

CEDAW DAILY IMPLEMENTATION 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- four (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 ingenerating 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

“CEDAW DAILY IMPLEMENTATION 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

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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*.

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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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CEDAW DAILY IMPLEMENTATION **IN NIGERIA**

INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**) is an international human rights document, which promotes the principles of non-discrimination and equality between women and men.

The convention was adopted by the general assembly of the United Nations (UN) on 18th December 1979 and entered into force as a binding treaty on 3rd September 1981. Nigeria signed the treaty in 1985. The CEDAW committee meets in January of each year at the UN headquarters in New York to review country reports on the status of women submitted by countries which have agreed to and signed the convention. The major interest of CEDAW is non-discrimination against women and girls and this differentiates it clearly from other international conventions.

In the year 2000 the UN General Assembly in their 23rd session to mark Beijing +5 reviewed all that has been achieved in the past decade and articulated new strategies for the 21st century. Some of the areas to focus on are health, violence, globalization, economy, human rights and political empowerment based on the principle of eliminating discrimination against women and girls. It is therefore important for Nigeria to work towards the practicalisation and full implementation of CEDAW in Nigeria.

SUMMARY OF PROVISIONS OF CEDAW

CEDAW is divided into 6 parts made up of 30 separate articles

PART 1	–	Articles 1-6
PART 2	–	Articles 7-9
PART 3	–	Articles 10-14
PART 4	–	Articles 15-16
PART 5	–	Articles 17-22
PART 6	–	Articles 23-30

The most important articles for our purposes are articles 1-16 which form the main pivot upon which all human rights as expounded by the United Nations rests.

Basic Principles of CEDAW

The preamble to CEDAW acknowledges the existence of discrimination against women and makes it clear that continued existence of such discrimination violates the principles of equality of all persons and respect for human rights and dignity. Government here means Governments which have agreed to the treaty.

While there are areas of similarity between Nigerian laws on human rights and those contained in CEDAW, there are many areas of difference. For instance where the Nigerian constitution does not specifically protect women against discrimination but allows women to rely on the general provision in chapter IV sections 33 – 46. Discrimination on grounds of sex, religion, ethnic or political opinion or ties is prohibited by sections 15 – (2).

Similarly, the African charter, which was adopted by the then Organisation of African Unity now African Union (AU) in 1981, and entered into force five years later also shares many characteristics with CEDAW and other human rights treaties. The African Charter however does not address women's rights comprehensively hence the lobby for the adoption of the Protocol to the Charter relating to women's rights.

FREEDOM FROM DISCRIMINATION

Article 1 – Defines discrimination to mean distinction, exclusion or restriction on made on the basis of sex in the political, economical, social, cultural, civil or any field. Women and men should be treated the same way in every aspect of life. There should be no preference or different treatment because of being a man or a woman. This applies to both married and single people.

Article 2 – Countries should do anything within their power to prevent the treatment of women different from men and should make rules to prevent this. Agencies and institutions should be set up to protect the rights of women.

Article 3 – Governments should make sure that women are not treated differently from men in a way that will disturb or affect their social, economic and political development.

Article 5 – Government must do whatever can be done to change those social and cultural practices that treat women different from men. Family education should be an important part of school education and this should include proper understanding of the problems of women.

Comparing these article 1, 2, 3 & 5 of CEDAW with the African Charter on Human and People's Rights one finds that Articles 1, 2 & 3 of the African Charter too prohibits racial and gender discrimination These articles of the Charter requires States Parties to take concrete steps to eliminate discrimination on basis of sex or race and to enact laws which embody the principle of equality.

Article 18 (3) of the Charter also supports Articles 1-3 of the Charter and complements the provision of CEDAW on non-discrimination.

The Nigerian constitution in chapter IV provides for equal protection and benefit of the law. It also provides for equal treatment of all persons without consideration for their race, gender, sex, ethnic or social origin, color, sexual orientation, disability, religion, conscience, belief or birth.

Despite all these provisions discrimination against women persists in Nigeria in almost all spheres of human endeavor. Such discriminatory practices are mostly predicated on culture and religion contrary to the provisions of CEDAW, African Charter and the Nigerian Constitution. Examples of some of the areas of discrimination could be found in the:

- Denial of inheritance rights
- General attitude to violence against women.
- Dehumanising widowhood practices
- Economic violence
- Sexual harassment

Our customary Laws in particular discriminate against women especially in the area of inheritance practices.

