

## RECOGNITION AND ENFORCEMENT OF THE RIGHTS OF NIGERIAN WOMEN

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### Abstract

*The Constitution<sup>1</sup> provides for the guarantee and enforcement of the fundamental rights of the citizens, which include freedom from discrimination. This position of the law has been a time honoured principle and endorsed by our courts in litany of cases and other foreign jurisdictions. Notwithstanding the college of statutory provisions and judicial precedents, the selective nature of the lynchpin of this work strongly suggests the gross abuse and colossal violation of the rights of Nigerian women. Beyond the suggestion are the daily experiences of the contraventions of the rights of women from their biological habitat through the various stages of their formation and development. While some of the women in their assertive nature have always approached the court for the enforcement of their rights, majority sweep the trending issue under the carpet, either for want of care, ignorance of the law or religious or ethnic colouration. Considering the vitality of awareness emerging among the Nigerian women with respect to their rights, it becomes more apropos and satisfying to unveil again those areas women's rights have been, is being, or likely to be violated and the legal framework set in motion to address it.*

**Keyword:** Rights, Women, Domestic Violence, Inheritance, Abuse

### Historical Trajectory of Violence against Women

Violence against women, also known as gender based violence is violent acts primarily or exclusively committed against women or girls. Violence against women has a very long history, though the incidents and intensity of such violence have varied over time and even today vary also between societies. In the words of the United Nation Declaration on the Elimination of Violence Against Women states, 'violence against women is a manifestation of historically unequal power relations between men and women, and violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men'.<sup>2</sup> The history of violence against women remains vague in scientific literature. This is in part because, many kinds of violence against women are under reported, often due to societal norms, taboos, stigma, and the sensitive nature of the subject. Notwithstanding the herculean task, the history of violence against women is closely related to the historical view of women as property and a gender of subservience.<sup>3</sup> Regardless of many years of advocacy and involvement of many feminist activist organizations, the issue of violence against women still remains one of the most pervasive forms of human rights violation worldwide<sup>4</sup>.

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<sup>1</sup> Sections 33 - 46.

<sup>2</sup> United Nations General Assembly's Declaration on the Elimination of Violence against Women.

<sup>3</sup> T Christiana, "Transforming Love" in *Sex and Violence: Issues in Representation and Experience*, p. 18.

<sup>4</sup> Ibid.

Gender-based violence is prominent in Nigeria as in other parts of Africa; there is a deep cultural belief in Nigeria that it is socially acceptable to hit a woman as a disciplinary measure. Cases of Domestic Violence are on the high and show no signs of reduction in Nigeria, regardless of the age, tribe, religion or even social status. The CLEEN Foundation reports 1 in every 3 respondents admitting to being a victim of domestic violence. The survey also found a nationwide increase in domestic violence in the past 3 years from 21% in 2011 to 30% in 2013.<sup>5</sup> Domestic violence takes many forms including physical, sexual, emotional, and mental often committed against females. Common forms of violence against women in Nigeria are rape, acid attacks, molestation, wife beating, and corporal punishment. It is however, estimated that approximately one in every three women suffers domestic violence and Intimate Partner Violence from the hands of those who claim to love and supposedly, protect them. The menace is eating deep as most of the victims do not speak out about violations of their rights, as a result of nonchalance, insensitivity, and negative response from their immediate family and society at large.

Currently, cases of domestic violence are on a high rate, especially the physical aspect of it. The 2008 Demographic and Health Survey showed that over 30.5% of married women have experienced at least one or more forms of physical, emotional or sexual violence in their marriage.<sup>6</sup> Most girls or women in Nigeria have experienced sexual assault, either through domestic violence or other forms. Many of the young girls(teenagers) that are going to school or to university have been sexually harassed, either by their lecturers in the tertiary level or in the secondary level. Girls at the age of 16 and above have immediately become a mother which makes them give up their education.

