment.

Any person who has or attempts to have unlawful carnal knowledge of a girl who is above eleven years but under thirteen years or attempts to have carnal knowledge of a woman or girl who is an imbecile or an idiot is guilty of a misdemeanour punishable with imprisonment for two years.

(F) TRAFFICKING IN WOMEN AND CHILDREN

The criminal code/penal code takes care of offences relating to trafficking in females to an extent through it's provisions on encouraging seduction of girls under sixteen, allowing persons under sixteen to be in brothels, abduction of girls under sixteen, abduction of girls under eighteen for prostitution or to have carnal knowledge of them.

Section 276-297 of the criminal code forbids trafficking in females either for prostitution or any immoral or illegal purpose. The penalty ranges up to 10 years imprisonment.

Whoever procures defilement of a woman by threats fraud or administration of drugs commits an offence punishable with two years imprisonment.

Offences include:

- Procuring a girl under the age of eighteen years to have unlawful carnal connection.
- Procuring a woman or girl to become a prostitute

- Procuring a woman or girl to be the inmate of a brothel elsewhere or
- By threat, intimidation, false pretence or administration of drugs or substances to stupefy or overpower her to enable a man have carnal knowledge of her Problem.

A person cannot be convicted of any offence under the section on the uncorroborated testimony of one witness.

In addition, Section 232(2) provides that procuring of a woman or girl

To become a common prostitute or

To leave Nigeria with intent that she may become the inmate of a brothel elsewhere or to leave her usual place of abode in Nigeria with intent that she may for the purpose of prostitution become an inmate of a brothel either in Nigeria or elsewhere is an offence punishable with 2 years imprisonment. But a person cannot be convicted of the offences above on the uncorroborated testimony of one witness.

Sec 275 provides that the seduction of any girl under the age of 18 years to go from any place or do any act with intent that she may be or knowing that she will be forced or seduced for illicit intercourse with another person is an offence punishable with up to 10 years imprisonment and fine.

Section 281. (Penal code) Titled "Traffic in women"

"Whoever in order to gratify the passions of another person, procures, entices or Leads away even with her consent a woman or girl for immoral purposes shall be punished with imprisonment which may extend to seven years and shall also be liable to a fine."

(Note: There is no age limit for female victims. This is an improvement on sec 275)

This is not a modern definition of the offence of trafficking in women, which necessarily involves movement of the trafficked persons and some pecuniary gain.

Trading in Prostitution

Section 4052(d) of the Penal Code States

Any male person who knowingly lives wholly or in part on the earnings of a prostitute or in any place solicits or importunes for immoral purposes commits an offence.

Living on the earnings of a prostitute, Soliciting, abetting, or controlling the activities of a prostitute amounts to living on the earnings of a prostitute and is punishable with imprisonment for two years.

Keeping a brothel

Keeping, managing, assisting in the management of, letting for purposes of using as a brothel is punishable on first conviction with a fine of N100 or six months imprisonment. Subsequent conviction: Three hundred naira or fourteen years imprisonment or fine.

Unlawful Detaining of a Woman

Detaining a woman against her will in any premises or brothel for her to be carnally known by a man or for any purpose is an offence punishable with two years imprisonment.

Importation of Girls from Foreign Country (Penal code)

Who ever imports a girl under 21 years into Abuja FCT from outside Nigeria with intent that she may be or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person is liable for an offence punishable with up to ten years imprisonment or fine .

Unfortunately the publicity is only for Nigerian women trafficked abroad for prostitution whereas there are several cases of trafficking within Nigeria for Prostitution and other forms of labour such Domestic service and farm labour.

ACTIVITY

DISCUSS THE CASE BELOW AND DO THE EXERCISE FOLLOWING IT

JANET'S STORY

Janet was 13 when she lost both parents in her village in Akwa –Ibom State. She had only attended primary school up to Primary six. Mid 1999, she lived with her aunt for a short while and had to leave her Aunt's place because of the objections to her stay by her Aunt's children.

Janet then had to stay with her father's uncle where she was also maltreated by the uncle and his children. One of Janet's friend called Mary introduced Janet to her sister called Joy who promised to assist her by sponsoring with a vocational training in Lagos. Janet was lured by this promise and she followed her friend's sister to Lagos the commercial capital of Nigeria in the year 2001.

On arrival in Lagos Janet discovered that her friend's sister, Joy was actually in prostitution and that she had no intention of sponsoring her vocational training. Joy demanded from Janet a repayment fee of N10,000 (Ten Thousand Naira) an equivalent of about \$83 US Dollars for her 'transportation costs' from the village to Lagos and N15,000 (Fifteen Thousand Naira or \$125 US.Dollars) for "settlement" for her shelter and upkeep.

Janet was forced into prostitution by Joy her friend's Sister. According to Janet, initially, she worked as a prostitute for Joy until she fully repaid the total sum of N 25000 demanded by Joy.

After the repayment Janet started work as a commercial sex worker in a brothel at Ifako Agege a sub-urban area of Lagos. There she pays N1000 (One Thousand Naira) per week for a room and N500 for the generating set for alternative power supply per week. She earns about N11000 (Eleven thousand Naira) per month. She admitted facing tremendous problems and violence from the Police who constantly raid them. She has never been to school or learn any vocation since she came to Lagos.