In a recent case of Akinubi Vs Akinubi¹. Mrs. Rufus Akinubi, a widow with five (5) children was married under customary law, her husband died intestate. He owned a building, which was let to Owena Bank after the death of Rufus, his brothers obtained letters of administration in respect of his estate, his widow went to court to get an injunction to stop them from administering the estate. The High court held that she had no locus to institute the action because by customary law she is part of her husband's estate and cannot be appointed to administer the estate. Her appeal to the court of appeal was dismissed. She went to the Supreme Court where it was held.

"It is a well settled rule of native law and customs of the Yoruba that a wife could not inherit her husband's property. Indeed under Yoruba customary law, a widow on intestacy is regarded as part of the estate of the deceased husband to be administered or inherited by the deceased family. She should neither be entitled to apply for a grant of letters of administration nor appointed as a co administrator".

This is a judgement which upholds discrimination against women. It is disheartening because it comes for an area (Yoruba) generally regarded as being liberal towards women in such matters. The judgment weighs against articles 2(f) and 5 of CEDAW. It should be noted that in many parts of Western Nigeria among the Yoruba's, a woman could inherit from her father along with her siblings under the Ori-Ojori system of inheritance.

The Ibo customary laws of inheritance dis-inherits both wives and daughters. Where there is no male child the male relatives of a deceased inherit, even a distant male relative can inherit by the Oli-Ekpe custom of Nnewi to the exclusion of the widow or her daughters.

Fortunately this custom was recently declared repugnant to natural justice, equity and good conscience. The Case is **Mojekwu Vs. Mojekwu²** where the Court of appeal declared the Ori-Ekpe custom, which denied a woman the right to inherit her husband's property repugnant for being discriminatory.

In another case, **Mojekwu Vs Ejikeme³**, it was held that a family line is not extinct because there are only daughters living, the judge referred to CEDAW in that case. This should be the attitude of our judges. The decision was not based on CEDAW but CEDAW was mentioned by Justice Niki Tobi.

¹ (1997) NWLR at 144.

² (1997) 7 NWLR (Pt 512) 28.

³ (2000) 5 NWLR 405.

CASE STUDY

Mojekwu V Ejikeme⁴

Facts:

The case tested the 'Nрачи 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 their grandparents until their death. 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 Reuben performed the ceremony for his daughter comfort that 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 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 Nراحی was performed, the appellants are not heirs (cannot inherit) to Reuben and therefore not entitled to succeed him or his estate since Nراحی 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's lineage became extinct, Bennet Ejikeme should inherit the estate through Oli-Ekpe custom.

⁴ 2000 5 NWLR 3.

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 an upper hand over the others, without it she can inherit her father's property while the others cannot.
- Is not worthy of application. It should not be enforceable in the judicial realm and no court of record should countenance or take judicial notice of it.
- Is inconsistent with public policy and 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.
- 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. 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.

Articles 2(e) and 5 of CEDAW require States to modify cultural patterns with a view to eliminating discrimination against women and gender based biases and stereotypes. This is supported by section 21 of the Nigerian Constitution, which provides "the state shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives of Nigeria."

Also the evidence act in section 2 defines custom as the rule which in a particular district has from long usage obtained the force of law. Such law can be applied as part of the law governing a particular case if it satisfies the following conditions.

- a. It has been noticed judicially
- b. It can be established by evidence to exist

Section 14 (3) of the same law provides that even where such customary law has been proved by evidence it will not be enforced if it is held to be contrary to public policy or repugnant to natural justice, equity and good conscience.

Our customary laws should be weighed against this scale before they are applied by our Courts, it should also be judicially noticed that it is against public policy not to recognise, implement and enforce international treaties which Nigeria has signed and ratified. See Gani Fawehinmi Vs. Abacha⁵

Other Areas of Discrimination in Nigerian Laws are:

- The language of the constitution is discriminatory using the masculine gender. Even the interpretation section fails to explain this by saying that references to the male gender includes the female gender. This underscores the belief

⁵ (1996) 9NWLR pt 475, at 710.

that women are not equal citizens even in the constitution. Section 26 (2) on citizenship is discriminatory on the issue of citizenship by marriage.

- Having ratified CEDAW, which is also part of our law by virtue of article 18 (3) of the African Charter, Nigeria is bound to change those aspects of our national laws, which contradict its obligations under CEDAW and the African charter.
- Under the criminal law, the penal code of Nigeria in section 55 permits men to beat their wives. The criminal code does not also protect women against marital rape.

