

A COMPILATION OF THE CONSTITUTION, NATIONAL AND STATE STATUTES AND REGULATIONS, LOCAL GOVERNMENT BYE-LAWS, CUSTOMARY LAWS AND RELIGIOUS LAWS, POLICIES AND PRACTICES, AND COURT DECISIONS RELATING TO THE STATUSES OF WOMEN AND CHILDREN, APPLICABLE IN NIGERIA

BY

NATIONAL CENTRE FOR WOMEN DEVELOPMENT, ABUJA

WITH SUPPORT FROM

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Preface

The Nigerian government, particularly under the present democratic dispensation, has always been at the forefront in the implementation of all UN instruments global initiatives, regional treaties and sub-regional frameworks aimed at repositioning women and children, and integrating the Nigerian woman in the country's multi-sectoral development endeavours.

Needless to say that almost all these international regional and sub-regional agenda, regarding women have been signed and ratified without reservation and backed by institutional legal and even constitutional frameworks. Suffice it to say that our government was among the first few countries in the world to sign and ratify the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and its Optional Protocol. It also signed the UN instruments on Child Rights and other treaties relating to Child Abuse, Child Labour and the Trafficking in Children and Young Persons, resulting in the enactment of the Child Rights Act by the Nigerian government.

As a result of these national actions, various laws, bye-laws and constitutional reforms are being carried out at the national, states, and local government levels, which are aimed at protecting the rights of women and children in the country, as well as putting in place various policies and programmes that are intended to streamline them for more effective multi-sectoral advancement.

This harmonized Country Report on the Institutional Strengthening Initiatives for Legal Reform and Legal Aid for the Advancement of Women and Children in Nigeria, as supervised by Professor Adedokun Adeyemi, is a clear testimony of Nigeria's effort to actualize global dreams and aspirations for women and children of the world.

This collaborative effort between the World Bank/IDF/UNICEF/NCWD is meant to identify discriminatory, supercede and or incomplete provisions within domestic legislations applicable in Nigeria. We thank UNICEF for the provision of additional resources which enabled us to cover Twenty four (24) States instead of the initial twelve (12) States the Researchers were expected to visit under the World Bank/IDF grant.

Let me at this juncture commend the vision of the past Director-General of the Centre, Dr. Timiebi Koripamo-Agary who initiated this project during her tenure. I also commend the efforts of Professor Adedokun Adeyemi, *Dean, Faculty of Law, University of Lagos*, who as the Project Consultant worked hard, to draw up the modalities for the project implementation; Dr. T. Ladan of the *Faculty of Law, Ahmadu Bello University(ABU), Zaria*, for his *technical expertise*; the Multi-sectoral Technical Team drawn from the Federal Ministry of Women Affairs, National Human Rights Commission, Legal Aid Council, Nigerian Law Reform Commission, FIDA, WRAPA and the Staff of the NCWD. I want to also place on record the contributions of the various States Ministries of Women Affairs to the realization of this work.

Let me add that as part of its mandate, the National Centre for Women Development (NCWD), Abuja works in support of Nigeria's gender agenda, the African Platform for Action and the Beijing Platform for Action. The Centre is also interested in addressing the strategic elements and critical factors, which, impact upon and affects its mandate. Its programmes and projects are executed through direct activities, co-operations with women NGOS and bodies working in support of its advancement. The research programmes are on long and short-term basis.

The National Centre for Women Development will continue to promote an enabling environment for the formulation of policies affecting women and children in all sectors through its research and training activities. However, the fund provided by the World Bank/IF Grant is not enough to cover the activities needed for Legal Reforms and Legal Aid in Nigeria (i.e. drafting of new laws, sponsoring of bills, advocacy meetings, etc.) We are therefore calling on all stakeholders and development partners to support some of the activities involved in the process to sustain the momentum for legal reform to a logical conclusion and move the gender agenda in Nigeria forward.

Mrs. Esther T. Mangzha FCAI
Director-General'
National Centre for Women Development – Abuja.

Foreword

It is my profound joy to write this foreword, the review of existing Gender Analysis of the Constitution, National and State Statutes and Regulations, Religious Laws, Policies and Practices, Customary Laws and Court Decisions relating to status of women and supported financially by the World Bank/UNICEF. The preamble to each UN instrument on Human Rights recalls the obligation of state parties to UN Charter to promote Human Rights and reminds the individual of his responsibility to strive to promote and observe these rights.

Nigeria as a member state of the United Nations signed and ratified the International Instruments, treaties and conventions without reservation. These instruments emphasize that member nations should put in place all the necessary mechanisms needed to eliminate gender discrimination, to ensure equality and human dignity to all, men and women. Yet there exist some discrimination in the Constitution, National and States statutes, customary and Religious Laws. We all know that in Nigeria, tradition, customs, sexual stereotyping of social roles and cultural prejudice militate against enjoyment of rights and full participation of Women in National Development.

The survey is therefore timely now that the enabling environment has been created by the democratic Government for corporate bodies and individuals to contribute to the present Government's Reform processes. I am convinced that after both the Nigerian government and the International Agencies will positively utilize the findings and suggestions of this publication for the advancement of the Nigerian Women and Children.

No doubt, this validated findings of this all important survey that is aimed at legal reform and legal aid for the advancement of women and children in Nigeria will receive the blessings of our Law Makers, Stakeholders from all walks of life and the media at all levels to take concrete steps towards implementing laws, policies and practices to eliminate discrimination against women and embody the principle of equality as contained in Article 2 of CEDAW.

My reference to international obligations point not only to their importance, but, to the fact that as a Ministry, we are challenged to values, we use global standards to formulate and assess our progress and achievements. Consequently, we see instruments such as CEDAW and the Millennium Development Goals (MDGs) as goals in themselves and also as tools for raising standards and informing the way policy and institutions work on the issues of women and children. My Ministry is extremely active in terms of its participation in these international events and sees its participation as opportunity for learning, putting our issues on the global agenda and utilizing knowledge gathered in these events to enhancing our national programs.

The rapidly changing social, political and economic circumstance in the last decade has had adverse effects on Nigerian Women and their Children. It is my sincere hope that this compilation will be used to identify gaps around the reform of national and local legal instruments. It is only when policies are put in place to assist the vulnerable that they can have rights as citizens and a voice in the society.

I am aware of series of activities that have been conducted before this final publication. I therefore, commend the efforts of the Management of the National Centre for Women Development, the World Bank, UNICEF for their financial support and the Multi-disciplinary Technical Team for a job well done.

Finally, I recommend this publication to all policy formulators, both in the public and private sectors, international donors agencies, researchers and students alike, as well as the general public, as our modest contributions and efforts to address more decisively, the inhibitions hindering the actualization of a level playing ground for women and children in Nigeria.

Hajiya Inna Maryam Ciroma
Honourable Minister,
Federal Ministry of Women Affairs, Abuja.

Acknowledgement

Our profound gratitude goes to the main grant agency of this project— the World Bank/IDF and the United Nations Children’s Fund (UNICEF) for buying into the project in its drive to uphold Women and Children’s Rights in Nigeria. We are also grateful to the World Bank Senior Legal Counsel Officer, Karen Hudes who is also the Task Manager for this grant for her guidance and support.

Similarly, we acknowledge the support of the past Honourable Ministers for Women Affairs, Hajiya Aisha Ismail and Obong Rita Akpan, the past Permanent Secretaries; Rev. E. Okunromade, Mr. T. Oyelade and Mr. E. Edache and the present Permanent Secretary Dr. (Mrs.) S. Mohammed, the members of the past-Governing Council of the Centre under the Chairmanship of Hajiya (Dr.) Laila Dogonyaro, the present Board led by Chief (Mrs.) I. Umez-Eronini and the former Director-General of the Centre, Dr. Timiebi Koripamo-Agary, during whose tenure this project was initiated. We also appreciate the contributions of the past Director-General of the Centre, Dr. Stella Dorgu and the present Director General, Mrs. Esther Mangzha for their effective leadership and counsels. Equally appreciated are the past Legal Advisers of the Centre; Barr. Ojobo Atuluku and Barr. Larai Kwaji. Not forgetting Mrs. P. Modebe, the current Legal Adviser.

We must not fail to acknowledge the different organizations who were members of the Multidisciplinary Technical Team for the World Bank grant; Federal Ministry of Women Affairs, National Human Rights Commission, Nigeria Law Reform Commission, Legal Aid Council, International Federation of Female Lawyers (FIDA) – FCT Branch, and Women Rights Advancement Protection Alternative (WRAPA).

This survey also benefited immensely from the different States’ Ministries of Women Affairs and Justice in the States visited. The support of Commissioners for Women Affairs, Commissioners for Justice, Permanent Secretaries for Women Affairs, Permanent Secretaries for Justice, Local Government Chairmen, Traditional Rulers, Religious groups, Opinion Formers, Women Leaders and others too numerous to mention that were involved in sourcing for relevant information at our request is also acknowledged. Our appreciation also goes to the different non-governmental organizations, individuals as well as civil servants who responded to our interviews and questionnaires in the course of the field work.

We sincerely thank the Project Team Lead Consultant, Prof Adedokun Adeyemi whose wealth of experience and knowledge guided and enriched the study through its various stages and Mrs. Esther Eghobamien who engendered this report and the past Director, Planning, Research & Statistics, Dr. Habiba Muda Lawal for ensuring the timely completion of this survey. Finally, we appreciate the Zonal facilitators: Dr. M. T. Ladan, Hajiya Amina Abdulhamid, Didi Unu Odigie, Z. O. Senbanjo, Ngozi Jiprezi and Mr. Awoponle for their commitment and thoroughness in the field work and production of zonal reports; the Researchers: Hauwa Shekarau, Grace Akpabio, Maryam Imhanobe, Princess Jummai Idonije, Ebi Emezue and Ismaila Baba for their perseverance and corporation with their Zonal facilitators in data gathering; and the Data Entry Officers: Umar I. Moh’d, Hauwa Abubakar, George Woyengikuro, Azubike Ogu, Anderson Duruoha and Ufuoma Oboh for their contributions in giving voice to the gathered data.

Many others who commented on the draft text are also appreciated. The support of the Management and the entire staff of the NCWD is also acknowledged.

May this study bring about the emergence of effective laws, policies and practices that would eliminate all forms of discrimination against women and children in the Country and promote a Nigeria fit for all.

Princess Jummai J. Idonije
Director, Planning Research & Statistics

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I. INTRODUCTION – THE PROJECT CONCEPT

A. Project Background

It is an acknowledged fact that gender insensitive legal systems and provisions have tendencies to result in either de-jure or de-facto discrimination against women. Over the past two or three decades, gender-based analysis of legal institutions and procedures across the world has revealed the potential power and role of these institutions to reinforce women's marginalization and disempowerment. There has also been a recognition of the close correlation and linkages between legal reforms and fundamental principles that guarantee human rights of all including women, freedom, justice, self-expression, ownership and control of productive resources and access to development opportunities and social benefits in agriculture, commerce, health, education etc. The project was therefore conceived as a strategy for unraveling the different modalities through which legal institutions discriminate against women and children through their provisions. Gender perspectives and concerns on legal institutions at different levels in the on-going national reform processes and the gender sensitivity of constitutional, legislative, judicial and political structures/mechanisms also provide the justification for the project.

This **World Bank/UNICEF Project on Gender and Legal Reform** has been carried out, through the *National Centre for Women Development*, with a view to carrying out a *Legal Reform* and *Legal Aid* for the *Advancement of Women in Nigeria*. The **Project** has been financed through an **IDF Grant** from the **World Bank**, Principally with a need to actualizing the **World Bank's Mission for Women Development**.

This **Study** has been part of a comprehensive *Project for Institutional Strengthening Initiatives for the Advancement of Women* and is recognition of women's advancement as a viable mechanism for redressing gender imbalance and inequalities which retard human development, progress and real growth. This study/research component broadly consisted of six (6) phases:

- i. Desk Review of Existing Data and Drafting of Position/Concept Paper;
- ii. Briefing/Critique of the Concept Paper, and Definition of Responsibilities;
- iii. Field Work (10 days), Data Analysis and Report Writing;
- iv. Harmonization of Reports (5 days);
- v. Validation and Editing Meeting (5 days); and
- vi. Printing and Dissemination.

The **Overall Project**, was aimed at strengthening capacities for gender-based analysis of the law and in greater detail, involved the following eleven (11) activities:

- 1) A 3-Day National Sensitization Workshop on Legal Reform, culminating in a Grand Action Plan for all Stakeholders;
- 2) Training on Gender and the Law for NCWD Staff and Staff of the Multi-Disciplinary Technical Team;

3) Comprehensive Compilation of *International Conventions*, the *Nigerian Constitution*, *National and State Statutes and Regulations*, *Religious Laws*, *Customary Laws and Practices*, and *Court Decisions Relating to Statuses of Women and Children, applicable in Nigeria*;

4) Legal review and **Gender analysis** of legal instruments such as the *Constitution*; *National and State Statutes and Regulations*, *Local Government Bye-Laws*, *Customary Laws*, *Religious Laws* and *Court Decisions relating to Status of Women and Children Applicable in Nigeria*. This required the -

- *identification of discriminatory, superceded and/or incomplete provisions within domestic legislations, in contrast with international, and other domestic legislations applicable in Nigeria, and*
- *popular consultation for restitution and validation of the law amendment proposals in at least, twelve states.*
- *Assessing the implications of these laws on the lives of women and men, girls and boys and the extent to which they guarantee basic and fundamental rights to freedom, liberty and dignity of life.*

5) Drafting of new law proposals in the domain of -

- Women's access to property rights and land tenure,
- Women's access to credit,
- Women's participation in politics,
- Women's education,
- Popular consultation for the restitution and validation of the law proposals in the thirty-six (36) States and the Federal Capital Territory, and
- Publication of **Draft Bills**;

6) Development of Training Modules for Legal Literacy Initiatives, specifically targeting literate women (training module n.1) and illiterate women (training module n.2), which must result in the publication of Legal Literacy materials specifically targeting literate and illiterate women;

7) Project Management Capacity Building Initiatives consisting of training in -

- Project Design, Management and Monitoring Techniques,
- Advocacy Techniques, Strategic Alliance and Partnership Building Techniques, and
- MTEF Programme Budgeting.

8. Joint Monitoring and Evaluation Activities;

9. Capacity and Skills development to promote gender and ICT through training in -

- Basic Computer Use: 5-Day Training Session,
- Strengthening the Internet Centre of the NCWD, and
- Training on Development and Use of Website;

10. Compilation of Publications (theses published and unpublished data) both Hard Copy and CD ROM (where possible) on the Role and Status of Women in Nigeria at the Information and Documentation Centre of NCWD;
11. Developing a Generic Action Plan (draft to be distributed in twelve [12] States, to multidisciplinary team and other relevant agencies); and
12. Organizing a National Validation Workshop for consensus building and approval of the Generic Action Plan.

B. Statement of Commitment

Nigeria, as a member of the international community, having ratified the *Universal Declaration of Human Rights (UDHR)*, *International Covenant on Civil and Political Rights (ICCPR)*, *International Covenant on Economic Social and Cultural Rights (ICESCR)*, *African Charter on Human and Peoples' Rights (ACHPR)*, and the *Convention on the Elimination of Discrimination Against Women (CEDAW)*, as well as the *United Nations Convention on the Rights of the Child (CRC)*, and the *African Union Charter on the Rights and Welfare of the Child (CRWC)*, the *ILO Conventions* and their *Protocols*, among others, is committed to establishing, through legal reform and legal aid, a legal order that will encourage and advance Women Development. The emphasis here is to make enduring changes in the law, which will remove all forms of discrimination in all gender-sensitive areas.

There are clear linkages between international and regional conventions and protocols and national laws. While countries as sovereign states are at liberty to enact and enforce the rule of law within their national boundaries, such liberties are influenced and affected by international legal agreements. The underlying principles of such agreements are global consensus on legal framework, practices, composition of legal drafting entities and parameters for shaping common interests, preferred personal behaviour and rules guiding violations. The history and experiences of women on the reality of de-jure and de-facto aspects of the law (both national and international) that served as the background and rationale which culminated in the adoption of the UN Optional CEDAW Protocol.

Article 2 of CEDAW stipulates that all State parties to the convention shall put in place measures, including the review of legislative, judicial and policy provisions to guarantee equality and reduce discrimination against women.