EXERCISE

- Did Janet suffer any violation of her rights?
- If so what rights are violated?
- Under which laws are these rights violated? Items all the relevant laws to this case?
- What assistance can you render for girls like Janet?
- What suggestions do you have to eradicate Trafficking of women and children?

Causing Miscarriage (Penal Code)

Whoever voluntarily causes a woman with Child to miscarry shall if the miscarriage is not caused in good faith for the purpose of saving the life of the woman be punished with imprisonment for up to 14years or fine or both. A woman who causes herself to miscarry faces the same punishment. Where death of the woman results from an attempt to cause miscarriage the punishment shall be a fine or imprisonment for fourteen years. If the Act was done with the consent of the woman imprisonment shall be for less term and fine may be imposed. Whoever unintentionally uses force to cause a woman to miscarry commits an offence punishable with 3years imprisonment. If the offender knew that the woman was pregnant punishment shall be five years.

(G) INCEST

Sexual intercourse with or without consent by Male with person who to their knowledge are their daughter, grand daughter, sister or mother is guilty of an offence punishable with 2 years imprisonment. Females over sixteen years permitting their grandfather, father, brother, son to have carnal knowledge of her is guilty of an offence punishable with sixteen years imprisonment. In the penal code offence extends to any of ascendant or descendant, paternal or maternal aunt or uncle, nephews, nieces and punishment is seven years imprisonment.

The unsympathetic attitude of the courts to the victim of sexual assaults characterise the few cases that manage to reach the law courts. For example,

The State Vs Akingbade Gabriel ²⁶

A Lagos High Court case

The accused was charged with rape of one Rebecca Okusaga, a 20 year old girl, a virgin. The girl had accompanied her male cousin to visit his friend who was a brother to the accused. The accused overheard that the girl was looking for a job and offered to help. The accused asked the girl to call back a few days later for some addresses of prospective employers. The girl came on the appointed day at about 6.30 p.m. She was given 4 addresses. As she knelt down according to custom to say goodbye, the accused a well built man, switched off the light, locked the door and forcibly carried the girl to the bed. In spite of her screams and struggle the accused had carnal knowledge of her.

No co-tenant came to the girl's rescue. After the incident the accused offered the girl 5/- which she refused. His bed sheet was stained with the girls blood and the girls pants were also blood stained. The girl reported to her father and mother

²⁶ (1971)ALL NLR 508.

and her said male cousin immediately she got home. They followed her to the accused's home who pretended to be sleeping. On being confronted with the girls complaint, the accused maintained silence. The accused also failed to make any statement to the police.

The judge held as follows "I have no doubt that the accused took most improper liberties with the girl who was also anxious to get a job. The accused committed the crime with which he is being charged but there is a practice in Nigerian Courts, which have for all practical purposes ripened into a law, that is the requirement of corroboration before conviction of rape even though the act does not call for corroboration".

"Corroborative evidence which tend to show not merely that the crime has been committed but that it was committed by the accused" Applying the principle to this case. The girl's prompt report or complaint to her parents is certainly not the corroborative evidence. That complaint and both the girl and her father's evidence of it satisfy me that she did not consent to sexual intercourse by the accused with her".

The learned trial Judge did not consider the silence of the accused as corroborative evidence". The accused was however discharged and acquitted

The State Vs. Samuel Adegboye ²⁷

Where the accused was charged with unlawful carnal knowledge and indecent assault of a 9 year old girl. The accused was discharged of the count of unlawful carnal knowledge of the girl and convicted of the lesser count of indecent assault. The court held inter-alia "Although in cases of rape and sexual offences against women and girls a Court may convict on the uncorroborated evidence of the prosecution yet the court must warn itself that it is dangerous to do.

Note

The apparent shift of sympathy to the accused rather than the victim constitutes an impediment to obtaining justice by the female victims.

Apart from the failure of the Nigerian system of administration of justice to enforce the provisions of the criminal law for an effective redress of sexual assault as a form of violence against women.

Cases of incidents of sexual assault in Nigeria are rarely reported as a result of the societal stigma usually faced by the women victims.

In a country where chastity and virginity are still held as prerequisite for marriage, the physically and psychologically are too ashamed to report incidents of violence against them.

Traditional Rulers and religious Leaders should sympathise with victims of sexual violence and ensure that they obtain justice.

²⁷ (1971)ALL.NLR404.

The Police should take each case of sexual assault against women seriously and conduct thorough investigations into the cases so that the culprits do not get away free from the law courts.

The lawyers should refrain from deriding already traumatized victims of sexual assault through disparaging cross examinations. In addition, lawyers should take up cases on behalf of female victims and provide free legal services where necessary.

The Medical Doctors are critical to successful prosecution of cases of sexual assault, therefore they should provide the necessary evidence including issuance of medical certificate to ensure that women get justice for the violence against women where needed.

(H) ASSAULT

Any person who strikes, touches or moves or otherwise applies force of any kind to the person of another either directly or indirectly without his consent, if the consent is obtained by fraud or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstance that the person making the attempt or threat has actually or apparently a present ability to effect his purpose assault that other person. Punishment for assault is imprisonment for one year Assault occasioning Harm – three years imprisonment. Despite these provisions, the weakness of the mechanism for monitoring, investigation and law enforcement means that very few offenders are brought to trial. The result is that the tolerance for violence against women in customary laws has found its way into the penal code.