Section 353 of the criminal code makes indecent assault on males punishable with 3yrs imprisonment while section 350 treats indecent assault on females as a misdemeanor punishable with a maximum of 2yrs imprisonment. This contradicts the principle of equal protection of the law guaranteed by CEDAW, the African charter and its protocol and the Nigerian constitution.

- The Nigerian constitution endorses child marriage by treating a married child as an adult – Section 29(4) states “Any woman who is married shall be deemed to be of full age”.

This provision contradicts the requirement of CEDAW, The African Charter and the protocol to the Charter on minimum age of marriage for states.

RIGHTS IN EMPLOYMENT

Article 4 CEDAW – *provides that steps taken for a long or short time to make life better for women, such as maternity leave or allowances is not discrimination and women should not be punished during such period.*

Article 11 – *All women have a right to work. They have a right to fair treatment at work and equal pay for equal work. The government shall ensure that they enjoy all benefits and entitlements same as men at work.*

- Married women are discriminated against in employment and under the tax policies, many employers are reluctant to employ married women because of reluctance of the employers to grant some rights and privileges arising from their marital or pregnancy status.

Some women are denied employment for being of childbearing age. The responsibility of child bearing or reproduction is not considered as service to the society by most employers. Consequently employers consider it a loss to accommodate the time when the women went to perform their reproductive responsibilities. Women are also usually denied maternity leave in private companies.

Although the Tax laws have been made gender neutral after much agitations from women's groups for equal treatment, the application of the tax laws still discriminate against women. This is because women have to prove “beyond reasonable doubt” that they are the breadwinners in the homes before being allowed the tax relieves. Whereas a man need not prove that he is married or that he has children or that he maintains his children before he benefits from the tax relief. Some women are denied employment for being of childbearing age.

There is denial of employment of married women in certain specialized labour. For instance married women are not allowed to join the police (Regulation 122 of Police Regulations). While unmarried women police officers who become pregnant will be discharged (Regulation 127). Those unmarried women who wish to get married must first get the formal approval of the commissioner of police before getting married. Until recently there was a ceiling on the promotion of women in the Police and Armed Forces.

The treatment of married women in practice thus negates the principles and provisions of Article 4 and 11 of CEDAW, the African Charter and the Non-Discrimination provisions of the Nigerian Constitution.

Article 6 – Selling and buying of women must stop and countries must do everything in their power to stop it and make sure that women are not sold into prostitution or for any economic gain. The Nigerian constitution gives a right to freedom from torture, inhuman or degrading treatment. It also prohibits forced labor, slavery and servitude. Exploitation of women by trafficking and living on the sweat of women comes under this section. Articles 5 & 6 of CEDAW encourage legislation to suppress trafficking and exploitation of women as well as degradation, especially slavery, slave trade, torture and inhuman and degrading treatment and punishment. **These articles along with article 18 can be used to challenge degrading widowhood practices.**

Article 7 – Government has the duty to ensure equal participation of women in politics, to vote and be voted for and to hold public office. Women should be free to organize themselves into groups or organizations, especially where the aim is to promote the country's interest.

Article 8 – Women must be given the same chance as men to represent their country at the international level. They must be treated the same way as men in the process of representing their country.

Article 9- 1. Women can belong to or change their native land without problem. Their decision shall not be affected by their husband's loyalty and protection by any given country
2. Women also have equal rights with respect to nationality of their children.

Article 10 – Governments shall make sure that every woman enjoys the right to learn and be educated in all areas without being treated differently from men including advice on family planning to help ensure well being and health of their families and also shall ensure:

- a) Equal opportunities for women and men in their chosen career, instructional education and training at all levels of education.
- b) Same criteria and standards for evaluation of men and women in all institutions of learning.
- c) Same opportunities and access to information and privileges such as scholarships.
- d) Establishment of educational and social welfare programs to reduce the disabilities of women who have either left school permanently or are indisposed to regular formal education.

Article 12 – Women have the right to enjoy good health and must have access to healthcare services, including those related to family planning.

Article 13 – Countries that have signed the convention must make sure that women are not treated differently in the areas of economic and social development. Women have the right to obtain family benefits, bank loans, to participate in sports and the cultural activities.

Article 14 – Government shall give special protection to rural women and ensure that they participate in the planning and implementation of programs aimed at improving their general social welfare and economic development.

