

A REVIEW OF THE LAW ON WOMEN'S RIGHTS IN NIGERIA*

Abstract

Women are generally seen as vulnerable part of the society compared with the male counterpart, and the patrilineal nature of the society, especially in Africa coupled with religious and cultural factors, make the rights of women to be given little or no attention. The resulting effect of this is that the dignity of womanhood and right to self determinism of a woman is often eroded, thereby making majority of women live their lives in abuse, discrimination and molestation. There is therefore a need for change and women should have full right and sense of belonging. It is in line with this that this research attempts a review of legal provisions on women's rights in Nigeria and recommends that these rights should be adequately enforced and Nigeria should do well by ratifying and domesticating relevant international instruments on the protection of women's rights in Nigeria.

Keywords: Women's Rights, Human Rights, International Law

1. Introduction

Women's rights are the rights and entitlements claimed for women and girls worldwide, and formed the basis for the women's rights movement in the nineteenth century and feminist movement during the 20th century.¹ Women's rights are generally supported by law and sometimes local custom, but in many African countries, Nigeria inclusive, these rights are ignored and suppressed. Women's rights generally extend to the right to bodily integrity and autonomy of women, and for women to be free from sexual violence; have right to vote; right to hold public office; right to enter into legal contracts; right to have equal rights in family law; right to work; right to fair wages or equal pay; right to have reproductive rights; right to own property; and right to education.² It is therefore crystal clear that women's rights are elaborate and encompassing, and it extends to the overall welfare and dignity of womanhood. It must however be noted that women's rights differ from broader notions of human rights through claims of an inherent historical and traditional bias against the exercise of rights by women and girls, in favor of men and boys.³ It is in the light of this background that this research holistically examines the concept of women's right in the current trend and the legal framework regulating these rights.

2. History of Women's Right

The history of women's right can be traced right from the holy books. Before and during biblical times, the roles of women in society were highly restricted and this reflects on the social, cultural and religious lives of women in the society.⁴ The Holy Bible guarantees women the right to sex with their husbands,⁵ and orders husbands to feed and clothe their wives.⁶ Breach of these Old Testament rights by a polygamous man gave the woman grounds for divorce.⁷ The Bible expressly provides that 'If he marries another woman, he must not deprive the first one of her food, clothing and marital rights. If he does not provide her with these three things, she is to go free, without any payment of money'.⁸ It suffices to say that, even if the Holy Bible commands that women should be submissive to their husbands, the man is duty bound to provide for the welfare of the woman and uphold her rights.

From the perspective of Islam, the Holy Qur'an provided guidance for Muslims to follow.⁹ The Qur'an introduced fundamental reforms to customary law and introduced rights for women in marriage, divorce, and inheritance. By providing that the wife, not her family, would receive a dowry from the husband, which she could administer as her personal property, the Qur'an made women a legal party to the marriage contract. The Qur'an introduced rules on inheritance with certain fixed shares being distributed to designated heirs, first to the nearest female relatives and then the nearest male relatives.

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¹ Some of these rights are enshrined in domestic and international legal instruments

² Lockwood, Bert B. *Women's Rights: A 'Human Rights Quarterly' Reader* (Johns Hopkins University Press, 2006) 22

³ Hosken, Fran P., 'Towards a Definition of Women's Rights' *Human Rights Quarterly*, Vol. 3, No. 2. (May 1981) 1-10

⁴ Hiers, Richard W: *Women's Right and the Bible; Implications for Christian Ethics and social policy* (Eugene, Oregon: Pickwick Publications 2003)

⁵ Frank L. Caw, Jr.: *The Ultimate Deception* (Western Publishing 2005) 54

⁶ DeLong-Bas, Natana J.: *Women in Muslim Family Law*, 2nd revised Edition (Syracuse University Press 2001) 72.