Penal Code Laws of the federation of Nigerian 1990 Cap 512 vol. xxviii Third edition Pg17600 section 55(1) Correction of Third Pupil, servant or wife. "Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done.

- By a parent or guardians for the purpose of correcting his child or ward, such child or ward being under eighteen years of Age.
- By a School master for the purpose of correcting a child under eighteen years of Age entrusted in his charge.
- By a master for the purpose of correcting his servant or apprentice such servant or apprentice being under eighteen years of age
- By a husband for the purpose of correcting his wife such husband and wife being subject to any native Law or custom in which such correction is recognised as Lawful (emphases on section 378).

That section of the law permits a man to bear his wife, provided that chastisement is done with reasonable force. Reasonable force is nowhere defined in the penal code and this exposes the woman to being maimed or even killed. For chastisement of wife it is permitted as grievous harm is not done grievous harm is defined in S.221

Under the Criminal Code it is a crime for a man to beat his wife. This will amount to assault and may result in wounding or grievous harm and these are

punishable offences. Such matters are however usually settled at the level of Police Station. The woman is usually left to go without redress as the matter is a family matter and going to court may result to breaking up of the home.

Grievous harm under Sec 24 PC is designated as

- Emasculation
- Permanent Deprivation of the (right) eye, of the hearing of an ear or the power of speech
- Deprivation of any member or joint
- Destruction or permanent impairment of any member or joint
- Permanent disfiguration of the head or face
- Fracture or dislocation of a bone or tooth
- Any hurt which endangers life or which causes the sufferer to be during a space of 20 days in severe bodily pain or unable to follow his ordinary pursuits.

The speculation of the above is that unless those conditions exist a man has not assaulted his wife. Those sections of the penal code offend the rule of natural justice, equity and good conscience by encouraging a man to assault his wife provided he goes short of maiming or killing her and should be expunged from our laws.

Penal code Section 400: Word, Gesture or act intended to insult the modestly of a woman

Who ever intending to insult the modesty of a woman utters a word, makes a sound or gesture or exhibits an object, intending that the word or sound shall be heard or that the gesture or object shall be seen by such woman or intrudes upon her privacy commits an offence with one year imprisonment or fine or both.

ADULTERY

Adultery by a man subject to any native Law or Custom in which marital sexual intercourse is recognised as a criminal offence.

Section 388 Adultery by a woman subject to any Native Law or custom in which extra marital sexual intercourse is recognised as a criminal offence.

Most customs do not recognise extra marital intercourse by a man as an offence. There is a need to examine the traditional license that permits men to engage in extra marital affairs while insisting that the women remain faithful. The scourge of HIV/AIDS underscores the need for both persons to abide by the same standard of fidelity.

Section 388- Enticing or taking a woman or detaining with criminal intent a married woman.

In respect of the Sections summarised above.

Section 1429(1) of the CPC (Criminal procure Code of the Northern states enjoins the courts in the following terms not to entertain any complaint brought independently by a female Victim. "No court shall take cognisance of an offence under section 387 388 or 389 of the penal code except Upon complaint made by

the husband of the woman or in his behalf by some person who had care of such woman on his behalf at the time when the offence was committed

In the case of the woman being unmarried upon a complaint made by her father or guardian or his father or guardian or in the absence on his behalf by some person who had care of such unmarried woman at the time when the offence was committed.

Section 142 (2) further states "where the husband or father or guardian referred to in sub section 1 is under the age of 18 years or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the court make a complaint on his behalf. The import of this section is that even where the father, husband or guardian is incapable of bringing a complaint, the female victim still cannot speak for herself, neither can her mother, sister or other female relative, a complete stranger is preferred by the Law.

This is the Law in the 16 Northern States and the FCT cases of rape, abduction and other forms of physical abuse of young girls against their will remain unreported and un-redressed.

3.3 Child marriage

There is no protection for sexual abuse resulting from marriage of a child. There is however a marriageable age assumed to be twelve years for girls and fourteen years for boys. Unlawful carnal knowledge as defined still allows a man to have sex with a girl of any age once she is his wife. It is not rape if a girl is below age to give consent.

Section 218-367 of the criminal Code operates to protect females of under 13 years from sexual intercourse with or without consent however section 6 of the same code which defines unlawful carnal knowledge automatically excludes girls of the same age from this protection. Moreover, it is a defence for the man to prove that he believed the girl to be above thirteen years.

3.4 WOMEN'S RIGHTS UNDER SHARIA/CUSTOMARY LAW

It is generally perceived that Islam does not protect the rights of women. This belief has in recent times been fuelled by cases such as the flogging of bariya Magazu convicted for adultery in Zamfara State and the death Sentence by stoning passed on Safiya Tudu by a Sharia Court in Sokoto for adultery Ref. SCA/GW/28/001/SAFIA, HUSSUINI TUDU VS THE STATE as well as laws in some sharia operating states which bar women from boarding the same busses as men, utilizing the popular "Okada" means of Transport, etc. These lapses have largely been due to socialization and wrong application of sharia norms rather than by design. Examples Quaran 2:228 says that women have rights just as men do. The holy prophet said "O people you have certain rights with regards to your women but they also have rights over you. Quaran 33:35 states the equality of men and women before Allah.