### **Gender Issues in Nigeria**

One of the common gender issues confronting Nigerian women is the issue of genital mutilation. Female genital mutilation, also known as female genital cutting in Nigeria, accounts for the most female genital cutting cases worldwide.<sup>7</sup> The practice is customarily a family tradition that the young female of the age of 0-15 would experience. It is a procedure that involves partial or completely removing the external female's genitalia or other injury to the female genital organs whenever for non-medical reasons.<sup>8</sup> The practice is considered harmful to girls and women and a violation of human rights. Female genital mutilation causes infertility, maternal death, infections and loss of sexual pleasure. Despite the graveness of the issue, the practicing societies look on it as an integral part of their tradition and cultural identity. In majority of the cases, it has been documented that their own family members such as parents mainly mothers, grandparents, and grandmothers of the girls are the perpetrators of this act. In Nigeria and other societies, girls who have not gone through genital mutilation are considered as unmarriageable, unclean and it is a social taboo. Most times, the girls

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<sup>5</sup> CLEEN Foundation National Crime Victimization Surveys, 2013.

<sup>6</sup> <[https://en.org/Domestic\\_violence\\_in\\_Nigeria](https://en.org/Domestic_violence_in_Nigeria)> accessed 23 October, 2022.

<sup>7</sup> Okeke, T.C.; Anyaehie, USB; Ezenyeaku, CCK, "An overview of female genital mutilation in Nigeria" in *Annals of Medical and Health Sciences Research*.

<sup>8</sup> Siddhanta, Ankita, "Attitude and perception towards female circumcision: A study of vulnerability among women in Kenya and Nigeria" <[www.researchgate.net](http://www.researchgate.net).> accessed 24 October, 2022.

themselves desire to conform to peer as well as societal pressure out of the fear of stigmatization and rejection by their own community.

On account of the poor surgical skills of most practitioners of female genital mutilation, the absence of antiseptic techniques and non-use of aesthetic agents, the procedures are associated with several complications. These may occur during or immediately after the operations, while others manifest in the medium and long-term to cause poor quality of life for the patient or result in mortality or both. The immediate complications include excruciating pain (when aesthetic agents are not used), haemorrhage, shock, acute urinary retention, injury to adjacent tissues and death. A meta-analysis utilizing 185 studies in 57 countries where genital mutilation is done detailed the most common immediate complications as excessive bleeding, urine retention and genital tissue swelling.<sup>9</sup> For those who survive, medium term complications are infections of the reproductive tract following use of unsterilized or poorly sterilized instruments, septic techniques and septic environment and raw wound surfaces. All these result in urinary tract infection, pelvic inflammatory disease, chronic pelvic pain, infertility and ectopic pregnancy.<sup>10</sup>

Among those who survive the acute and medium term consequences, many long-term morbidities noted are psychological disturbances, low libido, apareunia or dyspareunia, chronic pain, dysmenorrhoea, gynaetresia, cryptomenorrhoea, vaginal fistulae, labial agglutination, hypertrophic scar/keloids, clitoridal retention cysts, dermoid cysts, vaginal lacerations during coitus, straining at micturition, genital tract lacerations, especially during vaginal delivery, obstructed labour, increased rate of caesarean delivery and postpartum hemorrhage. Mortality can still occur following the above complications of labour and the puerperium. For the babies conceived by such women, there is increased risk of stillbirth, early neonatal death or babies with neurologic deficits from severe birth asphyxia.<sup>11</sup> The clitoris has extensive innervations and it plays crucial roles in sexual arousal, attainment of orgasm and sexual satisfaction. Its amputation or wholesome removal during FGM/C has been demonstrated to affect these functions. The second is child marriage.

The United Nations Fund for Population Analysis (UNFPA)<sup>12</sup> and the United Nations Children's Fund (UNICEF)<sup>13</sup> consider child marriage to be one involving a person under the age of eighteen. The practice primarily affects females. According to these bodies, child marriage is prevalent in Sub-Saharan Africa and Southern Asia, but also occurs in Latin America and the Caribbean.

In Nigeria, child marriage is a widespread practice. There is an unfounded belief that when a girl is married off early, she does not have the opportunity to become promiscuous. This places a heavy societal burden on young girls and the reality is different. It is also believed among Muslims in most parts of Northern Nigeria that it is permissible for a man to marry a

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<sup>9</sup> Effects of female genital cutting on physical health outcomes: a systematic review and meta-analysis <<https://tau.amegroups.com/article/view/13134/14794>> accessed 24 October, 2022.

<sup>10</sup> Serour, G.I., "Medicalization of female genital mutilation/cutting" in *African Journal Urol* 2013;19:145-9.

<sup>11</sup> WHO study on group on female genital mutilation and obstetric outcome <<https://tau.amegroups.com/article/view/13134/14794>>.