⁷ *ibid*

⁸ Exodus 21:10-11

⁹ *ibid*

Women generally gained greater rights than women in pre-Islamic Arabia¹⁰ and medieval Europe.¹¹ Women were not accorded with such legal status in other cultures until centuries later.¹² In overall Europe during the Middle Ages, women were inferior to men in legal status.¹³ Throughout medieval Europe, women were pressured not to attend courts and leave all legal business affairs to their husbands. In the legal system, women were regarded as the properties of men so any threat or injury to them was in the duty of their male guardians.¹⁴ Throughout Europe, women's legal status centered around her marital status while marriage itself was the biggest factor in restricting women's autonomy.¹⁵ Customs and practices not only reduced women's rights and freedoms but prevented single or widowed women from holding public office on the justification that they might one day marry.¹⁶ According to English Common Law, all property which a wife held at the time of marriage became a possession of her husband. Eventually, English courts forbade a husband's transferring property without the consent of his wife, but he still retained the right to manage it and to receive the money which it produced. French married women suffered from restrictions on their legal capacity which were removed only in 1965.¹⁷ In the 16th century, the Reformation in Europe allowed more women to add their voices, including the English writers Jane Anger, Aemilia Lanyer, and the prophetess Anna Trapnell. English and American Quakers believed that men and women were equal. Many Quaker women were preachers.¹⁸ Despite relatively greater freedom for Anglo-Saxon women, until the mid-19th century, writers largely assumed that a patriarchal order was a natural order that had always existed.¹⁹ This perception was not seriously challenged until the 18th century when Jesuit missionaries found matrilineality in native North American peoples.²⁰ The trend of women's right and liberation has ever since increased till the current 21st century and several limitations imposed on women in the past are gradually eroded day by day. It must however be noted that women's rights in Africa is not fully enforced due to several factors like cultural, religious, social and economic factors, hence a lot still needs to be done in this regard.

3. Peculiar Rights of Women

Women's right, as generally said, is human rights. There are various concepts interwoven to make up women's right. Some of these concepts are natural rights, employment opportunities, right to vote (political rights), property rights, rights against discrimination, right to health, Right to education, reproductive right, and freedom from violence. Women enjoy all rights provided in the law, both domestic and international. For instance in Nigeria, women enjoy all constitutional rights provided in Chapter IV of the Constitution of the Federal Republic of Nigeria. Women also enjoy rights provided in different international legal instruments like the African Charter of Human and Peoples Rights, Universal Declaration of Rights and so on. However, there are cardinal rights of women which are important to their very existence, these rights include the following:

Right to Freedom from Discrimination

Generally, right to freedom from discrimination is very sacrosanct to preserve the dignity and self esteem of every woman. More so, the right to freedom from discrimination includes not only the obligation of states to treat in the same way persons who are in analogous situations, but also the obligation to treat in a different way persons who are in different situations.²¹ The refusal of states to acknowledge the specific needs of women, such as the necessity of specific policies like the strong investment of states in reducing maternal mortality can be a form of discrimination. In this regard, treating women and men similarly does not work because certain biological aspects such as menstruation, pregnancy, labor, childbirth, breastfeeding, as well as certain medical conditions, only affect women. The Committee on the Elimination of Discrimination against Women (CEDAW) stipulates that states should 'examine gender neutral laws and policies to ensure that they do not create or perpetuate existing

¹⁰ M.khadduri: *Marriage in Islamic Law: The Modernist Viewpoints*, American Journal of Comparative Law Vol. 26, No. 2, pp. 213–18.

¹¹ Lindsay jones: *Encyclopedia of religion*, (1998)second edition, , p. 6224

¹² 'An interview with Prof Williams. <www.Alastairmcintosh.com>. 27 May 2005.accessed on 30 July, 2019

¹³ Mitchell, Linda E.; *Women in Medieval western European Culture* (Routledge Publishers 2002) 9

¹⁴ *ibid*

¹⁵ Badr, Gamal M.; Mayer, Ann Elizabeth 'Islamic Criminal Justice' The American Journal of Comparative Law. American Society of Comparative Law. (1984) 167–69