Quaran 4:34 gives leadership role to men but Quaran 2:23623 the man to govern his home in mutual consultation with his wife and not in an overbearing

manner. These provisions in the Quaran has not influenced the low stature of women in Sharia States. Women still remain in purdah and some cover their faces.

It is a ground for divorce under sharia for a man to assault his wife even though a man has the right to admonish his wife. The instrument used must be symbolic with a toothbrush or chewing stick and must not leave a mark on her body. Beating will be an example of injury and discord between husband and wife. She will need to prove assault by calling a witness. In a divorce granted under the condition, the woman does not need to return the gifts (or mahr) given to her in the course of the marriage. Sharia law allows the man to withdraw maintenance from the wife if she denies him sex but the law generally forbids marital rape.

A man has the right to correct his wife if necessary by beating under customary law. By Igbo custom, a man may chastise his wife for failing to perform her duties, laziness, wastefulness and destruction. By customary law, marriageable age is defined as the age of puberty and assumed to be 12 years for girls and 14 years for boys. In Eastern Nigeria marriageable age is set a t16 years of age. The penalty for violation is N200 fine or 6 months imprisonment. A woman is generally treated and regarded as property probably because the man pays dowry to marry a woman and refund of dowry is necessary for divorce under customary law.

3.5 AREAS OF DIFFICULTY FOR WOMEN/DISCRIMINATORY LAWS AND PRACTICES AGAINST WOMEN

Legal aid is available in a few criminal cases, murder, manslaughter, assault occasioning harm with the condition that applicant must have an annual income below 1,500.

E.g. The National Policy on women makes the following for reaching provision, which stakeholders can promote in their work

- ❖ Ensuring women's access to free or low cost legal services
- ❖ Minimum age of 18 or all forms of marriage so that girls enjoy their rights to education and proper physical and mental development.
- ❖ Enactment of family protection law to criminalize acts of domestic violence or neglect.
- ❖ Review and codification of customary laws as a means of eliminating their content and application.
- ❖ Harmonisation of laws to ensure women's rights to inheritance, custody of their children and ownership of land.

Constraints of women's rights in the criminal law

- ❖ Some offences are gender specific so police are reluctant to prosecute
- ❖ Sexual harassment is not recognised as an offence.
- ❖ Police are reluctant to prosecute.
- ❖ The requirement for corroboration is strict.
- ❖ Prosecution must begin within two months after the offence is committed
- ❖ In some cases a person cannot be convicted on uncorroborated testimony of one witness.

There is no minimum age for marriage under both the criminal and penal codes. This leaves a gap which exposes girls to early marriage and premature sexual intercourse. (See definition of unlawful carnal knowledge) Girls also stand a chance of getting the Vasicovagina Fittula (VVF) and other infections and are not protected by some sections of the law because of the implied consent as a result of marriage.

PART FOUR

Gender and Human Rights in Nigeria

4.1. THE ISSUE OF GENDER INEQUALITY

The issue of gender inequality has of recent come to the fore in the struggle for women's empowerment and emancipation in Nigeria. Nigeria is a mainly patrilinear society where gender relations are based on the patriarchal point of view. The traditional role of a woman is that of a child bearer, home keeper, comforter, and food provider for her husband, children and large pre supposes that the propagations of the male as the superior sex for purposes of inheritance, marriage and family relations, politics and participation and power relations including family and social decision making.

Traditional practices regarding widows and the female child lend weight to the marginalisation of women. Domestic violence is accepted as a way of calling erring women together. Social values which regard women as inferior to men are the critical factors in shaping behaviours to women.

Over the years and with civilization not much has changed. The capitalist economic system acquired during colonization equally adversely affected the status of women because women were disadvantaged in entering the changing economic market due to the dominant role of men in public affairs. The Victorian societal view of the woman as the home keeper reduced the influence of women and therefore their role in public affairs. This added to the traditional palmachial system further reduced the status of women in public decision making. It is common sense that those who make policies and make decisions will do what is more beneficial to them. The practice of early marriage household work and childbearing within the communities hindered their contribution on economic and political spheres. In many societies the woman carries out those activities which can be seen as an extension of their services in the home such as care for the sick (nursing), feeding and processing of food, petty trading, agriculture and sewing.

4.2. AREAS OF INEQUALITY

(1) Labour and employment

– Women do not generally earn the same wages as men for the same work especially casual or unorganized labor which is where most women are employed. Those in public service are discriminated against in the area of maternity, sexual harassment and employment practices.

(2) Access to finances and credit

– Most banks and finance homes do not give loans to women and most times women have to be guaranteed by men before they can access credit for economic activities. This results in more women becoming poorer, even those who are able to do some business for their economic enhancement.

(3) Politics and Participation

– Women are not equipped to participate effectively in politics because of low esteem and inability to jump the hurdles set by the men. Such hurdles include rigging, money politics, thugery, membership of "boys clubs". There exists only gender tokenism for women in politics.