Article 15 – The laws of the country must treat women and men equally. Women have equal rights with men in matters that relate to business contracts. Any laws that restrict women's rights is non-existent.

Article 16 – Women and men have equal rights in marriage and family relations – Women therefore have the right to:

- Marry and freely choose their spouse.
- Have a divorce if they so desire.
- Have equal rights during or at the end of a marriage.
- Share the same parental responsibilities as men in matters relating to their children.
- Decide the number and spacing of their children.
- Have a choice of taking children not their own into the family.
- Have a right to choose a family name, own and give away property and choose profession or occupation

Giving a child away in marriage shall not be recognized in law and steps must be taken to specify a minimum age for marriage and the registration of marriages should be made mandatory.

Under all categories of the laws practiced in Nigeria, women are discriminated against in marriage and family law, sometimes as wives and sometimes as daughters. Child marriage is still practiced in several parts of Nigeria because marriageable age under the marriage act is not defined. Wives have lesser rights in marriage and divorce. Contrary to article 16 of CEDAW, property jointly acquired through the efforts and hard work of a couple during marriage is still generally deemed to belong to the man.

Articles 17 – 22: Monitoring and implementation of the convention - Implementation of CEDAW is monitored by the committee on the elimination of discrimination against women. The committee is composed of 23 experts elected by state parties i.e. the governments that have ratified the convention. The committee meets once every year in New York. Members serve in their private capacity and are not government representatives. They are elected for a 4-year term subject to re-election.

Duties of the committee

- The committee examines annual country reports submitted to it by the states on steps they have taken towards implementation of the convention. They then make suggestions and recommendations which are disseminated to the State parties.

Articles 23 to 30 – Obligation of state partners and responsibilities of the United Nations - Any State which signs the convention shall not encourage acts which would hinder or defeat the objective or goals of the convention which is eliminating totally discrimination against women. States shall also make reports on their progress to the committee. State parties should submit national reports every 4 years. The convention is open to all states and can be signed by any country wishing to do so.

The convention can be reviewed by the General Assembly if the correct procedure for review is fulfilled.

CEDAW, THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS AND NIGERIAN LEGISLATION ON WOMEN'S RIGHTS

The African Charter on Human and Peoples Rights prohibits discrimination on grounds of sex (Articles 2 and 18(3)). The African commission realized that to achieve "the elimination of every discrimination against women" something had to be added to the charter and agreed in principle that there should be a protocol on women's rights to the African charter. The protocol sets out specific standards and measures by which women's rights should be recognized and protected. The protocol also contains provisions on the elimination of Harmful Traditional Practices. The protocol is at the stage of a 2nd experts meeting. It is expected that Nigeria will sign and implement the protocol to the African charter, which is in conformity with the national policy on women.

The African Charter on Human and People's Rights has been domesticated that is made part of Nigerian Law also contains several articles which are in line with the provisions of CEDAW. The African Charter is contained in Cap 10 of the laws of the Federation of Nigeria 1990 and can be used by judges to protect the women's rights where our national laws are inadequate. Article 18 (3) of the charter obliges Nigeria to implement International covenants and so there should be no excuse for non-implementation.

In *Gani Fawehinmi Vs. Abacha* (1996) ⁶ it was held that Nigeria having promulgated Cap 10 is obliged to fulfill its International obligations and that the provisions of the charter cannot therefore fall into the hierarchy of the courts in Nigeria and will not be inferior to decrees because no government will be allowed to contract out by local legislation, its International obligations.

The Draft protocol to the African charter defines discrimination against women as any distinction, exclusion or restriction based on sex or any differential treatment whose effects compromise, impair, nullify or destroy the recognition, enjoyment or the exercise by women regardless of their marital status on an equal basis with men of human rights and fundamental freedoms in all spheres of public and private life.

State parties are required to take all appropriate measures to protect women from violence. Other articles are on the rights to non discrimination in education and social and economic welfare rights. States shall guarantee to women equal opportunities at work, right to food, security (including water fuel, land and means of providing food), right to adequate housing, to involvement in the management of the environment and the right to development. It also assures the rights of women to equality with men in marriage, divorce, nationalization as well as the rights of women and girls on inheritance. Widows are specifically mentioned for they are to be protected. Reproductive rights and rights to information are recognized.