¹⁶ *ibid*

¹⁷ W. J. Rorabaugh, Donald T. Critchlow, *America's promise: a concise history of the United State* (Rowman & Littlefield. 2004) 75

¹⁸ *ibid*

¹⁹ Lafitau J, *Myth, Religion, and Mother-right* (Princeton, N.J. press 1967) 11

²⁰ Anthony, Ikechukwu; Kanu, O. 'Gender and Good Governance in John Locke' American Journal of Social Issues and Humanities 30-33

²¹ See also Article 3 of the Istanbul Convention states that 'violence against women' is understood as a violation of human rights and a form of discrimination against women

inequalities and repeal or modify them if they do so'. (paragraph 32).²² Another example of gender neutral policy which harms women is that where medication tested in medical trials only on men is also used on women assuming that there are no biological differences.²³

Right to Health

Health is defined by the World Health Organization as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.²⁴ Women's health refers to the health of women, which differs from that of men in many unique ways. Women's health is severely impaired in some parts of the world, due to factors such as inequality, confinement of women to the home, indifference of medical workers, lack of autonomy of women, lack of financial resources of women.²⁵ Discrimination against women occurs also through denial of medical services that are only needed by women. Violations of women's right to health may result in maternal death, accounting for more than 300,000 deaths per year, most of them in developing countries.²⁶ Certain traditional practices, such as female genital mutilation, also affect women's health. Worldwide, young women and adolescent girls are the population most affected by HIV/AIDS.²⁷

Right to Education

The right to education is a universal entitlement to education.²⁸ The Convention against Discrimination in Education prohibits discrimination in education, with discrimination being defined as 'any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education'. Article 3 of the International Covenant on Economic, Social and Cultural Rights states that 'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant', with Article 13 recognizing 'the right of everyone to education'.²⁹

Reproductive Rights

Reproductive rights are legal rights and freedoms relating to reproduction and reproductive health. Reproductive rights were endorsed by the twenty-year Cairo Programme of Action which was adopted in 1994 at the International Conference on Population and Development (ICPD) in Cairo, and by the Beijing Declaration and Beijing Platform for Action in 1995. Reproductive rights represent a broad concept, that may include some or all of the following rights: the right to legal or safe abortion, the right to control one's reproductive functions, the right to access quality reproductive healthcare, and the right to education and access in order to make reproductive choices free from coercion, discrimination, and violence.³⁰ Reproductive rights may also be understood to include education about contraception and sexually transmitted infections.³¹ Reproductive rights are often defined to include freedom from female genital mutilation (FGM), and forced abortion and forced sterilization.³² Reproductive rights are understood as rights of both men and women, but are most frequently advanced as women's rights. Women's reproductive rights may be understood as including the right to easy access to a safe and legal abortion. Laws regulating abortion are not uniform across the world, abortion is restricted in some countries³³ whereas there are no legal restrictions in some other countries.^{34,35} In many countries where abortion is permitted by law, women may only have limited access to safe abortion services. In some countries abortion is

²² Liu, KA; Mager, *Women's involvement in clinical trials: historical perspective and future implications* (Xulon Press 2016) 22-28

⁶¹ N. Morey, Maternal mortality rate in CIA world factbook (Littlefield 2002) 110-114

²⁴ Salman Rushdie; *Women's Health* Available at [www.who.int/topics/women's health/en](http://www.who.int/topics/women's_health/en) accessed 29 July 2019

²⁵ *ibid*

²⁶ JJ. Bachofen, *Fact Sheets on Women* <<http://www.who.int/mediacentre/factsheets/fs348/en>> accessed 29 July 2019

⁶⁵ W.J. Rorabaugh: *Right to Education* Available at www.un.org/en/events/womensday/2011/pdfs/infonotewpmenandtherighttoeducation.pdf> accessed 30 July 2019

²⁹ International Convention on Economic, Social and Cultural Rights Available at <www.ohchr.org>

³⁰ Cook, Rebecca J.; Mahmoud F. Fathalla 'Advancing Reproductive Rights Beyond Cairo and Beijing'. *International Family Planning Perspectives* (Guttmacher Institute Press. 1996) 15–21.