C. Objectives

The **Overall Project** approach embraces the goals and ideals of gender mainstreaming as adopted by the UNECOSOC which states that "Gender mainstreaming" It has therefore sought to equip stakeholders with necessary tools and skills to perform their respective roles in the contribution to changes at policy and operational levels that promote gender equality. In the light of these gender equality objectives, the project sought to:

* Provide the **NCWD**'s technical staff with the skills needed to carry out successfully its mandate through the acquisition of stronger management, advocacy and strategic alliance/partnership building techniques at the national, state and local government levels;

* Strengthen the capacity of the Legal Affairs Departments of the Federal Ministry of Women Affairs and Youth Development and the National Centre for Women Development in leading the Technical Team in charge of the Launch of the following three components.

(a) **identification of gender** - discriminatory provisions in the **Constitution of the Federal Republic of Nigeria, 1999**, other National and State statutes and Regulations, Local Government Bye-Laws, Customary laws, Religious laws, , and court decisions,

(b) drafting of new gender-responsive legislations and amendment of existing legislations to make them also gender-responsive, and

(c) Carrying out of legal literacy initiatives;

***Rationale:** Advocacy and partnership building skills are essential for cultivating relationships and developing networks of champions and allies to gender equality and women's empowerment in order to achieve positive results. Gender issues are cross-cutting and interventions usually span sectors with skills and expertise of other professionals necessary to complement those of gender advocates. Effective collaboration requires that all partners have a common understanding of gender equality goals and strategies for their attainment .The proposed gender responsive legislation and legislative amendments would serve as tools for demanding accountability of legal systems and institutions within the context of international social justice.*

To achieve this objective, it was recognized that urgent actions would be required to ensure that all discriminatory practices are eliminated soonest, and that appropriate legal framework and environment be created to assure systematic advancement of Women and healthy development of children in order to fully harness their human capital asset and enhance their productivity in all sectors of the economy and spheres of life in Nigeria. To this end, the basic principles contained in all **International Instruments**, right from those contained in the **Universal Declaration of Human Rights (UDHR)** and the **International Covenant on Civil and Political Rights (ICCPR)**, through the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **African Charter on Human and Peoples' Rights (ACHPR)**, to the **Convention on the Elimination of Discrimination Against Women (CEDAW)**, the **United Nations Convention on the Rights of the Child (CRC)**, and the **African Union Charter on the Rights and Welfare of the Child (CRWC)**, as well as the relevant **ILO Conventions** and their **Protocols**, should be implemented.

Similarly, domestic legislations, including the provisions of the *1999 Constitution*, particularly section 34 on the **dignity of the human person**, section 40 on the **right to peaceful assembly and association**, section 42 on the **right to freedom from discrimination on the basis of sex**, and section 43 on the **right to acquire and own property anywhere in Nigeria**, should be enforced through the development of institutional strategies and plans of action by legal and para-legal institutions and associations. Such strategies should embrace and reflect appropriate gender-responsive provisions of the various *Criminal* and *Penal Codes*, anti-trafficking legislations, labour legislations, marriage and succession legislations be enforced. It must be emphasized that, **under no circumstances, must any gender-offensive custom/customary law be given effect in the face of its inconsistency with statute law, including the Constitution** as this has the potential of **nullifying gender gains** of legislative reforms and from experience leads to **retrogression** rather than progress for women and other victims of discrimination. Efforts should be geared towards immediately putting the necessary machinery in place, both legislative and advocacy, with necessary trainings for capacity building being put in place.

Accordingly, the rights of women to equality as “human beings” deserving of basic rights and entitled to equal social benefits as citizens of their countries and members of families and communities on all fronts - marital, succession, political, social, economic and cultural, including education, health, infrastructure etc. should be implemented through appropriate legal/judicial and advocacy media. After all, by assenting to and ratifying the various *International Conventions*, Nigeria has assumed obligations to the international community to implement the provisions of those *Conventions*, in accordance with the provisions of section 12 of the *1999 Constitution*. In relation to the rights of women, similar legislative and advocacy steps taken in relation to children’s rights, which culminated in the enactment and bringing into operation of the *Child’s Rights Act, 2003 (CRA)*, should be undertaken in earnest. In case of children, particularly the girl-child, special measures are required for the implementation of the *Child’s Rights Act, (CRA)*.

D. Scope of Statutes on Women and Children Reviewed

1. Women

The **statutes of women examined under the project** covers diverse areas of *property rights, including land tenure, access to credit, education, participation in politics, marriage, succession, maintenance by their husbands/ex-husbands, and custody of children*, as well as the issue of *domestic violence*, among others.

This **Project** acknowledges the complexity of the situation of women’s right in Nigeria, which have been seriously compounded by the subsistence of gender-offensive *customs, customary laws and practices*, as well as *religious laws and practices*. It is significant to recognize and highlight how gender resistance is often veiled by pointing out that advocates of gender-offensive practices have always often conveniently treat culture, custom and customary law as if they were static, rather than dynamic instruments; whilst advocates of retrogressive interpretations of religious laws, as well those of retrogressive practices, have also usually chosen to ignore dynamic interpretations, which have been adopted in other jurisdictions and often resulted in progress for all.

Consequently, the lessons learnt in the course of advocacy for the passage into law of the *Child's Rights Act, 2003* demanded that appropriate enlightenment and sensitization needed to be undertaken to enable all the necessary players and stakeholders to become aware that, within the contexts of custom and religion, progressive and decent treatment of women, and accordance of equity to them in marriage, succession, etc., is quite possible and, in fact, positively desirable.

2. Children

The recognition of the **Rights of the Child**, in all its ramifications, in Nigeria, is far more advanced than that of the **rights of women**, in the sense that the *Child's Rights Act, 2003*, which came into force on 31 July 2003, has substantially implemented virtually all the provisions of the *United Nations Convention on the Rights of the Child*, and the *Organisation of African Unity Charter on the Rights and Welfare of the Child*. This *Act* has, in fact, been supplemented by the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003*, which has, among other things, set up the **National Agency for Prohibition of Traffic in Persons and Other Related Matters (NAPTIP)**. Also, a *Bill* to enact a legislation on **Female Genital Mutilation** has also recently been resubmitted to the **National Assembly**.

However, in view of the fact that the passage of the *Child's Rights Act, 2003* did not comply with the provisions of section 12(3) of the *1999 Constitution*, the benefit of sub-section (2) of that section of the *Constitution*, which would have given the law a national operational coverage, would not now be available to it. Hence, its confinement to the Federal Capital Territory in its operational coverage. Accordingly, there is need for parallel legislative enactments in the various States of the Federation. It is known that four (4) States, namely, **Ogun, Anambra, Imo and Ebonyi**, have already passed their respective *Child's Rights Bills* into Law; whilst the *Bill* is currently before twenty-one (21) State Houses of Assembly, currently being processed for legislation. The remaining eleven (11) States are at an advanced stage in the drafting of their own *Children's Bills*, which will hopefully be submitted to their respective State Houses of Assembly for legislative processing.

When these legislations are in place, then the legal framework for guaranteeing the *Rights of the Child* to **Survival, Development, Protection and Participation** will have been established.

E. Situation Analysis

The 2004 Nigeria UNDP Human Development Report and National Demographic Survey reveal that development indicators as they relate to women and children still remain abysmally low. With IMR and MMR of respectively, Nigeria's health standards are one of the lowest in the world. Legal frameworks and practices are one of the most fundamental vehicles and instruments for perpetuating

discriminatory practices against women and children. The project therefore recognizes the linkages between women and children's development concerns and rights denial and violations and explores modalities for addressing the fundamental causes to gender inequalities from a legal perspective. Specifically for this **Study**, for which the Specific Objective has been to compile and print up-to-date legal texts related to the statuses of women and children in Nigeria, at the end of which, it would be expected that -

- * A comprehensive up-to-date compilation of **International Conventions** related to the status of women and children signed and ratified by Nigeria be completed, and be ready for domestic dissemination
- * Comprehensive compilation of laws/regulations related to the statuses of women and children, applicable in Nigeria be completed
- * Printing of the two documents

To this end, it was found to be essential that -

- 1) All International Instruments relating to the statuses of women and children be compiled, with identification of specific gender-responsive principles contained in them.
- 2) All National/Federal Laws, both legislative and case, relating to and affecting the statuses of women and children be compiled, with clear identification of gender-responsive and gender-offensive provisions being made.
- 3) All State laws, legislative and case, Local Government Bye-Laws, customary and religious laws, were compiled for the four States covered in all the Six (6) Zones, with clear identification of gender-responsive provisions and gender-offensive/repressive provisions, particularly as regards customary and religious laws, being specified.

The **States/Zonal Studies** had examined the *Status of Women and children* in areas that have among others, notoriously resulted in gender inequalities in the enjoyment of basic human rights, access to productive resources and opportunities for equitable participation in national development as citizens such as

- * Marriage especially as it relates to:
 - (a) Age,
 - (b) Consent,
 - (c) Dowry and its significance; and
 - (d) Right to consortium, even during separation.
- * Widowhood
- * Divorce as viewed from the perspectives of -
 - (a) Grounds - for males, and for females

(b) Adultery & Penalties for-
Penalties for –

- (i) Male culprits;
- (ii) Female Culprits; and

(c) Custody of Children.

- * Single Parenthood as interpreted for women and men.
- * Control of Family Assets within patriarchal systems.
- * Succession as it is differentially interpreted for women and men .
- * Right to acquire and own property, including the Land Tenure System.
- * Economic/Business activities, including Access to Credit.
- * Chieftaincy and other Socio-cultural roles, including Family Headship.
- * Participation in Politics.
- * Education and skills acquisition as development assets.

F. Strategies for Creating Gender-responsive Legal Framework and Environment for Women and Children in Nigeria

A three pronged approach is proposed under the project for redressing gender inequalities which is in line with the principles and practice of gender equality and women's empowerment namely situation analysis, identifying sector or issue specific focus of change/reform process and advocacy/action to enhance stakeholder mobilization and involvement in social engineering for inclusive and participatory development. This approach is captured in the under-listed steps/processes:

* Situation analyses of statuses of women and -children, with a view to understanding -

(a) The actual situation of women and children, for the purpose of establishing a baseline to guide benchmarking and target setting for measuring and monitoring changes resulting from proposed reforms

(b) The nature and types of existing laws and regulations relating to and affecting the statuses of women and children in Nigeria.

* Embarking on gender sensitive legislative reform processes through -

(a) Abolition of gender-repressive customs, customary and religious laws and practices, that are in clear violation of the **Constitution** and other legislations that violate good conscience;

(b) Effecting legislative changes in gender offensive legal principles contained in judicial decisions;

(c) Amending gender-offensive legislations; and

(d) Enactment of new gender-responsive legislations.

* Embarking on advocacy designed to sensitize various stakeholders, with a view to enabling them understand the importance of enabling women and girl-children realize their societal development potential to the fullest, as well as assuring development, with minimum societal rancour and friction.

G. Project Strategies

The project strategies were informed by the need to address ambiguities in legal provisions which have the potential to contribute to any of the following gender related situations/actions viz:

- i. Create an uneven playing ground
- ii. Challenge the personhood of women and children
- iii. Trivialize/under-estimate women's productive roles and measurable inputs to national economic growth
- iv. Inhibit normal growth, development and social relations and
Create glass ceilings and barriers which delimit women's potentials and capacities as productive citizens and children as social assets and future leaders.

This **project** was essentially aimed at carrying out an analyses of the status of Women and Children, both legally and in practice, with a view to enabling the undertaking of appropriate exercises in legislative reform for purposes of abolishing gender-repressive customs, customary and religious laws and practices, particularly when they are in clear violation of provisions of treaties, the national *Constitution* and other domestic legislations; and legislatively changing gender-offensive legal principles contained in judicial decisions, as well as enacting new gender-sensitive legislations.

Members of the Research Team at a glance

II. THE LEGAL SITUATION OF WOMEN IN NIGERIA

A Gender Analysis of the Laws and Statutes.

Undertaking a gender analysis of the legal situation in Nigeria, stems from the understanding that legislation, policies and programmes do not affect women and men in similar ways. Furthermore, while laws may not be targeted at women, they often inadvertently reinforce or exacerbate gender gaps and inequalities. The UN Economic and Social Council (ECOSOC) defines gender analysis as:

“Assessing the implications for women and men, of any planners action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal of gender analysis is to achieve gender equality. E/1997/L.30 Para. 4 ; adopted in July, 1997.”

It is an established fact that laws and legal provisions have different meaning for women and men because they affect their social, economic and political life differently and accord them different rights and privileges. A gender analysis seeks to highlight the implication of existing laws and their impact on these three dimensions of development. It will also seek to demonstrate how the interpretation and application of laws, which are presumably protective, can have distinctly different consequences on the well being and development of women and men. It will also seek to demonstrate how these laws create uneven playing grounds either advertently or inadvertently thereby creating different obstacles and barriers for women and men which in turn result in unequal opportunities and benefits from development initiatives.

Social Dimensions to legal inequalities:

These are the different ways that laws affect social development issues including opportunities for acquisition of skills and capacities for optimizing individual talents and potentials. It is often reflected in the effect of laws on performance and participation in core sectors like education and health. It also affects social norms and value systems especially as it relates to issues like parenting, socialization, etc. The interface between social outlook and legal framework create social boundaries for human relations and set behaviour standards and are often powerful tools for shaping personal goals, dreams and aspirations. They act as triggers and levers for determining socially accepted behaviour patterns. So while a law may not expressly target social issues, it still has the potential to define and shape social patterns, moral interpretations and interpersonal relations. A review of the legal situation will reveal how indeed laws such as the constitution; tax, labour and other laws influence relationships and skill development patterns.

Economic dimensions to inequalities

Reflect the manner in which laws affect the capacities of individuals to pursue economic activities freely and have equitable access to and control over common resources, assets and capital. While laws are made to regulate human transactions it is noteworthy that seemingly normal laws have the

tendency to hamper the ability of all social groups to participate in economic growth and market development.. It also examines how laws affect the management and control of economic resources and how individuals contribute to and benefit from the sectors that serve as the engine for economic growth e.g. commerce, industry, agriculture, transportation, energy, solid mineral exploration, petroleum resources, infrastructure etc. Examples abound in laws relating to inheritance, marriage etc.

Political dimensions to inequalities

This is a reflection of how the political structure and economy impact on capacities of individuals within the society to participate meaningfully in governance activities. The degree of representation and participation of any social class is directly related to their ability to influence and shape the political system and processes in their favour. Consequently the exclusion of women from decision-making levels and political institutions has in practice excluded women's views and voices from the development/articulation of mechanisms for shaping public life including policies, legislative and judicial systems.

With the above recognition of some inherent gender dimensions to legal provisions and instruments, efforts will be made to highlight other issues of gender concern by raising questions and comments that will foster a greater understanding of the distinctive meaning, implication and impact that presumably neutral laws could have on women and men. It is hoped that these questions and comments will stimulate deeper reflection on their relevance in current social systems and the contributions or otherwise that they actually make to national development efforts. A constant or common indicator for assessing all laws, federal, state and local should be the extent that they promote and enhance the capacities of all citizens to contribute maximally to development processes without moral coercion, repression or exclusion. It is pertinent to suggest that failure of any law to respond to this common denominator is an indication that review of such laws are essential. It is hoped that the gender analysis will also buttress the recommendations for legal review.

Photo: NCWD Photo

A. FEDERAL LAWS

1. CIVIL LAW

1.1. POLITICAL LAWS

1.1.1. *The Constitution*

The *grundnorm* of Nigeria today is The *Constitution of the Federal Republic of Nigeria, 1999*.¹ The *Constitution* is supreme and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria²..... and if any other law or legislation is inconsistent with its provisions, that other law or legislation shall to the extent of the inconsistency be void³. The *Nigerian Constitution* frowns at inequality and discrimination, and Nigeria is also a signatory to a number of international instruments already listed in Part I above. These instruments aim at **protecting women's rights as human rights**.

The Constitution further provides:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

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

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force to an office in the service of a body corporate established directly by any law in force in Nigeria.⁴

Notwithstanding these provisions, Nigerian women are still subject to abuse, marginalization and discriminatory laws and practices, particularly where customary/ traditional practices are concerned. Organizational/ Institutional practices, procedures and culture also contribute to women's marginalization. Special measures and policies as prescribed for recruitment into the Nigerian Army,

¹ *Constitution of the Federal Republic of Nigeria (Promulgation) Act*, 1999, Cap. C23, Vol. 3, Laws of the Federation of Nigeria. 2004.