The Protocol also recognizes the rights of women to equal participation in political and peace processes as well as rights in determining cultural policies and cultural practices and State parties are to take steps to protect women from the harmful effects of cultural or religious practices. The Nigerian Constitution mentions these rights in chapter II. Thereby recognizing the principle of gender

⁶ *Gani Fawehinmi Vs Abacha* (1996) 9NWLR (Pt475)710.

equality in the fundamental objectives of state policy. This chapter should protect women from infringements on their human rights made on the basis of culture or tradition.

Chapter II makes general provision as directive principles supposed to guide the state in making policy. The state must not make policy that goes contrary to those principles. That is why the Nigerian constitution that is the overriding law of the land provides for non-discrimination on basis of sex in its fundamental human rights provisions (Section 42).

CEDAW is still not being implemented in Nigeria. Reasons given for non implementation of CEDAW in Nigeria range from non domestication to incompatibility with religious and traditional norms.

WOMEN'S HUMAN RIGHTS AND DOMESTIC APPLICATION OF INTERNATIONAL INSTRUMENTS

We are often asked the question "why women's rights? Is this not by itself discriminatory? The response is that women are different biologically, physically, emotionally, and otherwise. Their roles are also different in the family and social strata of society. There should be rights that concern their roles, which are different and essentially unequal. International instruments like CEDAW, The African Charter on Human and People's Rights, the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights as well as the protocol to the African charter now awaiting adoption recognize this fact.

That is why it is important to apply these international instruments as well as domestic laws in dealing with issues concerning women whose situations are so different and essentially unequal.

Implementation

This can be done by enforcement of fundamental rights or by case law:

- Chapter 4 of the Nigerian constitution and the African charter
Chapter 4 includes section 46 which states the procedures for enforcement. Section 12 talks of domestication of treaties but in practice domestication is no barrier to application of CEDAW. In the Unity Dow case the Botswana court relied on CEDAW in arriving at a decision even though Botswana had not domesticated CEDAW.
- Another source of law is case law
The court in Agbakoba's case created law on passports. That a Nigerian citizen is entitled to his passport. Nigerian courts should use case law to expand human rights. Judges should make use of section 46(6) to expand their orders in enforcement proceedings. Also in the cases of Mojekwu v. Mojekwu and Mojekwu v. Ejikeme the court of Appeal declared age-old customs discriminatory and repugnant to National Justice.

It was the court in Brown Vs. Board of Education that gave the blacks the right to attend the same school as whites. The courts have a wide scope to interpret and apply human rights and norms.

Enforcement procedures

Section 46 of the constitution: any person who alleges that his rights had been infringed can go to any high court in the state.

Is it only the High Court?

For enforcement proceedings YES but issues of rights can arise at any level from the customary courts to the Supreme Court. From the point of investigation and arrest to the point of conviction and even in private life. All the various Courts have a role to play and can rely on the available laws when issues regarding human rights violation arise e.g. where police opposes bail to an accused because the surety is a woman.

Application before the high court must be brought within one year and can be expanded by leave. There is usually an application for leave to enforce - and to another application for enforcement.

- References can be made to international law when deciding issues of arrest, bail, marriage and divorce, custody, etc.

Is it only states that can be sued?

Non-state parties can be sued.

Uzokwu Vs. Ezeonu – a community was sued over the caste system.

Section 46 (2) Provides that the court can issue such orders or issues such writs at it's discretion as it thinks fit. This is a wide provision that the court can use copiously to achieve justice.

Human rights application to only State actors are no longer tenable. Human rights have substantial scope to be applied to all actors.

Constraints to women's rights

(1) Our laws

- The Judges and Magistrates should have the courage to make the right decisions in such matters and make pronouncements that make the needed changes
- The bar is not to inhibit them. For example the provisions of section 211 of the Evidence Act should not be exploited to the detriment of rape victims or victims of sexual assault, the section states "when a man is prosecuted for rape or for attempt to commit rape or for indecent assault, it may be shown that the woman against whom the offence is alleged to have been committed was of a generally immoral character although she is not cross-examined on the subject. The woman may in such cases be asked whether she has had connections with other men but her answer cannot be contradicted. She may also be asked whether she had had connections on other occasions with the prisoners. If she denies it she may be contradicted." This is a provision that lawyers use superfluously to get set rapists free. Previous intimate relationships should never be an excuse for rape. The judge should protect the witness from answering embarrassing and incriminating questions that will destroy her case against an accused person.