Women do not have the financial resources to compete in the high financial game of politics in Nigeria. They are therefore given positions which the men do not find lucrative or challenging enough. Thus politically women's rights are denied because of poor representation at the levels where decisions and policies are made.

(4) Education and Health Care

– Inadequate education and inadequate facilities for health care hinders women's quest for equality. Unhealthy and uneducated women cannot produce healthy children or engage effectively in social activities. Available data shows high levels of maternal and infant mortality and life expectancy and women.

(5) Harmful Traditional Practices

– Traditional practices like female genital mutilation, widowhood practices, male preference, domestic violence lend weight to discrimination against women. The heavy workload of women within the household and lack of house decision making powers contribute to deprive women of their rights and life. Information on family planning where they exist sometimes produce harmful side effects .Male preference leads to abuse and low self esteem for the female child even from birth and thus she does not develop her full potentials to enable her contribute effectively to the nation.

(6) Violence Against Women

– Women are still victims of rape, sexual assault, Sexual harassment assault and battery, widowhood practices, forced labor, trafficking, incest, and other forms of gender assaults and abuses. Domestic violence is till regarded as a private affair requiring no legal or official intervention.

(7) Access to Justice

– Women are politically, economically, socially, culturally, educationally, and legally disadvantaged. They cannot take advantage of facilities and opportunities available to them to achieve and enforce their human rights. They are mostly ignorant of their fundamental rights and freedoms. In many police stations, women are still not allowed to take people on bail.

These imbalances and inequalities in gender relations must be redressed if Nigeria will move forward to join the league of civilized nations as a country with respect for human rights. Nigeria is a signatory to the universal declaration of human rights and the convention on the elimination of all forms of discrimination against women (CEDAW) both of which documents emphasizes and reminds nations of their duties to promote women's rights, women's education and improve the status of women. The Nigerian constitution, under its fundamental human rights provisions assures citizens of freedom from discrimination and inhuman and degrading treatment. This has not been so in practical terms and abuse of women's rights continues unabated.

4.3. STRATEGIES TO COMBAT DISCRIMINATION AND ABUSE OF WOMEN'S RIGHTS

All hands must be on deck

- Government must proceed to domesticate and practicalise all international treaties which Nigeria has signed. This is because the Nigerian constitution

in section 12 requires domestication before international treaties are adopted as part of Nigerian law. The process of domestication involves all state houses of assembly and the National Assembly.

- Government at all tiers should ensure affirmative action in all appointments to positions at state and national levels.
- Government should provide adequate educational and healthcare services at villages, towns and cities. The services should be geared towards assisting women improve their health and that of their families.
- Having established the ministry of women's affairs and adopted a national policy for women, these initiatives should be seen to be making the needed impact.
- Our national laws should be strengthened and enforcement mechanism improved to take care of those areas where lapses exist in our laws.

4.4. The role of traditional rulers and religious authorities

Traditional and religious doctrines are usually the excuse for violence and discrimination against women.

- Practices like female genital mutilation, widowhood practices, religious and cultural discrimination and societal perceptions which encourage the dehumanization and low status of women should be identified and discarded.
- The issue of death penalty for adultery by women as practiced by the sharia religious courts should be outlawed and denounced for being against our constitution, international human rights treaties and natural justice, equity and good conscience.
- The rights of women to divorce and custody as well as inheritance should be recognized and enforced.
- The practice of male preference, women disinheritance and wife beating should be discouraged.

Traditional rulers and religious leaders should utilize their wise support and followership to effect positive changes in their communities. They should work with the police, NGOs and government to promote and protect women's rights. They must understand and appreciate the provisions of and the importance of CEDAW for the promotion of women's rights.

4.5. THE ROLE OF DOCTORS

Doctors have an important role to play especially in the area of health and violence against women. Most sexual offences under our laws require corroboration in order to establish guilt. Most require the attention and report of a medical doctor. There is a time limit during which this medical report can be useful. For example, it will be no use to perform medical examination of a rape victim one week after the act of rape as there will be no value attached to such a medical report. The same applies to a medical report regarding an assault occasioning harm or battery if it is made after the wounds and swellings have healed and subsided.

- Medical practitioners should show sympathy for the plight of victims and de-emphasize money.
- They must realize that such women, having suffered physical and psychological injuries require attention and health.
- They may also require counselling and shelter as well as security for her person.

- Doctors should be available to testify in court when needed as their testimony is material to successful prosecution of cases.
- Medical reports should be short, clear and explicit using simple language.
- Victims should be promptly admitted in hospitals and where the closest doctor is not a government doctor, he or she should as soon as practicable refer the patients to a government doctor with a detailed report

4.6. THE ROLE OF THE POLICE

The police is usually the first place of contact and hope for victims of violence.