² The *Constitution*. Ibid, section 1 (1)

³ Ibid, section (3).

⁴ *Ibid*, Section 42.

Police or other corporate body often preclude women's equal opportunity to the respective professions thereby depriving them of basic rights and privileges as citizens of Nigeria.

However, the **right of the woman** to *freedom from discrimination* has been specifically derogated by the **Constitution** itself in the very section guaranteeing the right. Thus, section 42(3) has precluded the right conferred in section 42(1) from applying with respect to **any public office, including military or police appointments**.

Yet, the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** enjoins State Parties to *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*

(6) 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; ...⁵

It is clear that section 42(3) of the **Constitution** is clearly inconsistent with, or even, violative of Article 7(a) of **CEDAW**, since the former has more or less removed the right to freedom from discrimination in appointments to public offices from women, contrary to the positive enjoinder of that right by **CEDAW**. This means that no woman can legitimately invoke the provisions of the **Constitution** to protest or seek remedy for discrimination against her in respect of appointments to public offices. **CEDAW**, in fact, further enjoins State Parties to avoid discrimination against women, who should be appointed, on equal terms with men, to diplomatic posts at the international level and to participate in the work of international organizations.⁶ But the provisions of section 42(3) of the **Constitution** somewhat negates the observance of this treaty obligation by Nigeria, thereby militating against the implementation of this particular **CEDAW** provisions.

The **Constitution** further discriminates against women when it provides :

- (1) ...a person to whom the provisions of this section apply may be registered as a citizen of Nigeria, if ... (she is a)
- (2) ... *Woman who is or has been married to a citizen of Nigeria, ...⁷*

By these provisions, only a Nigerian man can legally confer Nigerian citizenship upon a woman who is or has been married to him. However, a woman cannot so confer a Nigerian citizenship upon a man who is or has been married to her. Such **Constitutional** provision has been abrogated

⁵ Article 7(b).

⁶ article 8, *ibid*.

⁷ Section 26 of the **Constitution**, *ibid*.

elsewhere on the basis of its being discriminatory against women,⁸ thereby creating conjugal inequality.⁹ However, **CEDAW** provides that -
*State Parties shall grant women equal rights with men to acquire, change or retain their nationality.*¹⁰

The discriminatory provisions contained in the **Constitution** have, therefore, resulted in the inability/failure of Nigeria to be legally prepared for the implementation of the **CEDAW** provisions under which it has assumed international obligation to condemn and eliminate discrimination against women. In the light of this situation, Nigeria cannot claim that she is currently capable of undertaking:

(b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all forms of discrimination against women.

This kind of unfortunate situation has more or less seemed to be constitutionally condoned, which has, even indeed, confirmed the problem of gender inequality and discrimination against women in Nigeria. Such situation has been aptly described by **Sope Williams** as follows:

Gender inequalities are a fact of Nigerian society for various reasons. First, the ideological relationship between law and culture means women rights issues are not always addressed by the adoption of gender-neutral laws, since these laws do not operate in a gender-neutral context, and their interpretation is coloured by cultural stereotypes Culturally, women do not enjoy the same legal or social status as men and suffer by comparison, as a result of cultural barriers interacting with low levels of economic development. The culture regards women as having been created to reproduce, getting married and child bearing are the most important female accomplishments and the only ones worth pursuing. The Nigerian woman is defined in terms of her role as a mother and a wife. Whether or not she has a career or owns a business, her worth depends on her marital status since her legal and social status are tied to her husband's, leading to a situation where unmarried women are regarded as an anomaly

*Nigerian men (have) ascendance in issues such as inheritance, authority and decision-making.*¹¹

These views of **Sope Williams**, quoted above, roughly summarises the situation of the Nigerian woman, in practice, notwithstanding the constitutional provision which purports to guarantee the *right to freedom from discrimination* on the ground, *inter alia*, of sex.¹²

⁸ *Aumeeruddy – Cziffra V. Mauritius* (“*Mauritius Women’s Case*”). (35/78), CCPR/C12/D/35/197; and *Unity Dow V. A-G of Botswana*, (1991) 13 Human Rights Quarterly, 614.

⁹ See *OC – 4/84, Proposed Amendments to the Naturalization provisions of the Constitution of Costa Rica, IA Ct HR, Series A4 (1998)*, at para 64.

¹⁰ Article 9 (1) of **CEDAW**, *ibid*

¹¹ **Sope Williams**, Nigeria, its women and International Law: Beyond Rhetoric, **Human Rights Review**, Vol. 4, Autumn, 2004, 229-255, at pages 229-231.

1.1.2. Electoral Laws

The Electoral Laws in Nigeria theoretically provide equal opportunity for men and women in the electoral process, either as voters or as candidates,¹³ in as much as they contain general provisions for qualifications to be voters and to stand for elective offices. However, the practical situation is that the general situation of women in Nigeria today does not enable them to have a level playing ground with men in the electoral process. In fact, nothing short of an *Affirmative Action*, which will actually assure the reservation of a particular per centage of elective offices for women, will suffice.

To this end, the *National Policy on Women, 2000* has provided for *Affirmative Action* to increase the percentage of women in decision-making positions to 30% in the Legislative and the Executive Branches of Government, as well as in the Political Parties. However, these targets are still a far cry from the situation currently existing. Nonetheless, the measures taken by the Political Parties, in furtherance of this **Policy**, has led to a noticeable increase in the number of women who participated in the 2003 electoral processes, as compared to the 1999 ones. It is to be hoped that both Governments and the Political Parties, as well as the Judiciary and the Private Sector, will now seriously embark on the implementation of this *Affirmative Action Policy*.

1.1.3. Police Act And Regulations

The *Police Regulations*, made pursuant to the provisions of section 46 of the *Police Act, 1967*,¹⁴ contain provisions which certainly discriminate against women, as police officers.¹⁵ However, *CEDAW* provides for the elimination of discrimination against women in field of employment, in order to ensure, on a basis of equality of men and women, the same rights, in particular –

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.¹⁶

Yet, the Nigeria *Police Regulations* provide that *a woman candidate seeking enlistment in the Police Force must be unmarried*¹⁷. The *Regulations* further provide that -

*Women Police Officers shall as a general rule be employed on duties which are connected with women and children.*¹⁸

¹² *The Constitution of the Federal Republic of Nigeria, 1979, ibid.,*
Section 42 (1).

¹³ See the *Electoral Act, 2002*, Cap. E6, Vol. 5, *Laws of the Federation of Nigeria, 2004*.

¹⁴ Cap P19, Vol. 13, *Laws of the Federation of Nigeria, 2004*.

¹⁵ See *Regulations* 121-129.

¹⁶ CEDAW, Article 11(b).

¹⁷ *Regulation* 118 (g)

¹⁸ *Regulation* 121.

The particular **Regulation** then defined the specific duties envisaged, as investigation of sexual offences against women and children,¹⁹ recording of statements from female witnesses and accused persons and from children,²⁰

attendance at interviews of females and children which are conducted by male police officers,²¹ searching, escorting and guarding women detainees in, and to and from police stations,²² school crossing duties,²³ and crowd control where women and children are present in any numbers.²⁴

The **Regulations** further provide that –

“Women police officers recruited to the General Duties Branch of the Force may, **in order to relieve male police officers from these duties**,²⁵ be employed in any of the following duties, namely –

- (a) Clerical duties;
- (b) Telephone duties; and
- (c) Office orderly duties.²⁶

The **Regulations** then proceeded to provide for some **Miscellaneous Conditions of Service for Women Police Officers**. Thus, a woman police officer shall not be called upon to **drill under arms** or to take part in any **baton** or **riot exercise**.²⁷ Whilst this **Regulation** is discriminatory and it violates the provision of Article 11(b) of **CEDAW**, it also contradicts the very intendment of **Regulation 121(e)**, for how can one expect a woman police officer to be able to perform the duty of crowd control,²⁸ when the same woman police officer is prohibited from drilling under arms or take part in any baton or riot exercise. [?]²⁹ Then, **Regulations** impose upon a woman police officer desirous of getting married the

¹⁹ **Regulation 121(a)**

²⁰ **(b) Ibid.**

²¹ **(c) Ibid.**

²² **(d) Ibid.**

²³ **(e) Ibid.**

²⁴ **(f) Ibid.**

²⁵ Emphasis supplied by the author

²⁶ **Regulation 122**, *ibid*

²⁷ **Regulations 123**, *ibid*

²⁸ Duty under **Regulation 121 (f)**

²⁹ Prohibition under **Regulation 123**.

obligation to apply for permission to get married, something not required of her male counterpart;³⁰ whilst 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.*³¹

These provisions of these **Regulations** prompted **Professor A. A. Adeyemi** to comment as follows:

Why should a woman police officer, who is expected to take part in crowd control, not be trained in riot exercise? Supposing a riot breaks out during the crowd control, why should she not know what to do with the crowd and with herself right there on the spot? Why, in any event, should she not **drill under arms** or take part in a **baton exercise**, if she is to be able to defend herself effectively as a police woman, particularly if a crime is committed in her presence when she will be expected to arrest the offender, even without warrant? ³² Worse still, she cannot marry without permission.³³ Why should she be required to seek permission to marry, when her male counterpart requires no such permission? Then, an unmarried, pregnant female police officer will be discharged from the Force.³⁴ Why should she be so discharged? The injustice of the case will become glaring if an unmarried male police officer makes an unmarried female police officer pregnant, the female Police officer will be discharged from the Police Force, whilst the male police officer will remain in the Force? Definitely, these provisions discriminate on grounds of sex against women police officers³⁵

³⁰ *Regulation 124*, *ibid*

³¹ *Regulation 127*, *ibid*

³² Regulation 10 (1) (b) of *the Criminal Procedure Act*. 1945, Cap. C41, Vol., 4, *Laws of the Federation of Nigeria, 2004, as variously amended up till 1972*; and Section 26 (a) of the Criminal Procedure Code, Cap 30, Laws of Northern Nigeria, 1963.

³³ *Regulation 124*, *ibid*.

³⁴ *Regulation 127*, *ibid*.

³⁵ **A.A. Adeyemi**, *Police and Criminal Justice Administration in Nigeria*, Chapter 1, *Current Themes in Nigeria Law*, **I.O. Agbede** and **E.O. Akanki**, Editors, 1997, pages 1-18, at pages 8-9.

1.2 ECONOMIC LAWS

1.2.1. Tax Laws

The *Personal Income Tax Act, 1993*,³⁶ provides, *inter alia*, for tax relief for the tax payer³⁷ in respect of his or her own general personal deduction,³⁸ or in respect of *the costs incurred by (him or her)...in maintaining or assisting to maintain a close relativeor (his or her) spouse who was either incapacitated by old age or infirmity from maintaining himself (or herself) or is the widowed mother (whether so incapacitated or not) of (his or her) spouse,*³⁹ in respect of an unmarried child below 16 years maintained by the taxpayer,⁴⁰ up to a total number of four children,⁴¹ and for this last purpose, a husband and his wife or wives not separated from him by deed or an order of any court shall be treated as one and the same individual,⁴² although where the cost of maintaining a child is shared between two or more persons, the relevant tax authority may apportion the (allowable deduction) as may seem to it equitable between (them), and the deduction to be allowed under this paragraph to any individual in respect of that child shall be his apportioned share of that sum⁴³

Photo: NCWD Photo

³⁶ Cap.P8, Vol.13, *Laws of the Federation of Nigeria, 2004.*

³⁷ Section 33, *ibid.*

³⁸ Section 33(1), *ibid.*

³⁹ Section 33(3)(c), *ibid.*

⁴⁰ Section 33(3)(b), *ibid.*

⁴¹ Section 33(3)(b): Proviso (i), *ibid.*

⁴² Section 33(3)(b): Proviso (i), *ibid.*

⁴³ Section 33(3)(b) : Proviso (iii), *ibid.*

From the foregoing, the law now seems to treat the two spouses (both husband and wife) as equals in respect of their allowable deductions, in contradistinction to the situation under the former law, whereby only the husband was granted allowable deduction for the maintenance of his wife; whilst the wife was not similarly treated.⁴⁴

Again, when it comes to the allowable deductions for dependent children, the law envisages an equitable apportionment between the spouses.⁴⁵ This is a fair and gender-sensitive provision by the law. But the *Policy* of the **Joint Tax Board** is still to give the allowable deductions to the husband, but nothing to the wife, which is absolutely unfair. It is important, in this regard, that both the letter and the spirit of the law⁴⁶ should be enforced, in order to enable working wives claim allowable deductions in respect of their dependent children, the maintenance of whom they are also contributing to. Of course, a woman should no longer have to prove the dependency of her children on her by establishing that her husband is dead or is physically or mentally incapacitated. This is only fair, in as much as a man need not resort to any such proofs to establish the dependency of his children upon him, which, in fact, may be largely assumed.

As regards single mothers, the **Joint Tax Board**, in its *1988 Policy/Decision*, gave no consideration to those of them who have **dependent children**, and they are not allowed any tax relief/deductions because the **Board** would require a **Marriage Certificate** from a woman, in order for her to be granted any tax relief/deduction. There is clearly nothing that demands this in the provisions of section 33 of the *Personal Income Tax Act, 1993*⁴⁷ This Policy, which obviously discriminates against single mothers, and which is certainly not supported by any legal provision, not even those of the old legislation,⁴⁸ is clearly unlawful. Therefore, it should be reversed to allow single mothers automatic allowable deductions, without being required to produce any **Marriage Certificate**, as single men have not been required to produce any such **Marriage Certificate**, in order to enable them claim allowable deductions in respect of their own children. They should be allowed to claim the tax relief of allowable deductions, in the same way as a man, unless the father of her child or children is already claiming such relief for the child or children. In such a case, she should be entitled to the same shared relief (between her and the father of her child or children), just the same way as has been provided for a husband and a wife to share the allowable deductions in respect of their dependent children.⁴⁹

⁴⁴ The *Income Tax Management Act, 1961*, Cap. 174, *Laws of the Federation of Nigeria, 1990*, section 24(2).

⁴⁵ Section 33(3)(b): Proviso (i), *ibid.*⁶ Section 33(3)(c), *ibid.*

⁴⁷ Cap. P8, *ibid.*

⁴⁸ Cap. 174, *1990 Laws*, *ibid.*

⁴⁹ *1993*, Cap. P8, *ibid.*, section 33(3)(b) : Proviso (iii).

1.2.2. LABOUR LAWS

1.2.2.1. *The Labour Act*

The *Labour Act, 1971*⁵⁰ certainly contains *discriminatory provisions*; whilst some seemingly *protective provisions* can also be considered to result in discrimination against women, in practice, although it was revised in 1990, four years after Nigeria ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

An example of such *discriminatory provision* can be found in the *provision* conferring upon a worker the **right to be accompanied by family**:

*Any citizen who is recruited for service in Nigeria may be accompanied to his place of employment and attended during his employment there 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.*⁵¹

Without any doubt, this provision favours only the male worker, as it interprets family only in terms of wives and children. There is, no corresponding provision conferring the right to be accompanied by her family (that is, a husband and children) on a woman worker. This apparently discriminatory provision seems to engender gender inequality against women in the field of employment.

However, in relation to the protection of women in employment, *CEDAW* has provided:

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.*⁵²

⁵⁰ Cap. L1, Vol. 8, *Laws of the Federation of Nigeria, 2004*.

⁵¹ *Ibid*, section 34(1). Compare a similar provision in case of recruitment for service outside Nigeria, which is provided for in section 44, *ibid*.

⁵² Article 11(2), *ibid*.

This Article enjoins State Parties to eliminate discrimination against women in the field of employment and, among things, seeks to prohibit discrimination against women on grounds of maternity or marriage, including the safeguarding of the function of reproduction by women. To this end, *CEDAW* enjoins the introduction of maternity leave with pay,⁵³ and prohibits the imposition of sanctions, dismissal on grounds of pregnancy or of maternity leave,⁵⁴ etc. It is however not uncommon to observe the existence of pre-employment contracts e.g. in the banking sector, that jeopardizes basic rights to family life and threaten family cohesion by requiring that young female employees sign agreements not to get pregnant for several years after marriage. Such practices also deter women's entry and retention in the banking sector on equitable basis with men. Further research to establish a comprehensive ratio of women and men in the sector and quantify income losses and denials that result from such policies and practices should be pursued.