(2) Customary Law

- There are good and positive customary norms that deserve to be protected, but there is a lot of oppression in the ways that our customary laws are interpreted. The fundamentals of customary law are equality and fairness e.g. under customary law, the principal reason for divorce was domestic violence. The family of the wife came to take their daughter away, yet today, they say wife beating is permitted by customary law

(3) Religion and morality

- There is a notion that there are things that women are not supposed to do and positions that women are not supposed to hold. Some harmful customary laws are enforced by religious authorities e.g. hair shaving by the Anglican Church for widows in eastern Nigeria. The repugnancy test should be applied to these practices that have evolved in order to change them. We must begin to challenge what we call custom, stoning to death of women for adultery is a religious practice fast becoming common in the Northern part of Nigeria.

Religion and CEDAW

The Nigerian constitution and CEDAW's prohibition of discrimination against women on grounds of religion. The introduction of Sharia, the Islamic Legal

System in some state of Northern Nigeria, notably Zamfara, Niger, Sokoto, has resulted in the passing of sentences in criminal cases, which tend to discriminate against women. This has led to the outcry all over the world that the Sharia legal system in Nigeria does not protect the rights of women.

Examples are;

- The flogging of Bariya Magozu who was convicted for adultery in Zamfara State.
- The death sentence by stoning passed on Safiya Hussaini Tunga Tudu by a Sharia Court in Sokoto for adultery while her male partner was allowed to go free.
- The death sentence passed on Amina Lawal in Funtua for having a child outside wedlock.

These sentences tend to discriminate against women and are contrary to international convention signed by Nigeria such as CEDAW, the African Charter and even the Nigerian constitution.

Some Moslems however say that the problem is not with the Sharia system but with its application. That Sharia in fact has high regard for women. An example is Chapter 4: 124 and 3: 195 of the Holy Qur'an, which states the equality of both sexes before God.

The Qur'an 35:28, which states that all moslems should seek knowledge irrespective of sex recognizes the right to education. Qur'an chapter 4:7 guarantees the right to inheritance also to both men and women.

There are several other provisions protecting women and promoting fair and equal treatment for all. The problem seems to be the manner of application of the system in Nigeria. This has to do with gender relations and gender conceptions in Nigeria.

There is need therefore to increase the awareness of Sharia Judges on human rights and the real provisions and procedures of the Sharia Islamic system.

In the area of marriage, Islamic Law permits child marriage and a man can take up to 4 wives. Child marriage exposes women to the disease known as Vesio Vagina Fistula, a disease that renders a woman incontinent and prone to infections.

(4) Evidence

- The general attitude is that the woman's evidence is half that of the man e.g. in a case of rape the supreme evidence is the body of the woman. Every male law student enjoys attending the lecture on rape because they find it entertaining. Think about the body of your mother or your sister or your daughter. Her body exposed in court. Her innermost details given as evidence in court... Our rule of corroboration in sexual offences must change, as is the case in South Africa, Sierra Leone, and Zimbabwe. No one invites witnesses to a rape scene.
- Credibility of the woman is usually not recognized due to societal views that either the woman is a prostitute, or dressed in a certain way, or moved or danced in a certain way to attract the problem
- The police do not regard cases of wife beating as assault.

(5) Remedies

Quite often, there are no remedies. Cases are not prosecuted fully for fear of stigma. Remedies should be fashioned to suit our circumstances. We have in our criminal procedure, provisions for Judges and Magistrates to award compensation but they rarely do it. Compensatory awards in criminal proceedings is something that should be encouraged. There is need for a rape law reform in Nigeria. When children are raped, the charge is for defilement, which is a lesser offence than rape. That law is outrageous and should be changed.

Communities must take group action such as group resistance to effect changes to customs and practices which adversely affect women. We must re-examine the way culture is interpreted to suit societal expectations.

In *Ministry of Internal Affairs Vs. Shugaba Abdurrahman* (1982) 3NCLR915, 1019⁷, it was held that the provisions protecting fundamental rights should be given a construction as would expand rather than restrict the enforcement of the rights. – Karibi Whyte JCA as he then was.

Gender roles and stereotypes also reinforce all the practices and attitudes that fuel abuses of women's rights.

CASES

Case 1 Chinwoke Maduabuchi

Her husband continued to assault her because he said she refused to have sex with him. Her refusal to have sex with him stemmed from the fact that he had on several occasions infected her with venereal disease. Also he did not provide for his wife and children but rather spent his money at Beer Parlours and gambling houses.