<sup>12</sup> UNFPA, 'Child Marriage Fact Sheet: State of World Population 2005'.

<sup>13</sup> UNICEF, 'Child Marriage: A harmful tradition practice. A statistical exploration 2005'.

child as young as 9 years, as long as sexual relations with her is postponed until she has attained puberty. However, it is clearly seen in the Northern parts of Nigeria that child brides are usually forced to have sexual intercourse with their spouses as soon as they are married, and many get pregnant in their first year of marriage. These early pregnancies often lead to Vesico Vaginal Fistula (VVF), or Rector Vaginal Fistula as these young girls are giving birth at a very tender age when their bodies are not physically able to put to birth a fetus. The pregnancy also puts them at a greater risk of sexually transmitted diseases, HIV/AIDS, human papilloma virus (HPV) and domestic violence.

Though early marriage is prevalent in Nigeria, Northern Nigeria has some of the highest rates of early marriages in the world where 39% of girls are married off before the age of 18, and 16% are married before they turn 15 years old. However, according to Save the Children, the number of Nigerian girls that are married before their 18th birthday is as high as 58.2%. The prevalence of child marriage varies widely across the country, but figures are as high as 76% in the North West region, compared with 10% in the South East.

According to the organization Girls Not Brides, while 45 per cent of girls in Nigeria were married before they turned 18, the practice of child marriage was more rampant in the Northern part of Nigeria, with figures as high as 76 per cent.<sup>14</sup> The high percentage of child marriage in Northern Nigeria can be attributed mostly to the fact that, the practice of Islam in the region endorses child marriage. However, other than Islam, additional factors contribute to this practice poverty.<sup>15</sup> In Northern Nigeria, the poverty level is 77.7 per cent in the North-West and 76.3 per cent in the North-East.<sup>16</sup> Obviously, poverty in the region undoubtedly, fuels child marriage.

Another silent killer of Nigerian women is the widowhood practices in Nigeria. In many cultures, widowhood in women is considered a stigma. Various tribes and cultures in Nigeria have diverse ways of practicing rites pertaining to burial, but traditions are specifically unfriendly to women. In Nigeria, widowhood comes with a lot of burdens and disadvantages. These include maltreatment, discrimination and stigmatization. Tradition, modernity and neo-patriarchy, all present challenges to Nigerian women. Some traditions barred women from inheriting land and property. Upon the death of a husband, the widow lost all she had acquired by herself and from her husband. She would be traditionally dehumanized through compulsory mourning rituals and other forced cultural beliefs.

In some Southern Nigerian communities, widows accused of killing their husbands were forced to drink or bath with water used to wash the husband's corpse. Some were forced to have sex with the corpse or kinsmen. The most recent<sup>17</sup> was the case of Asomugha of Ihiala Local Government Area who alleged that the brothers of her late husband said she must drink the water used to wash her late husband's remains to prove that she was not responsible for her husband's demise. According to report, the development generated a serious feud during

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<sup>14</sup><<http://www.girlsnotbrides.org/child-marriage/nigeria>> accessed 24 October, 2022.

<sup>15</sup><[http://www.premiumtimesng.com/news/4211-112million\\_nigerians\\_living\\_below\\_poverty\\_level](http://www.premiumtimesng.com/news/4211-112million_nigerians_living_below_poverty_level)> accessed 24 October, 2022.

<sup>16</sup>BBC 'Nigerians living in poverty rise to nearly 61%' <<http://www.bbc.com/news/world-africa-17015873>>.

<sup>17</sup>Sahara Reporters, New York; June 15, 2021.

the deceased's burial which was later resolved. In effect, one would imagine the health implications of such a practice in order to prove one's innocence, when our judicial system has provisions for conducting such trials. The funny part is that, there is no record of any widower compelled to perform such an act. This brings to limelight the height of male chauvinism in our land, violation of validity tests for customary law and affront to the Constitution.

In Northern Nigeria where polygamy is the norm, remarried widows occupy a "lower wives" status in the family.<sup>18</sup> Widows are also treated differently from widowers. Men tend to be free from demeaning social expectations. For instance, in Eastern Nigeria, some widowers voluntarily mourn their late wives, but it's not compulsory. They are permitted to keep beards and don't have to wear mourning dress. Widowers are not monitored and can remarry immediately. Some mourn for just short periods, while women compulsorily mourn for longer periods under strict surveillance.