The *Labour Act, 1971*, upholds this principle of maternity leave, and accordingly provides as follows:

(1) In any **public or private industrial or commercial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof**, a woman -

(a) shall have **the right to leave her work** if she produces a **medical certificate** given by a registered medical practitioner stating that her confinement will probably take place within six weeks;

(b) shall not be permitted to work during the six weeks following her confinement;

(c) if she is absent from her work in pursuance of paragraph (a) or (b) of this subsection and had been continuously employed by her then employer for a period of six months or more immediately prior to her absence, shall be paid not less than fifty per cent of the wages she would have earned if she had not been absent; and

(d) shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose.

(2) Subsection (1) (c) of this section shall have effect notwithstanding any law relating to the fixing and payment of a minimum wage.

⁵³ Article 11(2)(b), *ibid.*

⁵⁴ Article 11(2)(a), *ibid.*

(3) No employer shall be liable, in his capacity as an employer, to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement.

(4) *Where a woman -*

(a) is absent from her work in pursuance of subsection (1)(a) or (b) of this section; or

(b) remains absent from her work for a longer period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement and to render her unfit for work,

then, until her absence has exceeded such a period (if any) as may be prescribed, no employer shall give her notice of dismissal during her absence or notice of dismissal expiring during her absence.

(5) *In subsection (1)(d) of this section, “child includes both a legitimate and an illegitimate child.”⁵⁵*

Pursuant to these provisions, the Nigerian Court has held that the dismissal of a woman from her employment on her return from maternity leave amounted to a dismissal on account of her pregnancy, and was therefore, unlawful.⁵⁶

Next, the **Act** protects women from being employed *on night work in a public or private industrial undertaking or in any agricultural undertaking*⁵⁷ This, of course, *shall not apply to women employed as nurses, in any public or private industrial undertaking or in any agricultural undertaking, nor to women holding responsible positions of management who are not ordinarily engaged in manual labour,*⁵⁸ or where *the night work in question was due to an interruption of work which it was impossible to foresee and which is not of recurring character,*⁵⁹ working to preserve rapidly deteriorating raw materials or materials in course of treatment, in order to prevent them from certain loss.⁶⁰

Yet again, the **Act** prohibits the employment of women on underground manual work in any mine.⁶¹ However, once more, women in management position,⁶² women employed in health or social services,⁶³ or those entering the mine in course of their studies.⁶⁴ It can be said that, whilst the

⁵⁵ Cap. L1, *ibid.*, section 54, on Maternity Protection provisions, which incorporates the provisions of the *ILO Convention Concerning Maternity Protection (Revised) 1952, ILO No. C103; 214 UNTS 321.*

⁵⁶ *Ajiboye V. Dresser Nigeria Limited* (1972), 7 CC HCJ 57, invoking the provisions of section 54(4) of the **Act**.

⁵⁷ Section 55(1) of the **Labour Act**, *ibid.*

⁵⁸ Section 55 (2), *ibid.*

⁵⁹ Section 55 (2)(a), *ibid.*

⁶⁰ Section 55 (2)(b), *ibid.*

⁶¹ *Ibid.*, section 56(1).

⁶² *Ibid.*, section 56(2)(a).

⁶³ Section 56(2)(b), *ibid.*

⁶⁴ Section 56(2)(c), *ibid.*

intendment of the *Act* is to protect women as regards their health, and the guaranteeing of their safety in working conditions,⁶⁵ it has had the unintended effect of limiting available job opportunities for women. Perhaps, rather than prohibiting women from underground or other forms of stressful or risky work, the *Act* should have provided for the provision of appropriate protection gear to enable them work safely in a mine, and other stressful or risky situations. Furthermore, the act appears presumptuous and overlooks individual/personal interests, skills, abilities and aptitudes and delimits career choices of women.

1.2.3. Other Economic Laws

1.2.3.1. *National Commission for Women Act, 1989*⁶⁶

This *Act* seeks to, *inter alia*, promote the full utilization of women in the development of human resources and to bring about their acceptance as full participants in every phase of national development, with equal rights and corresponding obligations,⁶⁷ as well as work towards total elimination of all social cultural practices tending discriminate against and de-humanize womanhood.⁶⁸

These provisions certainly seem to accelerate the elimination of discrimination against women in the Nigerian body politic, as well as enhance the development of the human potential in women, with a view to assuring their full participation, on the basis of equality with men, in national development. To this latter end, the *Act* further provides for the (*encouragement of*) *the sense and essence of co-operative societies and activities amongst women both in the urban and rural areas and stimulate in them creative entrepreneurship in the field of cottage industries and small-scale industries.*⁶⁹ To this end, the *Act* empowers the Commission to *promote, develop and concretize income generation.....and employment through loan schemes, home and cottage industries, acquisition of skills generally for the improvement of arts and crafts and food processing and such other vocational training of women within the context of their assessed needs and potentials,*⁷⁰ as well as to ensure self-reliance enhancement of women.⁷¹

By and large, these provisions have created a good legal framework for the elimination of discrimination against women, but one wonders what explicit results have been achieved in the

⁶⁵ Compare Article 11(f) of *CEDAW*, *ibid.*

⁶⁶ Cap. N23, Vol. 10, *Laws of the Federation of Nigeria, 2004.*

⁶⁷ *Ibid.*, section 2(b).

⁶⁸ *Ibid.*, section 2(h).

⁶⁹ *Ibid.*, section 2(f).

⁷⁰ *Ibid.*, section 5(c).

⁷¹ *Ibid.*, section 5(f).

bridging of gender gaps and disparities. They are however said to have contributed to the enhancement of efforts to eliminate discrimination socially, economically and culturally, with a view to assuring their full participation in national development on the basis of equality with men.⁷² It is now known that the **Federal Ministry of Women's Affairs**, which took over from the **Commission**, has now been pursuing those objectives, performing those functions and is actively pursuing the implementation of the *Affirmative Action Policy*. However, the scope of its achievement is still rather limited. It requires the assistance of all and sundry to enable it achieve a greater pace of implementation and achievement of those laudable objectives.

1.2.3.2. *Other Laws*

There are other laws which seek to promote economic development, financial and fiscal policies, banking and other financial institutions, etc. Here, such laws contemplate general national development in their specific spheres, without, necessarily singling women out for any special assistance. It is, therefore, clear that the *Affirmative Action* called for by the *National Policy on Women* should be brought in both in spirit and in letter, to ensure that special assistance be given to women, in order to accelerate their pace of participation in the national development of Nigeria.

1.3. PROPERTY LAW

1.3.1. Laws on Movable/Immovable Property

1.3.1.1. The Constitution

Section 43 of the *Constitution*⁷³ guarantees to every Nigerian (man or woman) the right to acquire and own immovable property anywhere in Nigeria; whilst section 44 guarantees the right of a Nigerian to his or her movable or immovable property, subject only to compulsory acquisition, which is done in the manner and for the purpose prescribed by law (namely, for public interest), with entitlement to prompt payment of compensation, and with the right to a court of law or appropriate tribunal or body for determination of his interest in the property and the amount of compensation he or she is entitled to.

By these provisions, every Nigerian is entitled to acquire and own movable or immovable property, and such property can only be compulsorily acquired, in accordance with the law, provided that appropriate compensation is paid to him or her. He or she will be entitled to have his or her interest in the property, the amount of compensation payable to him, determined by a competent court, tribunal or body.

However, the Customary laws and Practices of several communities in Nigeria do not support the right to own immovable property by women. Such Customary laws and Practices, in fact, constitute derogations from the rights conferred upon Nigerian women by the above-cited provisions of the *Nigerian Constitution*.

⁷² *Ibid.*, section 2 and 5.

⁷³ *1999*, Cap. C23, *ibid.*

1.3.1.2. *Land Use Act, 1978*

The *Land use Act*,⁷⁴ is –

*An Act to vest all land composed in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments.*⁷⁵

This *Act*, vests the control over land in Governors of States for urban land, and in the Local Governments for non-urban land,⁷⁶ thereby conferring upon them *legal ownership* of the land; whilst the individual allottee /occupier is vested with beneficial interest, which involves the vesting in him or her of either a statutory right of occupancy in the case of urban land,⁷⁷ or a customary right of occupancy in the case of a non-urban land.⁷⁸ Often, such a right, in the case of urban land, is evidenced by a Certificate of Occupancy.⁷⁹ It is noteworthy that women’s low representation in political and public office has denied them access to governance machineries at a level that will enable them challenge the current barriers to their ownership of land and othe properties. Furthermore they are denied the opportunity of projecting their issues and concerns in the public arena with a view to seeking redress collectively.

Just like the provisions of the *Constitution*, those of the *Land use Act* also confer general powers to own real property upon both men and women. The only restriction under the *Land Use Act* is that which forbids the Governor from granting a statutory right of occupancy, or consent to an assignment or subletting of a statutory right of occupancy to a minor under the age of twenty-one years,

⁴ *No. 6 of 1978*, Cap. L5, Vol. 8, *Laws of the Federation of Nigeria, 2004*, and its provisions shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this *Constitution* and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this *Constitution* – see section 315 (5) of the *Constitution of the Federal Republic of Nigeria, 1999*, *Ibid.*

⁷⁵ **Head Note** to the *Act*, which commenced on 29th March, 1978.

⁷⁶ *Land Use Act, ibid*, section 2(1).

⁷⁷ *Ibid.*, section 5.

⁷⁸ *Ibid.*, section 6.

⁷⁹ *Ibid.*, section 9.

⁸⁰except through his or her guardian or trustee duly appointed for the purpose,⁸¹ or through inheritance.⁸²

However, the following provision of the *Act* is interesting:

The devolution of the rights of an occupier upon death shall –

(a) in the case of a customary right of occupancy, unless non customary law or any other customary law applies, be regulated by the customary law existing in the locality in which the land is situated; and

(b) in the case of a statutory right of occupancy (unless any non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:

Provided that –

(a) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law;

(c) *a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Governor.*⁸³

The above provision preserves the applicability of the rules of customary law of the locality of the land to the customary right of occupancy of a non-urban land.⁸⁴ In the case of a statutory right of occupancy of the deceased occupier, his customary law governing the devolution of similar property interest at the

⁸⁰ *Ibid.*, section 7.

⁸¹ *Ibid.*, section 7: Proviso (a).

⁸² *Ibid.*, section 7: Proviso (b). Here, see the provisions of section 24 of the Act. See, however, the restriction placed by section 25, which invalidates any purported devolution or transfer of rights to land to which any non-customary law applies, in which case, there can only be a plain transfer of the whole rights of occupation over the whole of the land.

⁸³ *Ibid.*, section 24

⁸⁴ Section 24 (a) *Ibid.*

time of his death shall govern the devolution of the right of occupancy to that land on his demise, unless any non customary law or some other customary law applies.⁸⁵ Consequences of such contradictions in the law is that women are often delimited from access to land transferable by heritage which could enhance their capacity to pursue productive activities such as farming, real estate etc. Research on the disparities in the ownership of properties and tangible assets will reveal the degree to which such laws have excluded women from participating in healthy competition and the development of efficient free market systems.

Also, the *Act* prohibits the applicability of any customary law which prohibits, restricts or regulates the devolution on death to *any particular class of persons*⁸⁶ or the right to occupy land for purposes of depriving any person of any beneficial interest in any such land other than the right to occupy same), or depriving him or her of the right to the proceeds of sale thereof to which he or she may be entitled under the rules of inheritance of any other customary law.⁸⁷ This means that, in the event of two or more competing or conflicting customary laws governing inheritance, the one which is more or most favourable to a successor, on inheritance, will be applied to the successor. This provision may, therefore, make it possible for a woman to inherit beneficial interests, rather than the land itself, in the case of the demise of her parents or husband, if the deceased is subject to any customary law, such as that of his or her personal law or that of the locality of the land, which is favourable to her inheriting such interests.⁸⁸

It appears that the act has a higher potential to promote compounded discrimination against women. (Could we have examples of beneficial interests in favour of women?)

Otherwise, the general rules of customary law in many parts of Nigeria, excepting the South West, forbidding inheritance of land by women, will continue to apply until legally changed either by legislation or by a decision of a higher court.

⁸⁵ Section 24 (b) *Ibid*.

⁸⁶ Emphasis is the authors'.

⁸⁷ Section 24: Proviso (a).

⁸⁸ These provisions, therefore, seem to confirm the decision in *Folarin V. Cole* (1986) 2 N.W.L.R. (Part 22), 236, where the court upheld the right of female children to be entitled to inherit interests in their fathers' land, like male children, but not the right to occupy the land. However, whichever of their brothers rightfully occupies the land is only a trustee for the other children, including their female children. See also, *Coker V. Coker* (1938) 14 N.L.R. , 83.

1.4. MARRIAGE LAWS

1.4.1. *Marriage Act, 1914*

The only discriminatory provision contained in the *Marriage Act, 1914*⁸⁹ is the following:

*If either party to an intended marriage, not being a widower or widow, is under twenty-one years of age, **the written consent of the father, or if he be dead or of unsound mind or absent from Nigeria, of the mother,***⁹⁰ or if both be dead or of unsound mind or absent from Nigeria, of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a licence can be granted or a certificate issued⁹¹.

This provision emphasizes only the requirement of the consent of the father, and recognizes the right to consent of the mother only in the event that the father is dead or of unsound mind or absent from Nigeria. Otherwise, where the father is alive, available in Nigeria and is of sound mind, then the consent of the mother is irrelevant. This clearly depicts unequal paternal and maternal rights which derive only from patriarchy. Perhaps, the law should demand consultation between the two parents for the purpose especially as it is one of the platforms for the perpetuation of child marriages as the consent of mothers are hardly ever sought in the marriage contract process. In practice, fathers have the singular right to arrange and contract a marriage without the consent of the mother or child. Such contracts have been known to be used to settle debts etc. This unequal parental rights has contributed in no small measure to gender disparities in literacy rates, productive capacities and skills as well as high MMR and IMR rates.

1.4.2. *The Matrimonial Causes Act, 1970*

The *Matrimonial Causes Act, 1970*⁹² provides for several grounds for divorce, among which is that –

Since the marriage and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of –

(i) having attempted to murder or unlawfully kill the petitioner, or

(ii) having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner.⁹³

⁸⁹ *No. 18 of 1914*, as variously amended up till 1971, Cap. M6, Vol. 8, *Laws of the Federation of Nigeria, 2004*.

⁹⁰ **Emphasis supplied by the author**

⁹¹ *Ibid.*, section 18.

⁹² Cap. M7, Vol. 8, *Laws of the Federation of Nigeria, 2004*.

⁹³ *Ibid.*, section 16(e), provides as one of the instances for proving that, since the marriage, the respondent has behaved in such a way that the petitioner finds it intolerable to live with the petitioner, as provided for in section 15(2) (c), *ibid.*

Statistics on domestic violence reveal that women are often the victims of violence. There is no doubt that this provision is most likely to apply to the wife as the victim of the violence, and consequently the petitioner, who is likely to invoke the provision; whilst the husband is most likely to be the respondent in such a petition for divorce. However, the problem with the provision is that it requires the petitioner to **wait for the conviction of the respondent** before the ground can be accepted as a ground. Such a demand would tend to subject the petitioner to stay in physically, mentally, and emotionally and, even, sexually abusive marriage until the petitioning spouse (often the wife) will be able to obtain a conviction against the abusing spouse (often the husband). Such a requirement should be done away with. Furthermore, moving out of the home for safety could jeopardize the possibility of favourable litigation and has contributed to the unwillingness on the parts of women to pursue legal action in instances of domestic violence. There is need to recognize that threat to life is sufficient grounds to terminate co-habitation. It should be sufficient for the petitioning spouse (often the wife) to establish during the divorce proceedings, beyond reasonable doubt, that she had been subjected to such brutality, abuse (physical and emotional), deprivation, threats and acts that violate the marriage contract by the other spouse (often the husband). This therefore calls for reviews to provide protective clauses in the extant law which permits removal of abused spouse from the marriage. This will ensure that the standard of proof for establishment of a crime (that is, proof beyond reasonable ground) is maintained, whilst, at the same time, enabling the abused spouse to get out of the undesirable marriage without having to wait for a conviction, the processes for which he or she may have very little control, if any at all, over. This calls for and would entail that objective and representative evaluation and interpretation of legislative processes be undertaken.