One day he went to where his wife worked with the civil defence corps at Oji River in Enugu State and beat her up there. He also threatened to deal with her employers if they continued to employ her. She thus lost her employment. The police refused to charge him to court claiming that it was a domestic matter. He has now sent her away from the matrimonial home and taken away the children of the marriage from her. She is afraid to go to court because her family will sanction her. She says she only wants custody of the children, which customarily rests with her husband.

Comment

Note the role of the police

Note also the role of societal norms in the issue. He was able to stop her from working. She was unwillingly to go to court, she cannot get custody of her children.

Case 2 Mrs. Ijeoma Nnoli -Domestic Violence

She has been having protracted marital disputes with her husband which resulted in her husband beating her and throwing her out of her matrimonial home. He subsequently started using police to harass and intimidate her and

⁷ *Ministry of Internal Affairs Vs. Shugaba* (1982) 3NCLR915, 1019.

their sponsors Mr and Mrs. Oditha. As a result, they continued threatening her life and due to harassment from her husband she ran down to Anambra State.

ACTION: A petition was written to the Inspector General of Police urging him to stop her husband from using the police to harass her. The Inspector General sent the letter to Anambra State Commissioner of Police.

The Anambra State Commissioner of Police invited the lawyers and Mrs. Nnoli and explained that he cannot achieve much as all the actions took place in Lagos, outside his jurisdiction. He however sent the letter back to Abuja and advised that the letter be re-routed to the Lagos State, Commissioner of Police for further action. There is a court Action pending before a chief Magistrate Court in Lagos in Suit No. MISC/MG/104/2001 over the matter.

However, Ifeanyi Nnoli has refused to allow his wife to rest. On the 13/07/2001, he went with thugs armed with dangerous weapons to our client residence at No.6 Egerton to kill her. She escaped. Being unable to carry out his mission he went down stairs into the street and waited from 10am to 6pm threatening that he must kill our clients to the hearing of passers by. She has stayed away from her house since then. Police carried out a proper investigation in the matter and he has been arrested, and arraigned for threat to life. Matter still pending in court.

Comments

Note the positive and negative roles played by police in the matter.

Case 3-Ngoni Onwuzuka and 8 others

These girls were sexually assaulted and beaten up by a group of young men when they went to fetch water at Ofia Stream in Achalla town in Anambra State. The tradition in the town was that women & girls could only fetch water from the stream if they are naked and carrying earthen pots. Men on the other hand could fetch with clothes on. The stream is the only source of drinking water in the town. A group of girls decided to resist the custom, which they considered barbaric. They were on their way to the stream with their clothes on when the young men of the village waylaid them, beat them thoroughly and assaulted them sexually.

The girls were in addition arrested and detained by the police. A report was made to FIDA centre Awka and a petition was written on behalf of the girls to the commissioners of police. The girls were released and 17 men who assaulted them were arrested. They are currently facing charges of assault and grievous bodily harm in court. FIDA visited the community and met with the traditional ruler. They discussed about changing the discriminating custom. The matter is still pending. The custom still exists. The case of assault and attempted rape is still pending.

Comments

Note the role of the police who turned the victims to accused by arresting and detaining the rape victims.

Note the role of traditional institutions in this case which supported the harmful traditional practice against women. The police were also used to harass and arrest the girls who were the victims of violence.

Case 4 Mrs. Anna Agbata- Widowhood Practices

Both Mrs. Agbata and her husband were teachers and “born again” Christians. Mr. Agbata died in 1991. His wife refused to share her hair or wear a prescribed colour as demanded by tradition. She said it was against her religious belief. She said her husband was of the same faith and would not want her to perform those rites. Her attitude pitted her husband’s family and community against her. On the day her husband was to be buried she was chased away from the burial ceremony by her husband’s brother, a medical doctor and a knight of the Anglican Church. She was never allowed to see her husband’s corpse. During the burial she was taken to the scene with her children but they were chased away by relatives aided by the police. Her children were not allowed to attend the burial. She was later chased away from the family house for committing an abomination by not shaving her hair. She is still being harboured by friends. There is no action in court because she is afraid.

Remarks

Note the role of traditional practices

The police were used to prevent the widow from entering her matrimonial home

APPENDIX I

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of man and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1. For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4. 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5. States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6. States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8. States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9. 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10. States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the

revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student dropout rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

Article 11. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection on with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13. States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14. 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15. 1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17. 1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention.

The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties, which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18. 1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned; and

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19. 1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20. 1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21. 1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22. The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23. Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24. States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25. 1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26. 1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps if any, to be taken in respect of such a request.