### **Cultural Discrimination**

Generally, among the Hausa custom, the eldest son inherits his deceased father's cattle, the main assets out of which, he presents some to his younger brothers according to their needs. For Hausa Communities, which are not subject to Islamic law, the commonly practiced system of succession is through the rule of primogeniture, which can be defined, as the right of the eldest surviving son to succeed his father in the headship of the family automatically and arises from the fact of seniority. Only the father has the right to deprive the eldest son of this right by a valid direction made with the aim of ensuring that the affairs of the family are properly managed by a person qualified on grounds of intelligence and qualification. In the absence of such direction, the right of the eldest son cannot be taken away without his consent.

Besides, by the original Hausa native custom, young males and females are not entitled to inherit from their deceased fathers' estate as was held in *Mohammadu v Mohammed*. The rationale was that, since young sons and daughters cannot go to war and secure booties or loot, they should not be allowed to inherit as heirs. The females were themselves objects of inheritance. Only adult sons and brothers were entitled to inherit. Females can inherit the moveable property of their mothers; and quite interestingly, land whether owned by females or males can only be inherited by the males within a family.

In Eastern Nigeria, the Igbo tribe is said to be discriminatory against the women particularly, the widows as they are not capable of inheriting from their husbands under customary law, in the same vein, the female children are also not entitled to inherit from their father. Igbo women do not possess the rights to inherit and, that is, neither the daughters nor the widows of the deceased have the right in the intestate estate of the decease. A widow has no ownership rights over the property of her deceased husband and she is only entitled to possessory rights of her husband's house which is subject to good behaviour. The Supreme Court in the case of *Chinweze v Masi*<sup>19</sup> held that under customary law, a wife has only a life

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<sup>18</sup><<https://theconversation.com/widows-in-nigeria-are-sometimes-treated-badly-culture-is-no-excuse-to-violate-rights-184934>> accessed 24 October, 2022.

<sup>19</sup> (1989) 1 NWLR (pt. 97) 254, 270.



interest in the property of her deceased husband and if he dies, her interest ceases. Interestingly, widows are not left with any form of protection, in as much as a widow cannot inherit from her husband, the first son who inherits from the father is charged with the responsibility of taking care of the widow and his younger sisters if they have not attained the age of marriage. However, the above decision of the Supreme Court has been reversed in the landmark case of *Mojekwu v Mojekwu*.<sup>20</sup>

Emotionally, woman who could not give birth to a child for husband suffers years of ostracism, if not divorced,<sup>21</sup> even when the husband battles with low sperm count or low motility rate. The seeming evidence of cultural suppression of women in Igbo culture could be traced in some of the Igbo proverbs, such as *onye ji nwanyi buru ibu, bu n'isi nkit*,<sup>22</sup> *onaghi adi mma agbachaa oso ka nwoke ebieya ka nwanyi*<sup>23</sup> and *nkita nwanyi zuru na ata akwa okuko*.<sup>24</sup> These proverbs without crumbling words, give men an impeccable appellation of a superior being inundated with high moral standard and discipline and the women, inferior being bereft of morality and standard.

Yoruba custom like many other African societies is essentially patriarchal; hence men are understood to be more privileged than women. Immediately a child is born, the question that will be posed will center on sex, not minding the health of the mother. If the baby is a female, the mother will be scolded and treated as a lazy, good for nothing woman; and if the child is a male, praises will be showered on the mother, not considering the fact that Biology has shown that it is the father who determines the sex of an offspring. Familusi argues that; as relevant as proverbs are in Yoruba society; they are used to portray women as less important and immoral entity.<sup>25</sup> She goes further to highlight some proverbs, giving weight to the claim '*Owuti iyagbonl'omonn ran*' – the attitudes of the mother are emulated by her offspring.<sup>26</sup> In this case, the mother is seen as immoral and ill-mannered; and every bad behaved child takes after her and summarily belongs to her. The father is exonerated, as good children belong to him and he is always proud of such children. Hence the saying '*omo to daranimti baba eyiti ko dara ni tiya*' – a well behaved child belongs to the father and vice versa. Another proverb that expresses women being disadvantaged is '*ailokunrin nilelobinrin njogunada*' – the absence of male affords a female the opportunity of inheriting cutlass.<sup>27</sup> Cutlass in this regard, is a farm implement traditionally used by men. It symbolizes power and essence of survival. Therefore, for a woman to assume the mantle of leadership, the head of the household must be irresponsible, lazy, or dead. When this is not the case, women are understood to be substitutes. Another proverb that further buttresses the perceived irrelevance of women is the belief that, 'a male child populates the family while the female child

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<sup>20</sup> [1997] 7 N.W.L.R 283.