- They should show sympathy and listen to complaints. And ensure that complaints are recorded promptly
- Assaults and abuses within families should be accorded the same importance with those emanating from outside the family.
- Victims must be given the full protection of the law and complaints should be taken and responded to even where the reporter is not the victim of violence.
- Spouses should have no protection for spousal assaults.
- Investigation must be thorough and the scene of the crime should be visited by the investigating police officer.
- Witnesses should be interviewed and their statements recorded.
- Interviews should be conducted separately to ensure privacy and confidentiality and victims should be told their rights under the law.
- The police should provide or arrange transport of the victim to the nearest hospital or medical facility and provide protection to the reporter of violence.
- The suspect should be arrested immediately or removed from the scene of crime if it is within the household.
- All communications with the victim should be in a language she understands and she should be assisted if she needs a protective order from a court.
- The police and court registrars must serve all court processes emanating from the case.
- During prosecution, police prosecutors and witnesses must be diligent and show a great sense of responsibility in furthering the ends of justice and public interest

4.7. THE ROLE OF LAWYERS

Lawyers should be ready to assist all persons in the establishment and protection of as well as defence of their human rights. This is particular necessary for women who are generally vulnerable, poor and defenceless. They may be unable to pay high legal fees and this should be taken into consideration in taking on cases involving women.

- Lawyers should consider the special position of women even when they are defence lawyers in cases of rape and sexual assault.
- Cross examination should not be geared towards causing embarrassment of the witness but at bringing out the truth.
- It should always be remembered that legal assistance and confidential communication with counsel is a right and should be ensured.
- Lawyers and professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members

from persecutions and improper restrictions and infringements, providing legal services to all in need of them and co-operate with government and other institutions in furthering the ends of justice and public interest.

- Lawyers should advise clients as to their legal rights and obligations and as to the workings of the legal system in so far as it is relevant to the legal rights and obligations of clients assisting clients in every appropriate way and taking legal action to protect their interest.
- Assisting clients before courts, tribunals or administrative authorities where appropriate.
- Lawyers should always loyally respect the interest of their clients and in doing all the above lawyers in promoting the cause of justice, shall seek and uphold human rights and fundamental freedoms recognized by national and international laws and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

4.8. ROLE OF JUDICIAL OFFICERS

Judicial officers have a central and vital role in the promotion of human rights. They should first of all be familiar with the legal provisions and divided cases relating to offences committed against women.

- They must ensure that women are not intimidated by the aura of the court.
- The laws must be dynamic and it is in the role of Judges to make it so.
- Specific National Legislation and international treaties should be given a liberal interpretation to accommodate offences against women.
- Technical procedures in the laws should not be a barrier to the enforcement of criminal justice as this has the adverse effect of undermining the confidence the public in the judicial system. Non lawyers cannot understand why such technicalities should stand in the way of apparent justice. They should only be enforced where breach of technicalities may also lead to miscarriage of justice. Rules of criminal procedure should not be so rigid that their breach can automatically lead to acquittal. The provision of section 382 of the criminal code is important for this aspect. It says "Subject to the provision herein before contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or review on account of any error, omission or irregularity in the complaint summons, warrant, charge, public summons, order, judgment or other proceedings before or during the trial or in any enquiry or other proceedings under the criminal procedure code unless the appeal court or reviewing authority thinks that a failure of justice has in fact been occasioned by such error, omission or irregularity". This provision is worth of universal adoption. It has been applied in the case of humble US State resulting in the sustenance of the conviction even though plea was not taken after an amendment conversely in Nwafor Ukaegbu and a retrial order made became fresh plea was not taken on amendment of the charge of murder.

LIST OF ACCRONYMS

AU	AFRICAN UNION
CEDAW:	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
C.C	CRIMINAL CODE
P.C.	PENAL CODE
ICCPR	INTERNATIONAL CONVENANT ON SOCIAL AND POLITICAL RIGHTS
ICESCR:	INTERNATION CONVENAT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
NGO:	NON-GOVERNMENTAL ORGANISATION
OAU:	ORGANISATION OF AFRICAN UNITY
THE PROTOCOL:	PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS
THE CHARTER:	THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS
UDHR:	UNIVERSAL DECLARATION OF WOMEN'S RIGHTS
WASRO	WILDAF WEST AFRICA REGIONAL OFFICE
WILDAF:	WOMEN IN LAW

APPENDIX 1

FUNDAMENTAL RIGHTS

(Chapter 4 Constitution of the Federal Republic of Nigeria 1999)

33. - (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary-

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

34. - (1) Every individual is entitled to respect for the dignity of his person, and accordingly-

- (a) no person shall be subjected 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.

(2) For the purposes of subsection (1)(c) of this section, "forced or compulsory labour" does not include-

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
- (c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
- (d) any labour require which is reasonable necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
- (e) any labour or service that forms part-
 - (i) normal communal or other civic obligations for the well-being of the community,
 - (ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or
 - (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

35. - (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-

- (a) in execution of the sentence or order of a court in respect of criminal offence of which he has been found guilty;
- (b) by reason of his failure to comply with the order of a court in order to secure the fulfillment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonable necessary to prevent his committing a criminal offence;
- (d) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

- (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
- (3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.
- (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of-
 - (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
 - (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceeding that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.
- (5) in subsection (4) of this section, the expression "a reasonable time" means-

- (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and
 - (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.
- (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.
- (7) Nothing in this section shall be construed-
- (a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and
 - (b) as invalidating any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.