The other problem with the provision is that it seems to recognize only extreme violence, like attempted murder or attempted unlawful homicide, or intentional infliction of grievous harm or grievous hurt, or the intent to inflict either. This leaves out a wide range of violence which the law does not seem to recognize for purposes of its granting a divorce petition. This would seem to accord with the view that assaults not occasioning harm are tolerable. Indeed, the *Penal Code*, on its part, in fact, allows the husband the right of reasonable chastisement of his wife⁹⁴ for corrective purposes. This view appears to have been judicially accepted, as can be seen from *Akinbuwa V. Akinbuwa*⁹⁵ and *Otti V. Otti*,⁹⁶ in which the **Court of Appeal (Benin and Jos Divisions)** respectively held that not all violence is intolerable, and that a minor assault for corrective purpose is pardonable.

⁹⁴ *Penal Code, ibid.*, section 51(1)(d).

⁹⁵ (1998) CA/B/6/94, 13 (Benin CA 1998).

⁹⁶ (1992) CA/J/164/89, 136 (Jos CA 1992).

Pertinent questions to ask are, how do we engage with and reverse gender conspired rulings? Who determines legal standards and procedures and who controls the change processes. What are the overt and covert interests of the lawyers and presiding judges? It would appear that rulings relating to marital relations have been informed by gender conspiracy geared towards maintaining powers that favour men and disfavour women.

With respect, no level of violence should be tolerable or acceptable. The husband is neither a parent to nor a teacher of his wife. So, who entrusted her correction to him, let alone correction by means of violence, called *chastisement*? Moreover, it is also necessary to draw attention to the fact that the marriage act does not include or specify corrective grounds in its contractual framework. Thus to apply the provisions of the penal code within a marital relationship is actually a violation of the terms of the marriage and a colouration of actions within the marriage as criminal in nature rather than social and deserving of punitive measures. Also, what is reasonable violence. Certainly, the idea of a husband been given a legal right to beat up his wife, in the name of correction, is certainly retrogressive, and clearly discriminatory. It is, in fact, derogatory of the right of a woman to her dignity as a human person.⁹⁷ Accordingly, the law should be amended⁹⁸ to make the ground for divorce incessant violence by the abusing spouse upon the abused spouse. This should be sufficient to make the marriage intolerable, and should be made to constitute a ground for divorce under section 15(2)(c).⁹⁹ In conclusion, the marriage act should be explicit in the definition of abuse and interpretation of violence so as to avoid situations where, legal proceedings and rulings are subject to the vagaries of presiding authority and in addition, reduce the possibility of professional conspiracy against weaker and under-represented group through a veiled protection of personal interests.

1.4.3. The *Child's Rights Act, 2003*

The *Marriage Act* fixes no minimum age for marriage. All that it fixes is the age below which parental consent is necessary, namely, the age of twenty-one years, in accordance with the above-quoted provision.¹⁰⁰ However, the *Child's Rights Act, 2003*¹⁰¹ has now fixed the minimum age for marriage at eighteen years.¹⁰²

⁹⁸ *Matrimonial Causes Act, ibid.*, section 16(e).

⁹⁹ *Ibid.*

¹⁰⁰ Section 18, *ibid.*

¹⁰¹ This was signed into law and became operative on 31 July 2003.

¹⁰² Section 21.

The implication of the intervention of the *Child's Rights Act, 2003* is that it has afforded the girl child protection from early childhood marriages¹⁰³ and early childhood betrothals,¹⁰⁴ both of which it now voids, and it now punishes both such marriages and betrothals with a fine of N500,000 or five years imprisonment, or both.¹⁰⁵ The country is yet to witness the full implementation of this act. Based on testimonies from child brides, there would be need to establish the degree of family and community pressure exerted on the girl-child to yield to early marriage arrangements. Thus the need for protective measures to enable the girl-child enjoy the provisions of the child act is critical to the successful implementation of this legislation.

Photo: NCWD Photo

Photo: NCWD Photo

¹⁰³ Section 21, *ibid.*

¹⁰⁴ Section 22, *ibid.*

¹⁰⁵ Section 23, *ibid.*

1.5 EDUCATION LAWS

The various Education Laws, including the *Universal Basic Education Act, 2003*, contain no discriminatory provisions against females/girls. However, in order to encourage girl-child education, increase enrolment and attrition rates resulting from arbitrary withdrawal rates and drop-out levels among females, *Affirmative Action* provision(s) can be inserted, which will assist in the implementation of the UBE scheme (process, although the issue may arise, as regards the boy-child, as to whether such provision(s) will not amount to a form of discrimination against him, contrary to section 42(2) of the *Constitution*.) Furthermore, there is need to create greater awareness on the established correlation between the level of mother's education and Infant Mortality Rates (IMR).

1.6. CHIEFTAINCY LAWS

Chieftaincy positions and matters play a huge role in determining and shaping social standards. It is however not a matter for Federal legislative competence, as it is neither on the **Exclusive Legislative List**¹⁰⁶ nor on the **Concurrent Legislative List**.¹⁰⁷ It is on the **Residual List**,¹⁰⁸ which belongs to the domain of States' legislative competence. Hence, there are no Federal Laws on chieftaincy matters. Available information and records indicate that chieftaincy laws, including appointment procedures and institutional practices, have tended to be discriminative on the basis of gender. The gender disparities in the number and role of women as compared to that of men in chieftaincy positions call

Photo: NCWD Photo

¹⁰⁶ *Constitution, ibid.*, **Second Schedule, Part I**, within the context of section 4(2)

¹⁰⁷ *Ibid.*, Part II, within the context of section 4(4)(a).

¹⁰⁸ *Ibid.*, section 7(c).

for a gender analysis of the traditional chieftaincy titles and their regulatory laws. Traditional councils comprising of chiefs, provide advisory and managerial services on development matters at the grassroots level. They also help to establish the framework for social and economic interactions at the community and sometimes state level. The almost total exclusion of women translates to their near total exclusion from governance and the social, economic and political systems that underpin good governance.

In practical terms, women and men are almost equally engaged in the operations of market systems especially in the informal sector. The exclusion of one set of voices, views and interests in the decision making processes have often resulted in the emergence and existence of inefficient and under-productive systems which in turn account for the persistent low levels of poverty in local communities of developing countries.

Due to the far reaching impact that chieftaincy laws have on the social fabric and level of development of a people, there is need to raise some key questions on the methodologies and guidelines that apply within the system such as:

Who constitutes the chieftaincy councils and what criteria are utilized to guide appointments and procedures? Who is most favoured by these provisions? Does it treat women and men as equal citizens entitled to basic rights and privileges? How does the current system perpetuate gender roles, stereotypes and division of labour? What privileges are conferred through chieftaincy titles? Are these extended to and enjoyed by women and men on an equal basis? What powers titleholders wield, how are they wielded and who are titleholders accountable to? Whose interests are protected or likely to be protected by titleholders? How has resistance to change been shrouded under the guise of cultural preservation?

Members of the Research Team at a session

2. CRIMINAL LAW

2.1 SUBSTANTIVE LAW

The Federal Criminal Law consists of the principal legislations of the Federal *Criminal Code Act*,¹⁰⁹ the *Penal Code (Northern States) Federal Provisions Act, 1960*,¹¹⁰ and the *Penal Code Act*,¹¹¹ which operates in the Federal Capital Territory, as well as the penal provisions contained in numerous Federal legislations in the various fields.¹¹²

2.1.1. *Criminal Code.*

As regards the *Criminal Code*, the provisions relating to the following offences and defenses will be considered, namely, **conspiracy**,¹¹³ **accessory after the fact**,¹¹⁴ **defence of spousal status to the offence of stealing**,¹¹⁵ **indecent assault on males**¹¹⁶ **and females**,¹¹⁷ and **provocation**.¹¹⁸ These shall now be treated *seriatim*.

2.1.1.1. Spousal Exemptions in Criminal Law

These defenses of **Spousal exemption** is applicable to both offences of **conspiracy** and **stealing**, when the property which is the subject-matter of the offence belongs to the spouse of the offender, with whom the offender was living at the time of the stealing.

(a) Conspiracy

The *Criminal Code* provides:

¹⁰⁹ Cap. C38, Vol. 4, *Laws of the Federation of Nigeria, 2004*.

¹¹⁰ Cap. P3, Vol. 13, *Laws of the Federation of Nigeria, 2004*, which, by its section 6, repealed the provisions of Cap. C38, in relation to the Northern States.

¹¹¹ Adapted from the *Penal Code of Northern Nigeria, 1959*, Cap. 89, *Laws of Northern Nigeria, 1963*.

¹¹² This by virtue of section 2 of the *Criminal Code*, Cap. C38, *Ibid.*

¹¹⁴ Cap. C38, *ibid.*, section 10.

¹¹⁵ *Ibid.*, section 36.

¹¹⁶ *Ibid.*, section 353.

¹¹⁷ *Ibid.*, section 360.

¹¹⁸ *Ibid.*, sections 283, 284 and 285.

*A husband and wife of a Christian marriage are not criminally responsible for a conspiracy between them alone.*¹¹⁹

*Christian marriage has been defined to mean a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others.*¹²⁰ This means a legally monogamous marriage.

Therefore, the above provision, based upon the **legal fictional unity** of the person in a husband and a wife of a monogamous marriage, means that, as one person, neither the husband nor the wife could agree with himself or herself, where the two of them are acting alone, since they are both deemed to be only one person. However, the bottom line, in practice, is that this defence of spousal exemption has been created only for the husband and wife of a legally monogamous marriage.

The question, however, arises, why limit the defence to only a wife of a monogamous marriage? Why should a wife of a Customary Law marriage or an Islamic Law marriage not be entitled to the same sort of protection as has been accorded to the monogamous wife? What are the links between Islamic marriage law and the marriage act. Since Christian marriages recognize and defer to the marriage act how do we draw a parallel between Christian and other marriages if they do not hold the same views and are not guided by the same provisions. Some African countries e.g. Burkina-Faso, Egypt uphold the pre-nuptial rights of intending couples to decide the type of Islamic marriage they would contract. Does this apply to Islamic marriages in Nigeria? Do all Islamic operate under the same legal provisions in the typology of the marriage union/relationship? The provisions have obviously discriminated against wives of Customary Law and Islamic Law marriages. Serious and urgent consideration, therefore, need be given to the extension of this protection to wives under the two polygamous systems of marriage identified above. The historical basis of the legal fiction of unity between the husband or a wife of a monogamous marriage can no longer be allowed to differentiate here between monogamous and polygamous marriages, particularly as the myth of this legal unity has been exploded in many other areas. We know that the intentional unlawful killing of a wife by her husband is not suicide, but murder. Where then is the unity of the person? Does this analysis and proposed options find correlation in other systems? efforts should be made to standardize gaps in existing laws that are on equal platforms. the codification of customary laws and alignment of Islamic marriage laws with the provisions of the marriage act might be more progressive than a request to water down the marriage act so as to bring it to par with other marriage laws that are less documented and standardized. Careful thought should be given to the comparative gains of pursuing proposed changes before advocacy around them are initiated.

¹¹⁹ The *Criminal Code*, *ibid.*, section 34.

¹²⁰ Section 1(1), *ibid.*

(b) Stealing

The *Criminal Code* provides:

When a husband and wife of a Christian marriage are living together, neither of them incurs any criminal responsibility for doing or committing to do an act or omission of which an intention to injure or defraud some other person is an element, and except in the case of an act done by either of them when leaving or deserting, or when about to leave or desert, the other.

Subject to the foregoing provisions a husband and wife are, each of them, criminally responsible for any act done by him or her with respect to the property of the other, which would be an offence if they were not husband and wife, and to the same extent as if they were not husband and wife.

But in the case of a Christian marriage neither of them can institute criminal proceedings against the other while they are living together.

*In this section, the term **property** used with respect to a wife means her separate property.¹²¹ It generally stems from the customary belief that payment of bride-price confers on the man, property rights over his spouse. The law needs to be explicit, in letter and practice, about the true meaning and purpose of bride price to deter husbands from claiming rights that translate to practices akin to slavery and ownership of human persons.*

The tenet of the provisions here is that, whilst husband and wife are still living together, none of them can be guilty of stealing each other's property. Again, the problem here is virtually the same as that of the spousal defence to the offence of **conspiracy** or, as will soon be seen, in the offence of **being an Accessory After the Fact** because of the limitation of the defence protection to the husband or wife of a Christian marriage. Again, the view here is that the provisions are discriminatory against the spouse of a polygamous marriage, and the protection should also be extended to her as well.

(c) Accessory After the Fact

The *Criminal Code* provides:

A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment, nor by receiving or assisting in her husband's presence and by his authority, another person who is guilty of an

¹²¹ *Ibid.*, section 36.

offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

*In this section, the terms **wife** and **husband** mean respectively the wife and husband of a Christian marriage.*¹²²

Here again, the provisions exempt a wife of a monogamous marriage from criminal liability where she receives or assists her husband to escape punishment for an offence known to her to have been committed by him. The *raison de'tre* here is that a wife is naturally expected to behave in such a way towards her husband. The question, therefore, arises: Why is such a natural behaviour not to be expected from the wife of a polygamous marriage? Clearly, there are some illegitimate assumptions at play here, and the law should be amended to extend such a defence/protection to the wife of a polygamous marriage, who is currently being discriminated against by these provisions, as they currently stand.

2.1.1.2. Indecent Assaults on Males and Females

The *Criminal Code* further provides as follows:

Any person who unlawfully and indecently assaults any male person is **guilty of a felony, and is liable to imprisonment for three years.**

*The offender cannot be arrested without warrant.*¹²³

It also provides:

*Any person who unlawfully and indecently assaults a woman or girl is **guilty of a misdemeanour, and is liable for imprisonment for two years.***¹²⁴

The issue here is that the earlier-quoted provision of the *Criminal Code* punishes the offence, when it is committed upon a **male victim, a felony, punishable with a term of three years imprisonment**; whereas, where **a female is the victim, the Code punishes the offence as a misdemeanour, with a term of imprisonment for only two years.** This means that the *Code* protects the man with a much more serious punishment than it provides for the protection of the woman victim. Yet again, there can be no justification for requiring a greater degree of protection for male victims than is provided for female victims of indecent assault. If, at all, there should be any difference in the punishment of offenders, then the protection afforded to females should have been the greater one. The distinctions between felony and misdemeanor simply on the basis of the sex of the victim tends to trivialize the personal worth, human dignity, social worth and asset of female citizens in comparison to that of the males.

¹²² *Ibid.*, section 10.

¹²³ *Ibid.*, section 353.

¹²⁴ *Ibid.*, section 360.

2.1.1.3. Provocation

Provocation is a defence which is applicable to *an offence of which an assault is an element*.¹²⁵ There are roughly about nine elements of this defence,¹²⁶ although their number may vary, depending upon which offence one is actually examining. However, for the purpose of this **Project**, only two of these elements can be said to be gender significant, namely, the **reasonable man (including the application of the class or status) test** and **spontaneity**. The element of **proportionality** has not been found to be gender significant.

The two element can now be examined *seriatim*.

(a) Reasonable Man (Class or Status) Test

In the **case law** on **provocation**, the test of the **reasonable man** has developed, over the years, to recognize the **class or status** of the offender. Thus, it was held in *R. V. Adekanmi* that the court must consider the effect which the **wrongful act or insult would be expected to have on a reasonable man of the accused's standard in life**.¹²⁷ Thus, the status of the appellant as an **uneducated peasant farmer** was taken into consideration, just as the status of an **illiterate peasant husband** was also taken into account in *R. V. Igiri*.¹²⁸ However, such easy excitability was denied to the appellant who was an **educated graduate** in *Oladiran V. State*.¹²⁹ Also, the **Class or Status test** was extended to cover **youth/childhood**, as a class in *D.P.P. V. Camplin*.¹³⁰

However, the issue of considering **woman** as a **class** was not confronted in the various cases involving domestic violence, which have come before the courts. Rather, the courts have been seeking to apply either the **principle of cumulative provocation** or that of **diminished responsibility** suffered by the women appellants in those cases. Thus, in *R. V. Ahluwalia*,¹³¹ the Court hinted at the possibility of

¹²⁵ *Ibid.*, section 283.

¹²⁶ Section 283 and 284, *ibid.*

¹²⁷ (1944) 17 N.L.R., 99.

¹²⁸ (1948) 12 WACA, 377.

¹²⁹ (1986) 2 NWLR, (Pt. 14), 75.

¹³⁰ [1978] AC 705 ; [1978] 2 All ER 168 ; [1978] 2 WLR 679.