³¹ *ibid*

³² Freedman, Lynn P.; Stephen L. Isaacs, 'Human Rights and Reproductive Choice'. *Studies in Family Planning. Population Council* (2001) 18–30

³³ Countries like the Dominican Republic, El Salvador, Malta, Nicaragua, the Vatican

³⁴ Countries like Canada

³⁵ Bert B. *World Abortion Population*

<http://web.archive.org/web/201604150/un.org/en/development/desa/population/publication/worldabortionpolicies>> accessed 30 July 2019

permitted only to save the pregnant woman's life, or if the pregnancy resulted from rape or incest. Meanwhile, the UN in its 2017 resolution on *Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence* urged states to guarantee access to 'safe abortion where such services are permitted by national law'.³⁶

The Committee on the Elimination of Discrimination against Women considers the criminalization of abortion a 'violations of women's sexual and reproductive health and rights' and a form of 'gender based violence'; paragraph 18 of its *General recommendation No. 35 on gender based violence against women, updating general recommendation No. 19* states that: 'Violations of women's sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.'³⁷ According to Human Rights Watch, 'Abortion is a highly emotional subject and one that excites deeply held opinions. However, equitable access to safe abortion services is first and foremost a human right. Where abortion is safe and legal, no one is forced to have one. Where abortion is illegal and unsafe, women are forced to carry unwanted pregnancies to term or suffer serious health consequences and even death. According to Human Rights Watch, 'the denial of a pregnant woman's right to make an independent decision regarding abortion violates or poses a threat to a wide range of human rights.'³⁸ Forced pregnancy is the practice of forcing a woman or girl to become pregnant, often as part of a forced marriage, including by means of bride kidnapping, through rape (including marital rape, war rape and genocidal rape). Forced pregnancy is strongly connected to the custom of bride price.³⁹

Freedom from violence

Violence against women is, collectively, violent acts that are primarily or exclusively committed against women. The UN 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.'⁴⁰ The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, provides the following definition of violence against women: 'violence against women' is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.⁴¹ Violence against women may be perpetrated by individuals, by groups, or by the State. It may occur in private or in public. Violence against women may be sexual violence, physical violence, psychological violence, socioeconomic violence. Some forms of violence against women have long cultural traditions: honor killings, dowry violence, female genital mutilation.

4. International Conventions on Women's Rights

United Nations Conventions

The Universal Declaration of Human Rights, adopted in 1948, enshrines 'the equal rights of men and women', and addressed both the equality and equity issues.⁴² In 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) for legal implementation of the Declaration on the Elimination of Discrimination against Women. Described as an international bill of rights for women, it came into force on 3 September 1981. The UN member states that have not ratified the convention are Iran, Palau, Somalia, Sudan, Tonga, and the United States. Niue and the Vatican City, which are non-member states, have also not ratified it.⁴³ The Convention defines discrimination against women in the following terms: '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

³⁶ Ibid

³⁷ Linda J. *Gynaecologist Refuse Abortion Miscarriage* <www.guardian.com/world/2016/mar/11/italiangynaecologist-refuse-abortion-miscarriage>

³⁸ K.Roberts: *Abortion and Women of Color: The Bigger Picture* (Guttmacher Institute press 2008) 66-69

³⁹ Ibid

⁴⁰ kaevan Gazdar: violent against women<coe.int/en/web/convention/fulllist//convention/090000/68008482> accessed 30 July 2019

⁴¹ Ibid

⁴² 'UNTC'<www.treaties.un.org>. accessed 30 July 2018.

⁴³ Convention on the elimination of all forms of discrimination against Women Article2(e)

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.’ It also establishes an agenda of action for putting an end to sex-based discrimination for which states ratifying the Convention are required to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women. They must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against women by individuals, organizations, and enterprises.