<sup>21</sup> Ojukwu E.V. and Ibekwe, E.U. 'Cultural suppression of female gender in Nigeria: Implications of Igbo females' songs' in *Journal of Music and Dance Vol. 10(1)* p. 3 <<http://www.academicjournals.org/JMD>> accessed 7 November, 2022.

<sup>22</sup> Who uses a woman as a pad in carrying luggage is carrying without a pad. This simply suggest that women are not reliable and trustworthy; Ibid (n 26).

<sup>23</sup> It is not good after running a race like a man to end it like a woman; Ibid (n 26).

<sup>24</sup> A dog raised by a woman eats fowl's egg; Ibid (n 26).

<sup>25</sup> OO Familusi, 'African Culture and the Status of Women: The Yoruba Example' in *The Journal of Pan African Studies, Vol. 5, No. 1, March 2012*.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

depopulates it'. This belief has occasioned this saying 'Adekunle ni oruko okunrin, Adetule ni oruko obinrin'. Given this belief, a male child who will bring a woman or women in is preferred to the female child who will leave her parental home after marriage. This is why the male child is metaphorically referred to as the pillar of the family – 'opomulero' while the female one symbolizes a seasonal stream.<sup>28</sup> In addition, the imposition of taboos on women also shows significance in the respect of the status of women. For instance, it is the belief of the Yorubas that a menstruating woman must not participate in the sacrifice to 'Obatala' – Yoruba divinity of fertility and other religious activities. *Obatala* is renowned for whiteness and this symbolizes purity (as menstrual period is believed to be a time of impurity or defilement).<sup>29</sup> Also, they are forbidden from entering into any sacred places because they could render all objects there ineffective.

Similarly, the rule of inheritance among the Yoruba's are similar, though, there are some negligible differences. The method of inheritance in Yoruba custom is hooked upon whether the property is a family property or personal property.

### **Statutory Discriminations**

Notwithstanding the clear provisions of section 42 of the Constitution which guarantees the right to freedom from discrimination, there are several existing laws that are bigot in nature. According to Regulation 124<sup>30</sup>:

*"a woman police officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Police Command in which she is serving, requesting permission to marry and giving the name, address, and occupation of the person she intends to marry"*.

The above section further states that permission will only be granted "if the intended husband is of good character", and the female police officer has served in the force for a minimum of "three years". Similarly, Regulation 127<sup>31</sup> stipulates that, "an unmarried woman police officer who becomes pregnant shall be discharged from the force, and shall not be re-enlisted except with the approval of the Inspector-General".

Section 26<sup>32</sup> explains the different ways by which one can become a Nigerian citizen. For a foreigner, one of such ways is to be married to a Nigerian man as stated in Section 26(2).<sup>33</sup> However, the Constitution does not make the same provision for a male foreigner who marries a Nigerian woman.

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<sup>28</sup>Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Police Act, 2020.

<sup>31</sup> Ibid.

<sup>32</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>33</sup> The provisions of this section shall apply to – (a) any woman who is or has been married to a citizen of Nigeria; or (b) every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria.

In recent years, there have been several cases where women have accused their husbands of having sexual intercourse with them without their consent. However, where such cases are brought before a court, securing a conviction is almost impossible and dead on arrival as there is no existing law in Nigeria that criminalizes marital rape. Accordingly, section 357<sup>34</sup> provides thus:

*“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”.*

But Section 6 of the code clearly states that “unlawful carnal knowledge” (as referred to in section 357) “means carnal connection which takes place otherwise than between husband and wife”.