¹³¹ (1993) Crim. L. R. 83.

accepting a **cumulation of provocative acts, as in domestic violence**, to ground the defence of provocation,¹³² although it ultimately quashed the conviction and ordered a retrial on the basis of evidence which might establish diminished responsibility. It might be helpful to consider what the chances of women as a class case succeeding. Are there any precedents or case studies? If the legal system remains the same, what are the probabilities or guarantees of the case succeeding in stimulating change?

In *R. V. Thornton (No. 2)*, the Court held that the **defence of provocation** was established on the basis of the establishment of **diminished responsibility** on the bases of her suffering from personality disorder and the battered woman syndrome.¹³³

However, it is suggested that the law should consider **womanhood** as a **class**, just as **youth/childhood** was considered in *D.P.P. V. Camplin*.¹³⁴ The reason for this suggestion will become apparent from the arguments raised in the **next element** of the **defence of provocation** to be considered, namely, **spontaneity**.

(b) Spontaneity

The classical rule in provocation is that the **reaction to the provocation** must be *on the sudden and before there is time for his passion to cool*.¹³⁵ However, the **doctrines of continuing provocation** and, **cumulative provocation** were established in *Parker V. Queen*¹³⁶ in 1964, and the latter now seems to continue to receive the courts' acceptance to the point that they are now prepared to take into account everything which the **deceased/victim has said or done over the preceding years without limitation of time**; and the court, therefore, is also prepared to take into account an **eight-year history of violent conduct by the deceased towards his younger son in considering the case of the older son, who had spent most of his time away from home**.¹³⁷ And in *R. V. Ahluwalia*,¹³⁸ the court held that it was open to the judge, when leaving the issue of provocation to the jury, **take account of the interval between the provocative conduct and the reaction of the defendant to it**. And reacting to Counsel's submission in the case that delay or a *cooling-off-period* might cause a defendant to react more strongly, in a *slow-burn* case, the Court held that **lapse of time would not necessarily negate the defence of provocation**, but that the longer the delay, the more likely it was that the defence of

¹³² Cumulative provocation principle was first established in *Parker V. Queen*, [1964] 3 WLR, 10. But it was also considered by rejected in *R. V. Thornton* (1993) 96 Cr. App. R. 112.

¹³³ (1996) 2 Cr. App. R. 108.

¹³⁴ *Op. Cit.*

¹³⁵ Section 119, *ibid.* See *R. V. Green* (1955) 15 WACA, 73, and *Stephen V. C. O. P.* (1986) 5 NWLR, 57.

¹³⁶ *Op. cit.*

¹³⁷ *R. V. Pearson* (1992) Crim, L. R., 194.

¹³⁸ *Op. cit.*

provocation could be negated. It would seem that in cases of delay, either or both of **continuing cumulative provocative acts** would need to be present for the defence to be successfully pleaded despite lack of spontaneity.¹³⁹ How does this argument/ observation apply in favour or disfavour of domestic violence and cumulative marital battering?

(c) Proportionality

The element of **proportionality**¹⁴⁰ has not been found to be gender significant, and will, therefore, not be discussed any further for purposes of this Project.

2.1.2. Penal Code

2.1.6.1. Reasonable Chastisement of a Wife By a Husband

The *Penal Code*¹⁴¹ provides:

Nothing is an offence which does not amount to infliction of grievous hurt upon any person and which is done by

*(d) A husband for the purpose of correcting his wife such wife and husband and wife being subject to any native law or custom in which such correction is recognized as lawful.*¹⁴²

How is the marital relationship defined? Why need the consent of two adults(parties) at the point of contracting the marriage when the law would in contradiction, turn around and grant/confer disciplinary powers on one over the other of the two consenting parties? What is the rationale for such contradictions? Would two adult parties enter willingly into the marriage contract under such glaringly unequal terms? Does the law imply that one party is a chattel or property of the other?

In this day and age, this is a rather scandalous provision, in which a less brutal form of wife battering finds legal justification. With respect, such a flagrant violation of the rights of the woman should not be legally permitted, as it violates the women's right to the sanctity and the dignity of her person, which must amount to a degrading treatment.¹⁴³ The current legal provisions could be faulted and call for review from the following deductions that it:

¹³⁹ As in *Parker V. Queen, ibid.*

¹⁴⁰ *Criminal Code*, section 284, *ibid.*

¹⁴¹ 1959, *ibid.*

¹⁴² *Ibid*, section 55(1)(d).

¹⁴³ *The Constitution, ibid.*, section 34(1)(a).

Presumes that once a wife is disciplined, then the union would work better or be more functional

Assumes that women or the wife has sub-human reasoning or learning capacity which calls for sub-human chastisement modalities which is equivalent to the treatment of domestic animals and pets

Fails to recognize the basic human rights of women

2.2. ADJECTIVAL LAW

2.2.1. The *Evidence Act, 1945*, provides¹⁴⁴ that –

A person shall not be convicted, on the uncorroborated testimony of only one witness, of any of offences uttering a seditious word,¹⁴⁵ defilement or attempted defilement of a girl under the age of thirteen years,¹⁴⁶ or of a girl above thirteen years but below sixteen years¹⁴⁷ or of a woman or girl who is an idiot,¹⁴⁸ or procurement of a woman or girl under eighteen years to have unlawful carnal knowledge of her,¹⁴⁹ to become a common prostitute,¹⁵⁰ *to leave Nigeria to become an inmate of a brothel elsewhere,*¹⁵¹ *or to leave her usual place of residence to become an inmate of a brothel for purposes of prostitution,*¹⁵² *and procuring the defilement of a woman or girl by threats or intimidation,*¹⁵³ *by false pretence*¹⁵⁴ *or by administering a drug or any other stupefying thing.*¹⁵⁵

The provision here is simply repeating the requirement of corroboration stipulated by each offence-creating provision of the ***Criminal Code***. Hence, it is really not adding anything to those provisions, as it merely repeats the requirement of corroboration for the respective offences.

The main issue here, however, is that, whilst virtually all other serious offences, even murder, require no such corroboration, with the exception of sedition, all the other offences, which require corroboration have women or girls as their victims. This requirement definitely weakens whatever

¹⁴⁴ Cap. E14, Vol. 6, *Laws of the Federation of Nigeria, 2004*, section 179(5)

¹⁴⁵ *Criminal Code, ibid.*, section 51(1)(b).

¹⁴⁶ *Ibid.*, section 218, the last paragraph of which provides: *A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.*

¹⁴⁷ *Ibid.*, section 221 (1).

¹⁴⁸ Section 221 (2), *ibid.* Again, section 221 requires corroboration.

¹⁴⁹ *Ibid.*, section 223 (1) section 223 creates offences requiring corroboration, by virtue of its last paragraph.

¹⁵⁰ Section 223(2), *ibid.*

¹⁵¹ Section 223(3), *ibid.*

¹⁵² Section 223(4), *ibid.*

¹⁵³ Section 224(1), *ibid.*

¹⁵⁴ Section 224(2), *ibid.*

¹⁵⁵ Section 224(3), *ibid.* Again, the three offences require corroboration.

protection the offence-creating provisions must have envisaged for the woman or girl.¹⁵⁶

Further, the protection provided for the female has been further assailed, in relation to rape, by the following provision:

*When a man is prosecuted for rape or for attempt to commit rape or for indecent assault, it may be shown that the woman against whom the offence is alleged to have been committed was of a generally immoral character, although she is not cross-examined on the subject; the woman may in such a case be asked whether she has had connection with other men, but her answer cannot be contradicted and she may also be asked whether she has had connection on other occasions with the prisoner, and if she denies it she may be contradicted.*¹⁵⁷

One may then ask the question: Who is on trial : is it the accused person who is alleged to have criminally victimized the prosecutrix, or is it the prosecutrix who was the victim of the crime ? The unfairness of this situation can be seen when one compares it with situations in other offences, where the accused person's character, including his previous criminal behaviour, cannot be put in evidence, unless he puts it in himself. Trial procedure should not be conducted in a manner, which will make the prosecutrix become secondarily victimized. Neither should the protection of the law for a woman against rape, which is a serious offence, be so weakened by such procedural approach. It should be clearly understood that even a prostitute has the right, at any given moment, to decide upon whose sexual advance she wants to welcome and consent to or refuse. Also, even previous sexual relationship between a man and a woman cannot take away the right of a woman to decide whether or not, at any given moment, a woman wishes to consent to or refuse the sexual advance of the same man. Consequently, the provision is unduly oppressive of a prosecutrix and should be repealed.

The **Evidence Act** further provides :

*When a person is charged with an offence other than one of those mentioned in the preceding subsection the husband or wife of such person respectively is a competent and compellable witness but only upon the application of the person charged.*¹⁵⁸

This provision on **competence and compellability** with regard to the wife of a monogamous marriage is discriminatory against the wife of a polygamous marriage (that is, a Customary Law or Islamic Law marriage, because the wife of a polygamous marriage can be compelled by the Prosecution to testify against her husband, even when her husband objects to her testifying – a situation from which the wife of a monogamous marriage is protected.

¹⁵⁶ See *Olaleye V. State* [1970] 1 All N. L. R. , 300 ; see also *State V. Ogwudiegwu* [1968] N. M. L. R., 113.

¹⁵⁷ *Evidence Act*, *op. cit.*, section 211.

¹⁵⁸ Section 161(2), *ibid.* However, *wife* and *husband* have been defined in section 2 to *mean respectively the wife and husband of a monogamous marriage.*

Again, nothing in section 161 shall make a spouse of a monogamous¹⁵⁹ or Islamic¹⁶⁰ marriage compellable to disclose communication made to him or her by the other spouse during the marriage. These provisions have resulted in protecting spouses of monogamous and Islamic marriages from being compellable to disclose communication between them during marriage; whilst no such protection has been extended to the wife of a Customary Law marriage, who can be compelled to disclose such spousal/ marital communication.

2.2.2. Interpretation Act

The *Interpretation Act, 1964*¹⁶¹ provides:

In an enactment –

- (a) words importing the masculine gender include females;
- (b) words in the singular include the plural and words in the plural include the singular.

This means that females are subsumed within males. One may ask, why not both ways as was done with singular and **plural**? The provision denotes the mentality of the secondary status of women. Which clearly violates the provisions of the international bill of human rights for all. Such a mentality is certainly unbecoming to any people, having regard to the developments in the rights of women, bearing in mind that *CEDAW* provides:

States Parties undertake:

- (a) To embody the principles of the equality of men and women in their national constitutions or other appropriate legislation and to ensure, through law and other appropriate means, the practical realization of this principle.¹⁶²

It is hoped that Nigeria will ensure the realization of this principle soonest.

¹⁵⁶ See *Olaleye V. State* [1970] 1 All N. L. R. , 300 ; see also *State V. Ogwudiegwu* [1968] N. M. L. R., 113.

¹⁵⁷ *Evidence Act, op. cit.*, section 211.

¹⁵⁸ Section 161(2), *ibid.* However, *wife* and *husband* have been defined in section 2 to mean respectively the wife and husband of a monogamous marriage.

B. STATE LAWS

1. INTRODUCTION

It is commonly observed that the Nigerian woman is discriminated against right from birth, through childhood and adolescence, into adulthood, marriage widowhood and, sometimes, even, death. Although the **right to freedom from discrimination** is guaranteed by the *Constitution*, such guarantee is not necessarily specifically guaranteed in legislations, as well as in *Customary Laws, Polices and Practices*, as discriminatory situations against women have been found to be still existing. Hence, the need to identify the discriminatory *legislative provisions customary laws and practices* that still exist within States, with a view to addressing them, in order to improve the situation for women.

Nigeria is politically divided into **Six Geo-political Zones**, comprising **thirty-six States** and the **Federal Capital Territory**. The **Six Geo-political Zones** are, namely: **North-East, North-West, North-Central, South-East, South-West and South-South**. Being a multi-ethnic, multi-religious country, the discriminatory laws and practices against women vary from one part of the Country to the other. For instance, the **Northern Zones, which** operate the old *Penal Code*, enforce provisions, which contain elements of *Sharia Law*, and with the introduction of democracy in 1999, **twelve States** of the **Northern Zones** adopted the *Sharia Law* as part of their **Criminal Law**, through the adoption of *Sharia Penal Codes*.¹⁶³ The **Southern Zones**, on the other hand, operate the *Criminal Code*, and *Customary Laws*. However, throughout Nigeria, the various communities adopt various *Customary Laws and Cultural Practices*.

This **Report** covers **State laws** of the **Six Geo-political Zones** of Nigeria, based on data collected from **four States from each Geo-political Zone**, making a total of **twenty-four (24) States** covered.

2. CIVIL LAW

In all the States of the Country, there are some specific laws, which have been found to be overtly/intentionally discriminatory against women and children, particularly, the girl-child in spite of the existence of federal laws to the contrary. Thus one wonders which laws have superiority of power, when local discriminatory laws hold greater sway than federal laws.

2.1. POLITICAL LAWS

Although there are no discriminatory legislations against women in politics in all the States visited. Nonetheless, the level of political participation by women is still generally low as a result of discriminatory institutional and organizational practices by political organs and party systems which promote systemic and entrenched barriers to women's full and equal participation in political development.

¹⁶³ See, for example, the **Zamfara, Kaduna Sokoto, Kebbi, Katsina, Kano**, etc., *Sharia Penal Codes*..

In the **North**, women are often denied political appointments, and the environment is not conducive for their participation in the processes for elective positions. For instance, in **Gombe State**, **there is only one woman Commissioner, one Permanent Secretary and no female Caretaker Committee Chairperson at the local levels**. The implication of such set-up is that women have little or no place in the public and political life. They are therefore tactically deprived of public career regardless of the skills and expertise they may have and the contribution they are capable of making to socio-economic growth and development.

In some Southern States, the situation is not different. For instance, in **Rivers State**, **a woman aspiring for leadership position must go back to her state of origin**. However, in the **South West**, the situation is quite different, as most of the **Permanent Secretaries and Directors in the various Government Ministries are women. But they have very few women Commissioners. However, in many of the States in Nigeria, women fare much better in the Judiciary, where there are many Judges and Magistrates on the Bench, with about six female Chief judges of the State High Courts.**

2.2. POLICE REGULATIONS

Police is a Federal Institution and everything discussed in relation to this matter at the Federal level apply in the States.

2.3. ECONOMIC LAWS

2.3.1. Tax Laws

Generally all over the Country, women pay higher taxes than their male counterparts. The discussions at the Federal level also apply to the States. Women in the various States have claimed that they paid a higher per centage of their income in taxes than their male counterparts, and that the laws and practices here are discriminatory against women.

However, among the **Mbula** and **Bachama** people of **Numan LGA** of **Adamawa State**, women above 50 years of age and unmarried women are exempted from paying tax, on the ground that they are presumed to be of little income. Here, men pay higher taxes. But in **Bauchi State**, it was discovered that there is a **State Policy of PAYE** which stipulates higher taxes for female civil servants, who are denied tax deductions because they are perceived not to have responsibilities. This perception applies to other **Northern States** as well, except in cases of those above 50 years and unmarried women in **Numan LGA** of **Adamawa State**.

2.3.2. Labour Law

Generally, there are no discriminatory **labour Laws** against women in the States, as the **Labour Act** is a Federal legislation. But, in practice, pregnant women are refused jobs, or in some cases, even lose their jobs mainly because of their pregnancy. In some financial institutions, married women are not offered employment at all, and even when they are employed, they are given conditions not to get

pregnant for the first three years of their employment. Most revealing was in the Agricultural Sector, where women claim that women are paid at a rate equal to only one third of the pay for their male counterparts. And, even, some jobs are still reserved for men.

Although maternity leave is granted for a period of 12 weeks (84 days), both in the Public and Private Sector employment, to women who are about to put, or have put, to bed, the regulation stipulates that whenever a female officer undertakes her annual leave before the maternity leave, she will normally forfeit her salary for that period of annual leave. When she goes on maternity leave first, she forfeits her annual leave.

Most **respondents** from **Northern Nigeria** opined that there is discrimination against women in promotion to decision-making positions.

In the **Private Sector**, this Study found the issue of rent and medical facilities discriminatory. The regulation stipulates that a female officer, who would otherwise be eligible to receive a rent supplement, but is married to an officer who already draws a rent supplement, is excluded from receiving rent supplement herself.