Declaration on the Elimination of Violence against Women

The Declaration on the Elimination of Violence against Women was adopted by the United Nations in 1993. It defines violence against women as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’⁴⁴ This resolution established that women have a right to be free from violence. As a consequence of the resolution, in 1999, the General Assembly declared the day of 25 November to be the International Day for the Elimination of Violence against Women. Article 2 of The Declaration on the Elimination of Violence Against Women outlines several forms of violence against women. The Article clearly states that:

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Vienna Declaration and Programme of Action

The Vienna Declaration and Programme of Action, also known as VDPA, is a human rights declaration adopted by consensus at the World Conference on Human Rights on 25 June 1993 in Vienna, Austria. This declaration recognizes women’s rights as being protected human rights. Paragraph 18 reads:⁴⁵ ‘The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community’.

United Nations Security Council Resolution 1325

On 31 October 2000, the United Nations Security Council unanimously adopted United Nations Security Council Resolution 1325, the first formal and legal document from the United Nations Security Council that requires all states to respectfully international humanitarian law and international human rights law applicable to the rights and protection of women and girls during and after the armed conflicts.

Maputo Protocol

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, better known as the Maputo Protocol, was adopted by the African Union on 11 July 2003 at its second summit in Maputo,⁴⁶ Mozambique. On 25 November 2005, having been ratified by the required 15 member nations of the African Union, the protocol entered into force.^[259] The protocol guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, and to control of their reproductive health, and an end to female genital mutilation.

Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, is the first legally binding instrument in Europe in the field of domestic

⁴⁴ J. Kent *Gathering a body of Global Agreements* (Mill City Press 2000) 33-36

⁴⁵ Vienna Declaration and Programme of action < www.Ohchr.org > accessed 30 July 2018.

⁴⁶ African Union: Rights of women protocol Adopted, press release, amnesty international < www.amnesty.org/rights/women > accessed July 30 2019

violence and violence against women,⁴⁷ and came into force in 2014.^[263] Countries which ratify it must ensure that the forms of violence defined in its text are outlawed. In its Preamble, the Convention states that 'the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women'. The Convention also provides a definition of domestic violence as 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim'. Although it is a Convention of the Council of Europe, it is open to accession by any country.

Trafficking Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the *Trafficking Protocol* or *UN TIP Protocol*) is a protocol to the Convention against Transnational Organised Crime. It is one of the three Palermo protocols. Its purpose is defined at *Article 2. Statement of purpose* as: '(a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.'⁴⁸

5. The Nigerian Situation

Women's right in Nigeria is an emerging phenomenon with little legislation regulating it. Generally, in Nigeria, women enjoy all rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). These rights include right to life, right to human dignity, freedom from discrimination, right to freedom to thought, conscience and religion, right to freedom of expression and so on. Other rights are guaranteed in the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act and several international legal instruments which Nigeria is a signatory to. There is also the recent enactment of the Violence against Persons Prohibition Act of 2015 enacted to protect abuse of human person and preserve human dignity. The Act made emphasis on the protection of women from violent practices like female genital mutilation, domestic violence, physical violence, economic violence and so on. Some states in Nigeria have also enacted legislations to this effect, example is the Ekiti State Gender-Based Violence Law.

6. Conclusion

This research has examined the concept of women's right from the global point of view. The research evaluated the conceptual analysis of women's right and treated some of the cardinal rights peculiar to women. The research further postulated that women generally enjoy every basic fundamental right which is inalienable to human existence, however for the purpose of equality and freedom from discrimination, some rights are specifically for women, and this is the main purpose of this research. The research evaluated some international legal instruments protecting women's right in the world. After an evaluation of the situation of women's right in Nigeria, the research concludes that Nigeria should domesticate various international instruments which the country is a signatory to for total emancipation of women from abuse.

⁴⁷ Bureau des Traités. 'Liste complète'. Conventions.coe.int. accessed 18 July 2019.

⁴⁸ United Nations Convention against Transnational organized crime and Protocols thereto <www.unodc.org>. accessed 30 July 2019.