In Nigeria, indecent assault committed against females carry lesser punishment than that of males. Under Section 353 of the Criminal Code, “any person who unlawfully and indecently assaults any male person is guilty of a felony and is liable to imprisonment for three years”. However, Section 360 of the same code says that “any person who unlawfully and indecently assaults a woman is guilty of a misdemeanor and is liable to imprisonment for two years”. Meanwhile, Section 55 of the Penal Code gives room for men to beat their wives as a corrective measure as long as it does not result in “grievous” bodily harm.<sup>35</sup>

In addition, section 55 of the Nigerian Labour Act prohibits women from working at night with the exception of female nurses and women in management positions who are not engaged in manual labour. Under section 56(1) of the Act, women are also prevented from engaging in underground work in any time. Also, while Section 34(1) of the Act allows men who are employed in the public service to be accompanied to their place of posting “by such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him,” there is no such provision made for women.

### **Legal Interpolations**

As earlier established<sup>36</sup>, the Nigerian Constitution frowns at any form of discrimination premised on the circumstances of one’s birth. It is obvious from the provisions of the

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<sup>34</sup> Criminal Code.

<sup>35</sup> Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done – (d) 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 recognized by law.

<sup>36</sup> Section 42(1) provides as follows: “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person” –

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



Constitution that, discrimination against women practiced in most customs in Nigeria are contrary and amount to breach of the fundamental human right of that person. Notwithstanding the various conflicting decisions on the rules of inheritance and intestate succession, the Supreme Court in the recent case of *Ukeje v Ukeje*<sup>37</sup> held that the Igbo customary law which denies the female child inheriting from her father's estate is contrary to section 42 of the 1999 Constitution. In *Anekwev Nweke*<sup>38</sup>, Justice Ogunbiyi while giving judgment expressed his disappointment on the practices of Awka custom in this 21<sup>st</sup> century. He also commented that the Awka practice was null and void because it was repugnant to natural justice, equity and good conscience.

In the same mood, the Violence Against Persons (Prohibition) Act, 2015 in its explanatory memorandum aims to “prohibit all forms of violence against persons in private and public life, and provide maximum protection and effective remedies for victims and punishment of offenders.” The Act provides general protections against offenses including infliction of physical injury, coercion, offensive conduct, willfully placing a person in fear of physical injury, wilfully making false statements against another person, damage to property with intent to cause distress, and deprivation of personal liberty. The Act also provides protections against offenses that affect women disproportionately, including a prohibition of female genital mutilation<sup>39</sup>; forceful ejection from home<sup>40</sup>; forced financial dependence or economic abuse; forced isolation; emotional, verbal and psychological abuse; harmful widowhood practices<sup>41</sup>; and spousal battery, among others. Notably, the Act defines the offense of rape in Section 1(1) without an exception for marital rape, which had not traditionally been recognized as an offense. The Act provides a procedure for injured parties to apply for a protection order and empowers the High Court of the Federal Capital Territory with jurisdiction to hear and grant applications brought under the Act. As stated in Section 47, the Act is a product of federal legislation enacted in regard to criminal law, a residual matter over which the states have exclusive legislative power pursuant to the Nigerian Constitution. Thus, the VAPP Act applies only to the Federal Capital Territory and is not binding law in a state unless adopted by that state.

Still on the same issue, a nongovernmental organization, Women in Politics Forum (WIPF), filed a suit against the Nigerian Government, seeking the implementation of the 35 per cent

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- 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, religion or political opinions.

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

<sup>37</sup> (2014) JELR 54676.

<sup>38</sup> (2014) 9 NWLR (Pt. 1412) 393.

<sup>39</sup> See S. 6(1) - (4); subsection one categorically provides that “The circumcision or genital mutilation of the girl or woman is hereby prohibited.

<sup>40</sup> See S. 9(1); it provides that “A person who forcefully evicts his or her spouse from his or her home or refuses him or her access commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N300,000.00 or both.

<sup>41</sup> See S. 15(1); “A person who subjects a widow to harmful traditional practices commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or both.

Affirmative Action in appointments of women into public office.<sup>42</sup>WIPF had filed the suit through its lawyer, Funmi Falana, who argued during hearing that women were being discriminated against as a result of the belief that women were inferior to men. She noted that the National Gender Policy (NGP) which provides that women should be allocated 35 per cent of all appointments was being violated. According to her, “the predominant appointment of men to decision-making positions, especially ministerial positions, with the exclusion of women is discriminatory against women and is in violation of sections 147 and 42 of the Nigerian constitution and article 19 of the African charter”. She added, “Only seven of Nigeria’s 36 ministers are female. In the eyes of the law, 36 and 7 are not equivalent. Only four of the 37 members of the Federal Character Commission are women. This is ridiculous and insulting.”