36. - (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law-

- (a) provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
 - (b) contains no provision making the determination of the administering authority final and conclusive.
- (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.
- (4) Whenever any person charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that-

- (a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;
- (b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to-

- (a) be informed promptly in the language that he understands and in detail of the nature of the offence;
- (b) be given adequate time and facilities for the preparation of his defence;
- (c) defend himself in person or by legal practitioners of his own choice;
- (d) examine, in person or by his legal practitioners, the witness called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
- (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal

offence heavier than the penalty in force at the time the offence was committed.

- (9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.
- (10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.
- (11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

37. The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

38. – (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

39. - (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish

or operate a television or wireless broadcasting station for any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonable justifiable in a democratic society-

- (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
- (b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

40. Every person shall be entitled to assemble freely and associate with other persons, and in a particular he may form or belong to any political party, trade union or any other association for the protection of his interest:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

41. - (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

- (a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or
- (b) providing for the removal of any person from Nigeria to any other country to-
 - (i) be tried outside Nigeria for any criminal offence, or
 - (ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

provided that that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

42. - (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 a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

43. Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

44. – (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things-

- (a) requires the prompt payment of compensation therefore; and
- (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction that part of Nigeria.

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law-

- (a) for the imposition or enforcement of any tax, rate or duty;
- (b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
- (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
- (d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, or persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
- (e) relating to the execution of judgments or orders of court;
- (f) providing for the taking possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
- (g) relating to enemy property;
- (h) relating to trusts and trustees;
- (i) relating to limitation of actions;

- (j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
- (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
- (l) providing for the carrying out of work on land for the purpose of soil-conservation; or
- (m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as, may be prescribed by the National Assembly.

45. – (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonable justifiable in a democratic society-

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons.

(2) An Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonable justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorize and derogation from the provisions of section 36(8) of this Constitution.

(3) In this section, a “period of emergency” means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

46.- (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in

pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.

(4) The National Assembly-

- (a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and
- (b) shall make provisions-
- (c) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and
- (d) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

APPENDIX 2

EXTRACT FROM THE NIGERIAN PENAL CODE **(CAP 345 Laws of the Federation of Nigeria 1990)** **(Applicable in the Northern Part of Nigeria)**

55. (1) Nothing is an offence which does not amount to the infliction of grievous hurt upon a person and which is done-

- (a) by a parent or guardian for the purpose of correcting his child or ward that child or ward being under eighteen years of age; or
- (b) by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge; or
- (c) by a master for the purpose of correcting his servant or apprentice, the servant or apprentice being under eighteen years of age; or
- (d) by a husband for the purpose of correcting his wife such husband and wife being subject to any customary law in which the correction is recognized as lawful.

(2). No correction is justifiable which is unreasonable in kind or in degree. Regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction is justifiable in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.

78 A person who is convicted of an offence under this Penal Code may be adjusted to

make compensation to a person injured by his offence and the compensation may be either in addition to or in substitution for any other punishment.

232. Whoever voluntarily causes a woman with child to miscarry shall, if the miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

EXPLANATION. A woman, who causes herself to miscarry, is within the meaning of this section.

233. Whoever with intent to cause the miscarriage of a woman whether with child or not does an act which causes the death of that woman, shall

275. Whoever, by any means whatsoever, induces a girl under the age of eighteen years to go from any place or to do an act with intent that the girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

276. Whoever imports into the Federal Capital Territory, Abuja from a country outside Nigeria a girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be,

forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

281. Whoever, in order to gratify the passions of another person, procures, entices or leads away, even with her consent, a woman or girl for immoral purposes shall be punished with imprisonment which may extend to seven years and shall also be liable to fine.
282. (1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-
- (a) against her will;
 - (b) without her consent;
 - (c) with her consent, when her consent has been obtained by putting her in fear of death or of 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 herself to be lawfully married;
 - (e) with or without her consent, when she is under fourteen years of age or of unsound mind.
- (2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

EXPLANATION. Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

283. Whoever commits rape, shall be punished with imprisonment for life or for any less term and shall be liable to fine.
284. Whoever has carnal intercourse against the order of nature with a man, woman or an animal, shall be punished with imprisonment for a term, which may extend to fourteen years and shall also be liable to fine.
383. Every man who by deceit causes a woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.
384. (1) Whoever having a husband or wife living marries in a case in which that marriage is void by reason of its taking place during the life of that husband or wife, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.
- (2) This section shall not extend-
- (a) to a person whose marriage with the husband or wife has been legally dissolved; nor
 - (b) to a person who contracts a marriage during the life of a former husband or wife, if the husband or wife at the time of the subsequent marriage shall have been continually absent from the

person for the space of seven years and shall not have been heard of by the person as being alive within that time, provided the person contracting the subsequent marriage shall, before that marriage takes place, inform the person with whom the marriage is contracted of the real of facts so far as the same are with his or her knowledge.

388. Whoever, being a woman subject to any customary law in which extra-marital sexual intercourse is recognized as a criminal offence, has sexual intercourse with a person who is not and whom she knows or has reason to believe is not her husband is guilty of the offence of adultery and shall be punished with imprisonment for a term which extend to two years or with fine or with both.