Similarly, the children of female employees are not deemed to be entirely dependent on her unless the father of the child is dead, or a court has granted custody to the mother in the event of a divorce or separation, or she can show sufficient proof that her husband is physically and/or mentally incapacitated.

This is discriminatory, as some women's husbands are physically and mentally not incapacitated, but they have no jobs, and the wives are the sole breadwinners for the family. . In recent times, rural-urban drift and enhanced skills/income level has resulted in more women assuming the role of de-facto heads of households. To therefore refuse to extend the rights to medical care to family members under such circumstances would be painfully discriminatory.

Moreover, there are no specific regulations prohibiting women from owning enterprises. However, no enduring policies are put in place to encourage them to start their own businesses. The provision of tax relief, incentives and low interest rate loans would greatly enhance women's ownership and management of enterprises.

2.3.4. Others

It was discovered that in the **North-Eastern States** women are not given *Professional driving licenses*.

2.4. PROPERTY LAW

The *Oyo State Married Women's Property Law, 2000*, in section 3, recognizes a woman's capacity to acquire, hold and dispose of any property, and have personal liability in respect of contractual matters. This also obtains in the **South East**, and is provided for in *Married Women's Property Law, 1994*. However, in **Kaduna**,¹⁶⁴ **Sokoto**¹⁶⁵ and **Zamfara**¹⁶⁶ **States**, only married women are allowed to acquire, hold and dispose of any immovable property or interest in them. A single/unmarried woman is not allowed to do so. In the **North-Central States**, men and women have equal rights to own movable and immovable properties. But in **Rivers State**, their laws provide that only women married under the *Act* can own property on their own.

2.5. MARRIAGE LAWS

Marriage laws vary from one State to another. In the **North-Eastern, North-Western and North-Central Zones**, girl-child marriages, without the girl's consent, was found to be predominant. This practice is assumed to be both Islamic and cultural. There are laws prohibiting this practice. But they are, usually, not enforced. However, in **Sokoto, Zamfara, and Kaduna State**, the *Infants Law*¹⁶⁷ encourage child marriage and infant marriage settlements. These practices are known to promote high dependency ratio within families, lower literacy rates which in turn contribute to high IMR and MMR.

However, in the **South-South, South-West and South-East**, only adults, who have consented, can get married. In the **South-East**, *Age of Marriage Law, 1956*¹⁶⁸ is aimed at regulating the age of marriage and the limitation of dowry payable in customary law marriages. It provides for the nullity of marriages of persons under sixteen years, and for limitation of dowry and incidental expenses to sixty naira (N60). It further criminalizes and penalizes contravention of the provisions.

2.6. EDUCATIONAL LAWS

The various education laws are not discriminatory. The **Universal Basic Education Scheme** is being implemented in many of the States. In most of the States visited, there are legally backed policies to promote girl-child education, in order to make for the past neglect of female education. For instance, in **Bauchi State**, the *Withdrawal of Girls from School for Marriage (Prohibition) Law*¹⁶⁹ and the *Juveniles Accompanying Koranic Mallams Law*¹⁷⁰ are already in existence.

¹⁶⁴ *Kaduna State Laws, 1991.*

¹⁶⁵ *Married Women's Property Law Cap 91, Laws of Sokoto State, 1996.*

¹⁶⁶ *Married Women's Property Law Cap 91, Laws of Sokoto, 1996 currently applicable in Zamfara State..*

¹⁶⁷ Cap. 68, *Laws of Sokoto State, 1996 currently applicable in Zamfara as well as Cap 65, Laws of Kaduna State, 1991*

¹⁶⁸ E.g., Cap. 6, *Laws of Eastern Nigeria, 1963.*

¹⁶⁹ No. 17 of 1985, *Laws of Bauchi State.*

Similarly, Ebonyi State in the South East Zone, enacted a law making education from primary to junior secondary school free and compulsory.¹⁷¹ It also has a law banning hawking for school-age children.¹⁷² However, the enforcement of these legislations are not quite effective, as, for instance, sudden loss of parents often leads to the girl-child being withdrawn from school in some South-South States. In the Northern States too, girls are still being withdrawn from schools for marriage, despite the laws in all the Northern States to the contrary.

2.7. CHIEFTAINCY LAWS

There are no laws restricting women's participation in chieftaincy affairs in any of the States visited. Women, however, are still generally sidelined in chieftaincy affairs. In most communities, especially in the **North-East and North-Central-States, women are appointed to leadership positions in the traditional set-up, albeit insignificant ones.** In the **South-West, women are appointed to Chieftaincy positions which entitle them to sit in the King's Council, although their number is smaller than the number of their male counterparts on the Council.**

3.0. REPRODUCTIVE RIGHTS

Apart from Edo and Rivers States, there are no laws on reproductive rights in the whole country. But efforts are being made to enact such laws. Edo State has a law called the *Maternal Mortality Monitoring Law, 2001*,¹⁷³ which empowers every hospital in the State to report pregnancy, births, deaths of mothers and children. While River State has a bill for a law providing free Reproductive Health Services in government owned hospitals.

4.0. CRIMINAL LAW

The Nigerian criminal law has some provisions dealing with women and children.

Generally, as the *States' Criminal Codes* in the **Southern States** replicate the provisions of the *Federal Criminal Code*. Therefore, all the discussions of the *Federal Criminal Law* are equally **applicable in all the Southern States.** The earlier discussion on the *Penal Code*, which is **replicated in all the Northern States, equally apply as regards the right of the husband to reasonably chastise his wife.**

However, the adoption of *Sharia Laws* by some **Northern States** has provided alternative laws to the provisions of the *Penal Code*. But then, crimes of **adultery** and **fornication** are offences that can be committed by both male and female perpetrators. However, the rules for proving these offences require either a confession on the part of the perpetrators or evidence of four eye-witnesses, which is near impossible. However, pregnancy by a single woman is evidence of fornication. Thus, as the law

¹⁷⁰ Cap 76, *Laws of Bauchi State*.

¹⁷¹ Free and Compulsory Primary and Secondary Education.

¹⁷² *Law, 2000 – Ebonyi State*.

¹⁷³ This *Law* came into operation on 7 March 2001.

stands, it is possible to prosecute and convict a female fornicatrix, without convicting her male partner, where that male partner denies the allegation, as he can be convicted then only on the evidence of four eye-witnesses, who are most unlikely to be available. The law should explore the use of DNA testing to ascertain paternity of babies resulting from controversial pregnancies. This would allow the state/law to be equitable in its treatment of adultery and fornication crimes.

4.1. Conspiracy

Because of the multiplicity of partners in marriage in most **Northern communities**, some elements of *criminal law e.g. conspiracy*, which ordinarily should apply to spouses, are not provided for. In the **South-South, South-West and South-East Zones**, the *Criminal Code* provides that there is no conspiracy between husband and wife of a marriage under the *Act*.¹⁷⁴ However, persons married under native law and custom can be guilty of conspiracy committed between them alone. Thus, the husband and wife of a customary law marriage do not have the protection available for the couple of a marriage under the *Act*. It is recommended that the spousal exemption for conspiracy should also be extended to wives of Customary law and Islamic law marriages, except where the conspiracy is against another wife or the child of another wife.

5.0. ADJECTIVAL LAW

5.1. INTERPRETATION LAWS

The existing *Interpretation Act* is Federal, and it applies in the whole Country. It is gender insensitive. It does not acknowledge the existence of the woman. For example, *man* includes *woman*. But *woman* does not include *man*. The States have also legislated similar laws in their States. Thus, section 27 of the *Interpretation Law of Akwa Ibom State*¹⁷⁵ provides that *words importing the masculine gender shall include the feminine gender*, just like the Federal Legislation.

5.2. LAW OF EVIDENCE

The *Evidence Act* is a Federal law, and it applies in all the States. The requirement of corroboration in sexual offences against women and juveniles makes it difficult to prosecute those cases successfully. In most **Northern States** of the Federation, for instance, in cases relating to rape, existing laws overrate the evidence of the man over and above the woman's.

Further, much to the disadvantage of female victims of rape, trials are currently being conducted in the open court, a practice which results in their being stigmatized, and consequently, being secondarily victimized. As a result, legislations are currently being proposed, which will enable rape offenders to undergo their trials in Chambers, in order to avoid such secondary victimization of the victims.

¹⁷⁴ *Marriage Act*, Cap. 218, *Laws of the Federation of Nigeria, 1990*.

¹⁷⁵ Cap 64 of the *Laws of Akwa Ibom, 2000*.

The Islamic law of evidence also implies that two female witnesses cannot credibly prove a claim without the evidence of a male witness.

CONCLUSION

The States visited, being part of the 36 States that make up the Federal Republic of Nigeria, are already under the Federal Laws and are subject to legislations under the **Exclusive and Concurrent Legislative Lists**. However, reports from the States indicated that States have found cause to also legislate and enact laws on matters on the **Concurrent List**, such as **Civil, Criminal and Adjectival laws**.

In some of the **Northern States**, certain **State laws discriminate against women by expressly excluding the operation of the principle of non-discrimination to such laws**. Even, where the laws provide for protection of the rights of the woman, the provisions are not properly enforced.

There is a preponderant view that in **Southern Nigeria**, **there has been a conscious legislative activism towards the recognition of the right of women and children, although there is still considerable room for improvement**.

Photo: NCWD Photo

C. LOCAL GOVERNMENT BYE-LAWS

1. INTRODUCTION

Nigeria operates the 3 tiers of government – Federal, State and Local Governments. The Local Government is the third tier of government, and is the nearest to the grassroots. The Local Government areas are headed by elected Chairpersons and Councillors that serve in the Cabinet at the Local Government level.

Nigeria officially has 774 Local Government Areas out of which 148 were covered for the purpose of this Study, which entailed the compilation of the laws enacted by the Local Government Councils, which are known as the *Local Government Bye-Laws*.

In addition to compiling the *Bye-Laws* in all the Local Government Areas, in-depth interviews were conducted with 517 respondents, comprising of 43.1% male and 56.9% females, within the age group of 16-70. The educational level of respondents varied from illiterates to those who have completed tertiary education, who constituted about 50% of the total respondents. 72.2% of respondents were employed by either Government or the Private Sector; while 27.8% of respondents were self-employed. The income level of respondents ranged from No income to over N1 million in a month. However, the majority of respondents fell into the N20,000 to N50,000 per month income level. 20.5% of those interviewed were single; while 69.1% were married, and the remaining percentage represents divorced or widowed respondents. 62.3% of respondents were Christians, 35.8% were Muslims; while 2% belonged to traditional religion found in the South-South Zone of the Country.

Legal Advisers at the Local Government Areas disclosed that most of the laws were gender sensitive. These laws regulate transactions discussed in the areas below

2.1. CIVIL LAW

The various Local Government Bye-Laws in the Country have been enacted in respect of quite a number of matters, including the following:

1. Licensing
2. Acquisition of Shops
3. Tax
4. Indigeneship

The findings from the Study from the **Six (6) Geo-Political Zones** in Nigeria can be harmonized under the above-listed sub-heads as follows:

2.1.1 Licensing

Generally, the Local Government grants licenses, for a fee, to any person who applies for anything that needs licence, e.g. bicycle licence, whether male or female. It was reported from all the Zones that laws controlling the issuance of all licences are not discriminatory against women.

2.1.2 Acquisition of Shops

The *Revenue Bye Laws* that govern sales and allocation of shops are not discriminatory. In all the Zones, as long as women apply and fulfill all the requirements needed, they are normally given shops by the Local Government Authority.

2.1.3. Tax

The Local Governments do not initiate collection of taxes, as this is a Federal issue. However, the Local Government levies persons residing within their constituencies as a means of revenue generation. It was found that, even though the provisions of the *Personal Income Tax Act, No. 104 of 1993*, which is a Federal Act, provides for equality in the deductible allowances for both men and women, it is hardly adhered to in the Local Governments, which often engage in **discriminatory practices against women**, whenever they collect income tax from them. However, **variations exist at the zonal level**. In terms of enforcement in the **South East Zone, women are generally exempted from payment of taxes on the assumption that a woman does not earn an income. However, female government workers do not enjoy this exemption.** *In reality, such exemptions* preclude women from public and political aspirations as tax payment are electoral pre-requisites/criteria for running for public office.

In the **South West Zone**, Bye-Laws on Local Government levies are considered to be gender sensitive. However, **women are exempted from taxes in Ibadan North Local Government, even though some respondents commented that this amounted to discrimination against men.** Another situation that is worth mentioning is the case of **Numan Local Government Area of Adamawa State in the North East Zone, where women above the age of 50 years and unmarried women are exempted from paying any tax.** The implications of such apparently protective laws is the collective exclusion of women of certain age brackets from public life and political aspirations.

2.1.4. Indigeneship

Generally, women who are non-indigenes, married in the different Zones, are discriminated against. However, the discrimination is not very obvious, it exists in a subtle manner. For example, most married women interested in politics have to go back to their States of Origin to contest. In the **South-South**, it is assumed that a wife loses her nativity at marriage and becomes subsumed in her husband's home. Ironically, in practice, however, this is not the case, as the woman is always referred back to her own home State of Origin, if she desires an elective post or a high government or judicial appointment, e.g. Akwa-Ibom. But Lagos State is certainly an exemption to this.

D. CUSTOMARY LAWS

1. INTRODUCTION

It is common knowledge that the Nigerian woman is discriminated against, right from birth, through adolescence, adulthood, marriage, death and widowhood. Although the Nigerian *Constitution*, which is the *grundnorm* from which every other law derives its legality, guarantees every individual the right to freedom from discrimination, such rights are violated, in practice, due to long held beliefs and customary practices. These practices are mostly discriminatory against the female, whether as a daughter, a wife, a mother, or a widow.

Section 2(1) of the *Evidence Act* defines **Custom** as *a rule which, in a particular district, has, from long usage, obtained the force of law*. In practice, customary rules or laws are uncodified i.e. they do not exist as documented records, and they vary widely among different groups and are usually ambiguous in nature. They are consequently prone to subjective interpretation, inconsistent and circumstantial in their application. The “people’s court” might be a better option for granting force of law to local practices.

Such a custom can be applied as part of the law governing a particular case if:

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

However, Section 14(3) provides that, even where a particular custom is proved by evidence, it would nevertheless not be enforced *if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience*.

Despite these provisions and the decisions of courts in the following cases:

- a) *Edet V. Essien* (1932) 11 NLR 47;
- b) *Mojekwu V. Mojekwu* (1997) 7 NWLR 28; and
- c) *Mojekwu V. Ejikeme* [2000] S.N.W.L.R. 403.

which had held the practices to be repugnant to natural justice, equity and good conscience, the discriminatory practices are still very rampant in the various Nigerian communities. Hence, the need for this Study, which is meant to identify the specific discriminatory practices and customs still being perpetuated, with a view to addressing the issues effectively, either through the codification of the Customary Laws and/or through legislating against such practices.

The Research Teams visited four States per Geo-political Zone, and conducted an extensive research on the laws, regulations, customary, traditional/ cultural beliefs and taboos, as well as policies and practices that are discriminatory towards and/or found to be in favour of women.

For this purpose, the following instruments were used:

- a) The personal variables were administered in order to determine the age, sex, social and economic status of the persons that gave information in the questionnaires;
- b) Questionnaires requesting for information on the various discriminatory cultural and customary practices, policies and laws were administered in the various areas of the Geo-political Zones to the traditional rulers, opinion leaders, women, market women, teachers, workers and the NGOs;
- c) Interviews were conducted with the various traditional rulers, women and opinion leaders;
- d) Both States Ministries of Justice and Women Affairs were consulted with a view to identifying the various legislations in place, as well as identifying the communities to be visited;
- e) The States Courts were visited, with a view to obtaining relevant case law materials;
- f) Some NGOs were also visited.

The age range of majority of people interviewed was between 25 to 70 years. Both men and women were given equal chance of selection.

The Laws set out here are current, well-established Customary Laws ascertained in the course of field research. The Customary Laws that have emerged from the exercise are laid down as the general applicable laws with geographical variations when necessary. The role of a woman has been examined in her relationship as revealed hereunder.

2.0. CIVIL

2.1. Women as Spouses

In both the South East and the South-South Zones, there is an unwritten law that marriage confers on the woman the nativity or indigeneship of her husband. The woman loses her separate identity and her natural indigeneship, and is subsumed in her husband's home. Ironically in practice, however, she is not fully accepted as a full member of that family when benefits accrue her way as a result of the marriage. Such benefits may include representation of the family or sharing in the family property. However, when it comes to assumption of duties and responsibilities, within her husband's family, she is then regarded as a full member of the family.