The defence lawyer, Terhamba Agbe, in his address, urged the court to dismiss the suit on the grounds that it did not disclose any cause of action. He said the policy can be lobbied to be passed into law by the National Assembly, and not by the court. He added that the Nigerian Constitution in section 147 gave the president a guideline for appointments of ministers, and in doing that, the president should ensure there is a minister from every state and not from all sexes. In his further submission, he argued that “no matter how sentimental the plaintiffs are, ministerial appointment or appointment of any government parastatals is not guided by sex but on qualifications or on whom the president thinks can deliver the job.

Delivering his judgments on the suit, the judge, Donatus Okorowo, agreed with the plaintiff that Nigerian women had been subjected to various forms of discrimination concerning appointments into key positions of government. The judge dismissed the preliminary objection of the federal government’s lawyer, Terhamba Agbe, who had argued that the plaintiff’s case did not disclose any cause of action. Referencing Section 42 of the Nigerian constitution as it relates to the suit, the judge upheld the plaintiff’s contention to the effect “that of all the 44 ministries, there are only about six female gender, and that the situation is worse in other MDAs and agencies.”

Mr. Okorowo noted that the defendant, by its conduct, insinuates that there are no competent and reliable women that should be appointed to “stop the apparent male dominance as witnessed in the appointments” of men into key government positions. He held further that the Attorney-General of the Federation Abubakar Malami who was the sole defendant in the case, “failed to disprove the material allegations contained in the affidavit, and led no credible evidence to debunk material evidence of the plaintiff.”

Also, the Supreme Court in a landmark decision has upheld the right of a female child to inherit properties of her father. By this decision, the apex court has voided the Igbo age-long law and custom which forbids a female child from inheriting her late father’s estate. The Supreme Court voided this tradition and custom on the grounds that it is discriminatory and conflicts with the provision of the Constitution. The Supreme Court held that the practice

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<sup>42</sup><<https://www.premiumtimesng.com/news/headlines/522195-affirmative-action-court-orders-nigerian-govy-to-reserve-35-of-public-offices-for-women.html>> accessed 18 November, 2022.

conflicted with section 42(1)(a)<sup>43</sup> and (2)<sup>44</sup> of the 1999 Constitution. The Supreme Court affirmed this in *Ukeje v Ukeje*<sup>45</sup> where it held that, the Court of Appeal was right to have voided the Igbo native law and custom that disinherit female children. Justice Bode Rhodes-Vivour *inter alia* held that: “No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father’s estate”. Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father’s estate is a flagrant breach of section 42(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian.

Conversely, Article 16<sup>46</sup> which empowers women all over the world to own not only immovable property but to give away such property at will. The import of this article is that, women and men should be treated accordingly and equally. Similarly, Article 17 of UDHR provides that everyone has the right to own property alone as well as in association with others; and no one shall be arbitrarily deprived of his property.

The Protocol to the African Charter on Human and Peoples Rights of Women<sup>47</sup> equally made declarations on the right to equality among every person, property rights of all individual, and the right to inheritance. Again, Article 20 provides for widows’ rights that: “State parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions”:

- a. That widows are not subjected to inhuman, humiliating or degrading treatment;
- b. That a widow shall automatically become the guardian and custodian of her children after the death of her husband, unless this is contrary to the interest and welfare of the children.

Similarly, Article 2<sup>48</sup> provides:

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents’ properties.

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<sup>43</sup> 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 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, religion or political opinions.

<sup>44</sup> No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

<sup>45</sup> (2014)11NWLR (Pt..1418)384, SC.224/2004, (2014) LPELR-22724(SC).

<sup>46</sup> CEDAW.

<sup>47</sup> African Union, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 11 July, 2003.

<sup>48</sup> *Ibid*.

## **Conclusion**

The daily emergence of laws legislating on the rights of Nigerian women suggests the idea of lacunae found in already existing laws. The enacted laws are there to address the mischief which the former failed to address. However, notwithstanding these laws, cases of marginalization of Nigerian women remain on the increase. Sequel to this, the attention of our women is drawn to the availability of these laws and the need to activate it to secure their fundamental rights. The States House of Assembly of the federation are equally encouraged to domesticate relevant laws that guarantee the rights of Nigerian women.