Article 27. 1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28. 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29. 1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30. The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

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APPENDIX II

THE OPTIONAL PROTOCOL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Preamble:

The preamble is the introductory part of the Protocol which sets out the object and purpose of the Protocol. It refers to the principles of equality and non-discrimination as embodied in the UN Charter, the Universal Declaration of Human Rights, and other international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women. It reaffirms the determination of States parties which adopt the protocol to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms.

Article 1

Establishes that States who become parties to the optional protocol recognise the competence of the Committee to receive and consider communications under the protocol.

Article 2

Provides a Communications Procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received.

Article 3

Establishes that a communication will only be considered by the Committee if it concerns a country that has become party to the protocol. In addition, a communication must be submitted in writing and may not be anonymous.

Article 4

Stipulates admissibility criteria of communications. Before a complaint is considered, the Committee must determine that all available domestic remedies have been exhausted and the complaint is not, nor has been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. In addition, a complaint will only be admissible provided the complaint is compatible with the provisions of the Convention; is not an abuse of the right to submit a communication; the claimants' allegations can be substantiated, and the facts presented occurred after the State party ratified the Protocol.

Article 5

After receipt of a communication and prior to its final decision, the Committee has the option of contacting the State Party with an urgent request that the



State Party take steps to protect the alleged victim or victims from irreparable harm.

Article 6

Establishes the communications procedure. Where a communication has been found admissible, the Committee will confidentially bring a communication to the attention of the State Party, provided the complaint has consented to disclosure of their identity to the State Party. The State Party is given six months to provide a written explanation or statement to the complaint.

Article 7

Outlines the process of complaint consideration. The Committee will examine and consider all information provided by a complaint in closed meetings. The Committee's views and recommendations will be transmitted to the parties concerned. The State Party has six months to consider the views of the Committee and provide a written response, including remedial steps taken. The Committee may request further information from the State Party, including in subsequent reports.

Article 8

Establishes an inquiry procedure that allows the Committee to initiate a confidential investigation by one or more of its members where it has received reliable information of grave or systematic violations by a State Party of rights established in the Convention. Where warranted and with the consent of the State Party, the Committee may visit the territory of the State Party. Any findings, comments or recommendations will be transmitted to the State Party concerned, to which it may respond within six months.

Article 9

Establishes a follow-up procedure for the Committee. After the six-month period referred to in article 8, the State Party may be invited to provide the Committee with details of any remedial efforts taken following an inquiry. Details may also be provided in the State Party report to the Committee under article 18 of the Convention.

Article 10

Provides an opt-out clause. At ratification of the Optional Protocol, a State Party has the option of refusing to recognize the competence of the Committee to initiate and conduct an inquiry as established under articles 8 and 9. However, this declaration may be withdrawn at a later time.

Article 11

Requires a State Party to ensure the protection of those submitting communications.

Article 12

A summary of the Committee's activities relating to the Protocol will be included under article 21 of the Convention.

Article 13

Establishes a requirement that States Parties widely publicize the Convention and its Protocol and provide access to the views and recommendations of the Committee.

Article 14

Requires the Committee to develop its own rules of procedure when dealing with communications and inquiries considered in accordance with the Optional Protocol.

Article 15

Governs eligibility for States to sign, ratify or accede to the Protocol. Any State Party that is party to the Convention may become party to the Protocol.

Article 16

Establishes that a minimum of ten countries must have ratified or acceded to the Protocol before the Protocol enters into force. The Protocol will enter into force three months after the 10th ratification or accession.

Article 17

Provides that there shall be no reservations to the Protocol.

Article 18

Establishes procedures for amending the Protocol. Any State Party may suggest amendments to be sent to the Secretary-General of the United Nations to be communicated to all States Parties to the Protocol. If requested by a minimum of one-third of States Parties, a conference may be convened to discuss and vote on any amendments. With the support of a two-thirds majority and the General Assembly, an amendment comes into force and is binding on States that have accepted the amendments.

Article 19

Provides for a State Party to withdraw from the Protocol by written notification to the Secretary-General. Withdrawal will not impact any communications submitted prior to the effective date of withdrawal.

Article 20

States that the Secretary-General of the United Nations shall inform States of signatures, ratifications and accessions, the date the Protocol comes into force and any amendments and withdrawals.

Article 21

Provides that the Protocol will be deposited in the United Nations archives, made available in Arabic, Chinese, English, French, Russian and Spanish and sent to all States Parties by the Secretary General.