390. Whoever being a man has sexual intercourse with a woman who is an whom he knows or has reason to believe to be his daughter, his granddaughter, his mother or any other of his female ascendants or descendants, his sister or the daughter of his brother or sister or his paternal or maternal aunt and whoever being a woman voluntarily permits a man who is and whom she knows or has reason to believe to be her son, her grandson, her father or any other of her male ascendants, her brother or the son of her brother or sister or her paternal or maternal uncle to have sexual intercourse with her, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

EXPLANATION. In this section words expressing relation include relatives of the half blood and relatives whose relation is not traced through a lawful marriage.

APPENDIX 3

CRIMINAL CODE

(Criminal Code Act Cap 77 Laws of the Federation of Nigeria) (Applicable in the Southern Part of Nigeria)

218. Any male person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life with or without caning.

Any person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for fourteen years, with or without caning.

A prosecution for either of the offences defined in this section shall be begun within two months after the offence is committed.

A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

219. Any person who, being the owner or occupier of any premises, or having, or

having, or acting, or assisting in the management or control of any premises, induces or knowingly permits any girl of such age as in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully carnally known by any man, whether a particular man or not, is guilty of an offence.

If the girl is of or above thirteen and under sixteen years of age, he is guilty of a misdemeanour and is liable to imprisonment for two years, with or without caning.

If the girl is under the age of thirteen years, he is guilty of felony, and is liable to imprisonment for life, with or without caning.

222. Any person who unlawfully and indecently deals with a girl under the age of sixteen years is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without caning.

If the girl is under the age of thirteen years, he is guilty of a felony and is liable to imprisonment for three years, with or without caning.

It is a defense to a charge of the offence defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

The term "deal with" includes doing any act, which, if done without consent, would constitute an assault as hereinafter defined.

222A (1) Whoever, having the custody, charge or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon, such a girl, shall be liable to imprisonment for two years.

- (1) For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon, a girl who has been seduced, unlawfully carnally known, or indecently assaulted, or who has become a prostitute, if he has knowingly allowed her to consort with or to enter or continue in the employment of, any prostitute or person of known immoral character.

222c. Notwithstanding, anything contained in sections 220, 221 and 2 shall only be a defense to a charge of any of the offences defined in section 219, paragraph (1) of section 221 and section 222 to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years if the accused person was under the age of twenty-one years at the time when the offence is alleged to have been Committed and has not previously been charged with any of such offences.

223. Any person who-

- (1) Procures a girl or woman who is under the age of eighteen years to have unlawful carnal connection with any other person or persons, either in Nigeria or elsewhere; or
- (2) Procures a woman or girl to become a common prostitute, either in Nigeria, or elsewhere; or
- (3) Procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere; or
- (4) Procures a woman or girl to leave her usual place of abode in Nigeria, with intent that she may, for the purposes of prostitution, become an inmate of a brothel, either in Nigeria or elsewhere;

is guilty of a misdemeanour, and is liable to imprisonment for two years. A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness.

The offender may be arrested without warrant.

224. Any person who-

- (1) By threats or intimidation of any kind procures a woman or girl, to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (2) By any false pretence procures a woman or girl to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (3) Administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have lawful carnal knowledge of her;

Is guilty of a misdemeanour, and is liable to imprisonment for two years.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness.

225a. (1) Every male person who-

- (a) Knowingly lives wholly or in part on the earning of prostitution; or
- (b) In any public place persistently solicits or importunes for immoral purposes,

Shall be liable to imprisonment for two years, and, in the case of a second or subsequent conviction, shall, in addition to any term of imprisonment awarded, be liable to caning.

(2) Any magistrate who is satisfied, by evidence upon oath, that there is reason to suspect that any premises or any part of any premises are or is used by a female for purposes of prostitution, and that any male person residing in or frequenting the premises is living wholly or in part on the earnings of the prostitute, may issue a warrant under his hand authorizing any constable to enter and search the premises and to arrest that male person.

(3) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercise control, direction, show that he is aiding, abetting, or compelling her prostitution with any other person or generally, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

(4) Every female who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person or generally shall be liable to imprisonment.

ASSAULTS ON FEMALES:

357. Any person who has unlawful carnal knowledge of a woman or 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 personating her husband, is guilty of an offence which is called rape.

358. Any person who commits the offence of rape is liable to imprisonment for life, with or without caning.

359. Any person who attempts to commit the offence of rape is guilty of a felony, and is liable to imprisonment for fourteen years, with or without caning.

360. Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour, and is liable to imprisonment for two years.

361. Any person who, with intent to marry or carnally know a female of any age, or to cause her to be married, or carnally known by any other

person, take her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for seven years.

362. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour, and is liable to imprisonment for two years.

363. In the case of proceedings in respect of an offence under the preceding section-

(a) it is immaterial that the offender believed the girl to be of or above the age of sixteen years; It is immaterial that the girl was taken with her own consent or at her own suggestion.

MONITORING CHART

MATTERS RELATING TO WOMEN'S RIGHTS ISSUES

MONTH	NAME OF PARTIES	ISSUES FOR DETERMINATION	DECISION	REMARKS
JANUARY				
FEBRUARY				
MARCH				
APRIL				
MAY				
JUNE				
JULY				
AUGUST				
SEPTEMBER				
OCTOBER				
NOVEMBER				
DECEMBER				