Also, the issue of killing of twins in Ikot Ekpenne, in Akwa Ibom State, needs to be revisited, as there is an appearance of a modified version still in existence in the area. Similarly, in Khana LGA, Bianu town, Ogoni River State, the traditional rulers still reject their wives who give birth to twins.

Such discriminatory practice is widely practiced in places like Akwa Ibom, Cross Rivers and Rivers States.

Furthermore, other practices that deprive her of rights to ownership of assets and access to productive resources technically weaken her substantive standing or ability to exercise her indigenous rights.

2.2. Women as Members of the Community

Women are considered to be members of their communities in both the South East and South-South. However, in some communities, such as Bekwara in the Northern part of Cross River State, non-indigene women married to Bekwara men are still not considered as part of the community. Non-natives remain visitors, no matter their number of years of settlement in the area. However, in the South-West, married women are accepted as members of their husbands' communities. They have, even, been conferred with traditional chieftaincy titles, usually along with their husbands, in their husbands' communities. But this can sometimes be counterproductive for such women, as their original communities of origin may then refer them back to their husbands' communities whenever they seek for any elective or high appointive offices, including judicial appointments. If the husband's community should reject such a woman as not being indigenous to their community, then she would lose both ways.

This situation should be reviewed, with a view to eliminating the discriminatory practice here. Policy makers and relevant stakeholders should also be involved in advocacy campaign against the practice.

2.2. Dowry/Bride Price

2.2.1. Concept of Dowry/Bride Price

There has always been a little confusion in the meanings ascribed to dowry and bride price. In Nigeria, what is known as dowry is actually the definition given to bride price by the dictionary. Dowry is an essential ingredient/requirement of a valid marriage. Agreement on it is a condition precedent to a valid marriage; and so, no marriage can take place unless and until dowry is fixed, agreed upon and paid even if not in full.

In the North, the amount payable as dowry is influenced by religion. The maximum amount is not fixed. It depends upon the status of a man. However, the minimum amount payable is limited to N2,700.

In the South East and some areas of South-South, the amount payable is exorbitant, exploitative and excessive necessitating the enactment of a law on the limitation of dowry payable to Sixty Thousand Naira (N60,000).

Also in Akwa Ibom State, under section 5(2)(1) of the ... *Law*, it is forbidden for any person to receive or pay bride price/dowry for any person who is below the age of 16 years. Any contravention attracts a fine of N2,000 or imprisonment for 6 months¹⁷⁶. However, these provisions of the law are neither adhered to nor enforced. While the prescribed penalty is not stiff enough to serve as a deterrent.

¹⁷⁶ Cap 8, Vol.1, *Laws of Akwa Ibom State, 2003*

2.2.3. Significance of Dowry

Payment of dowry legalizes a relationship and transforms it into a marriage. It signals the commencement of a marriage. Without the payment of a dowry, any relationship, whether or not children are involved, is regarded as mere cohabitation or concubinage. But payment of dowry militates against the principle of spousal equality of status. In the South Eastern and South Southern States, failure to refund dowry upon dissolution of marriage means that the marriage is not fully terminated. A child born when dowry is not refunded is assumed to be the child of the woman's divorced husband, despite the fact that the man is not the natural father of the child. This practice has been declared to be contrary to natural justice, equity and good conscience in the case of - *Edet V. Essien* (1932) 11 NLR 47

Despite this judicial pronouncement, the practice is still prevalent as the definition and clarification of what dowry stands for and the rights and privileges it bestows on the parties is yet to be revisited. The question of whether the dowry bestows property rights on one party over the other is yet to be properly tackled.

2.4. Spousal Relationship

The man is the head of the family, and his authority is not questioned. The woman is expected to be submissive, and obey and respect him all the time. The woman should not question his decisions. However, in practice, a lot of women influence the decisions of their husbands privately. But this must not be publicly acknowledged, as it is seen as a sign of weakness for a man's decision to be influenced by his wife. A wife tolerates all the mistakes of her husband, and where a man reports his wife to the Council or the Elders of the Village, his wife is made to apologize and pay a fine, despite the fact that the man was at fault. This is, however, not a general practice in Nigeria. It is limited to only the South-South, particularly in Akwa Ibom and Cross River States (in Ejegham, Calabar North, and Bekwara Local Government Areas).

2.5. Age of Marriage

In the **South West**, marriage takes place only between **adults**. But adulthood is not defined. However, the incidence of child marriage is not common in the Zone. In the **South East and some parts of South-South, that were part of the former Eastern Region**, the *Customary Marriages (Special Provision) Law, 1963* has been adapted in the various States. Thus in Akwa Ibom State the *Customary Marriages (Special Provisions) Law* has been enacted, and like the other laws, it limits the age of marriage to 16years.¹⁷⁷ The law limits the age of marriage to sixteen(16) years. In practice, the law notwithstanding, people marry off their daughters at any age, especially if the family is not financially strong. The **practice of marrying out under-aged girls is common in the Northern**

¹⁷⁷ Cap 8, Vol.1, *Laws of Akwa Ibom State, 2003, op. cit.*

States of the Country. There are laws prohibiting this practice. These laws can be found in some States, such as **Bauchi State**, in the *Withdrawal of Girls from School for Marriage (Prohibition) Law, 1985*.¹⁷⁸

2.6. Divorce

It is normally the man that may initiate a divorce. However, a woman may initiate a divorce when it is obvious that her life is endangered. In some communities, like those in **Akwa Ibom** and in **Rivers State**, it is only a man that can reject a woman by initiating a divorce. Any woman that initiates a divorce is seen as wayward. However, in the **South-West**, women, like men, are free to sue, and do freely sue, for divorce, when desired without waiting for their husbands to file the action.

2.6.1. Causes for Divorce

2.6.1.1. Adultery

Adultery by a woman is not just an offence, it is regarded as an abomination. Generally, adultery by a woman is a common ground for divorce in virtually all communities in Nigeria. Thus, in the South East, Edo and Rivers States, the woman is allowed the mercy of a divorce. However, in **Akwa Ibom**, there is no room for divorce, as a woman who commits adultery suffers difficulties at child birth, called *Ekpo Nku Owu*. She is denied medical attention until she confesses to adultery. In **Bekwara, in North Cross River State**, a native gun is usually shot at marriage; and it is believed that a woman who had gunshot fired at her wedding would die if she commits adultery. In other customs, women are made to swear to an oath of chastity on marriage. This is supposed to make the commission of adultery almost impossible.

In the **South-East Zone**, any woman who has committed adultery has to appease her husband and his ancestors through the provision of some animals, depending on the locality. Adultery by a man is not an offence, it is regarded as an expression of virility.

In the **North**, and the **South-West**, adultery remains a strong ground for divorce, but without any ritualistic appeasement being required.

2.6.1.2. Violence

Excessive Violence is enough ground for divorce in all the communities, except in **Akwa Ibom and Cross River States**, where a wife tolerates all the mistakes of her husband, and when the man reports his wife to the Council or the Elders of the Village, she is made to apologize and pay a fine, despite the fact that the man was at fault.

In all the communities, moderate violence is accepted for purposes of correction of the wife, as a man is deemed to be entitled to chastise his wife reasonably for corrective purposes.

¹⁷⁸ No. 7 of 1985.

2.6.1.3. Failure To Provide

Failure to provide for a spouse is enough ground for divorce. Generally, a man is expected, as the head of the family, to care for his family. But in some parts of **Akwa Ibom State, Cross Rivers State and Ebonyi State**, the wife is expected to be industrious, provide and care for the man and home. In **Abakaliki Area of Ebonyi State**, inability of a woman to provide for the man is regarded as laziness and lack of productivity. It is even a ground to divorce the woman. In practice, women shoulder some responsibility for the family, ranging from augmenting to being the ones that provide for the family.

In the **South-West**, the husband is expected to provide for his wife, and failure to do so may be a ground for divorce.

In the **Northern States**, women must be provided for, and failure to do so will certainly be a ground for divorce.

2.6.1.4. Impotence

Impotence is a ground for divorce. But from a sample of those interviewed, nobody uses it in open court as a ground for divorce, except in the **South-West**. In the **South-East**, it may not be a ground for divorce, as an arrangement is discreetly made for the wife, with or without the knowledge of the husband, to be copulating with another man so that she may conceive and give birth to children for the family.

2.6.1.5. Infertility

It is not a good ground for divorce. A man may take a second wife. If a woman generally accepts it as her lot, she may stay on in the marriage. If she does not accept it, she may leave. In the **South East**, the woman may take a *surrogate wife*, who will be giving birth to issue or issues for her, for the family. Such custom has been pronounced as repugnant to natural justice, equity and good conscience in *Edet V. Essien*.¹⁷⁹ However, the practice is still very prevalent despite the judicial pronouncement.

2.6.1.6. Frigidity

Officially, frigidity is not a ground for divorce. In polygamous societies, the woman is not divorced, as she does not refuse sexual intercourse with her husband, who may not, in fact, have any knowledge of the frigidity.

2.6.1.7. Other Reasons for Divorce

- Desertion by the wife or husband;
- Cruelty by the husband;
- Failure by wife to cook meals regularly for the husband, except that this is not a ground for divorce under Islamic marriages;

¹⁷⁹ *Op. cit.*

- Failure by the wife to give due respect to husband or senior members of his family;
- Refusal of the wife to have sexual relationship with her husband;
- Refusal of the husband to have sexual relationship with his wife;
- Infecting the other party with venerable diseases;
- habitual stealing by either party;
- Lack of maintenance of wife by husband;
- A wife practicing witchcraft.

2.8. Consent

Two types of consent are involved here: Consent of the parties and the consent of the parents of the bride to be. Originally, the consent of a girl was not required. Parents imposed husbands on their daughters. Even the symbolic handing of a glass of wine by the girl to her prospective husband as a sign of acceptance, approval and consent in the **Eastern States**, was clearly symbolic. But modern trends show that in the **South-East, Edo and River States** and the **South West**, both parties bring their partners to the family to seek the consent of his or her parents. But in **Akwa Ibom State** and **Northern part of Cross River State**, and some parts of **Edo State**, as well as in the **North**, the parents still forcefully give their daughters out in marriage.

In the **Northern Zones**, the consent of the girl for the first marriage is **required**, but not **mandatory**. But for subsequent marriages, the consent of the girl is **required** and **mandatory**.

2.9. Inheritance/Succession

Inheritance /succession generally in Nigeria is patrilineal, with the exception of some communities such as **Amasiri and Edda in Afikpo Division of Ebonyi State, Etsako Local Government Area of Edo State and Biase in Central Cross River State**, where succession is matrilineal.

The cardinal principle of inheritance/succession in the **South East and South South is primogeniture, i.e., succession by the first-born male**. In **Edo State, the first son inherits to the exclusion of other sons**.¹⁸⁰ But ordinarily, the properties are shared among the male children with women being taken care of. In matrilineal societies, men and women inherit. Inheritance is usually through the maternal uncles. The right of succession of women in Nigeria is considered as follows:

- The woman as *femme sole*, covering girls and unmarried women;
- The married woman; and
- The Inheritance as a widow.

¹⁸⁰ See *Lawal-Osula & Ors. V. Lawal Osula* [1995] 9N.W.L.R. (Pt. 25), 276, on Benin Custom, where the custom was invoked by the Supreme Court to overturn the bequest in the testators will to his wife and daughters.

2.9.1. Inheritance by a Woman as a *Femme Sole*

Under strict native law and custom, a daughter has no right to succeed her father's estate/property. The reason for this being the fact that women are expected to get married and ultimately leave their parent's home and move to the family of their husbands. The inheritable property, such as land, must remain in the family, and are not to be transferred to another family.

Although this is the general rule, there are some exceptions. In the **South East**, a customary practice called *Nrachi Nwanyi* allows a man, who has no sons, to keep one of his daughters at home, unmarried for the rest of her life, to raise issues to succeed him. A daughter on whom this ceremony has been performed becomes a *man* technically. She can, therefore, inherit. However, this custom has been held by the court of Appeal in *Mojekwu V. Ejikeme*¹⁸¹ to be repugnant to natural justice, equity and good conscience, as it encourages promiscuity, as the daughter is not obliged to stick to only one man in the quest to bear children for the father/family. This kind of imposition on a woman would seem to violate the provisions of Article 6 of *CEDAW*, which seeks to prohibit the *exploitation of prostitution of women*.

2.9.2. Inheritance by a Married Woman

Generally, a woman, whether married or unmarried, has no right of succession to her father's estate. On her death intestate, her real property acquired during marriage, goes to her husband, her children, brother, father or uncle. A married woman's effects, such as clothes and cooking utensils, are shared by her female children, with the female children going for such female items like articles of clothing, cooking utensils, jewellery, etc.

2.9.3. Inheritance By a Widow

A widow has no right to administer the estate of her late husband, especially where there is an heir. A widow, who chooses to remain in her husband's house and in his name, is entitled, in her own right, to go on occupying the matrimonial home, whether she has children or not. See *Lopez & Ors vs. Lopez*.¹⁸²

However, in some parts of Nigeria, women enjoy the same rights as their male counterparts. For the **Ijaws** of the **South-South**, an unmarried daughter enjoys the same rights of inheritance with her brothers. Among the Efiks, a daughter, whether married or not, has succession rights to land and chattels in her father's estate.

Women generally are entitled to their mother's movable properties, such as cooking utensils, ornaments and dresses.

The Customary laws applicable to the **South-West Zone** have, by judicial decisions, developed beyond restrictions imposed in other customary laws in the country. The right of female children and

¹⁸¹ [2000] 5 N.W.L.R., 403.

¹⁸² (1923-24) 5 N.L.R., 52. The case also established that both sons and daughters inherit certain rights in their father's land, although females do not acquire the same rights as males. This was case relating to Lagos in the South-West.

wives to succession has been held to be common and equal irrespective of sex. See *Folami V. Cole*.¹⁸³

Inheritance in the **South-West** could be either through:

- **Idigi** – where children inherit through their mother; or
- **Ori Ojori** – where children inherit as individuals in their own rights.¹⁸⁴

In the **North**, the influence of Islamic religion has largely dominated the issue of succession. Females inherit according to a prescribed sharing formula of 1:2 in favour of boys. The law permits a woman to acquire properties but forbids her from selling off more than one third (1/3) of her property without the consent of her husband. Additional studies on gender distinctions in family expenditure profile and household maintenance responsibilities will help to dispel the myth that men bear higher domestic responsibilities and corroborate existing findings that women actually bear higher proportion of the domestic care burden and expenses.

In some other communities in the **North-East**, such as the **Kilba people of Adamawa State**, both male and female children are entitled to inheritance. The **Bachama Women in Numan Local Government of Adamawa** are entitled to inherit, but men are given preferential shares. In **Mbula culture**, the widow does not inherit her husband's property, as it goes to the maternal uncles of the deceased. However, in a **landmark case of 1989**, the **Adamawa State High Court** pronounced the practice to be *repugnant to natural justice, equity and good conscience*.¹⁸⁵ Women cannot inherit movable and immovable properties in the **South-East**.

Will making was generally unknown at **Customary Law**. But now, judicial notice has been taken of a case in Benin where **will** making has been recognized, except for family property, which cannot be devolved in a **will**.¹⁸⁶ The modern trend now is for a man to set out the sharing of his property in a **will**, with the exception of the family property that is exclusively reserved for the first male born. A customary law **will** may not be written, it may be made orally before some elders of the family. The same principle of inheritance is applicable to both moveable and immoveable properties.

In **Oraukwu in South-East**, a woman may inherit if the **Nrachi Nwanyi** ceremony has been performed on her. She is, therefore, allowed to stay in her father's house and procreate for the family. She also inherits both moveable and immoveable properties of the family, on the ground that she has become a **son** of the father.

¹⁸³ [1986] 2 N.W.L.R. (Pt. 22), 326. See also, *Coker V. Coker* (1938) 14 N.L.R., 83.

¹⁸⁴ See *Dawodu V. Danmole* [1962] All N.L.R., 695.

¹⁸⁵ (1989).

¹⁸⁶ *Lawal-Osula & Ors V. Lawal – Osula, op, cit.*

2.9.4. Succession/Inheritance By Women Generally

Women are not entitled to inherit their husband's property. Neither are daughters allowed. Only male children inherit. But in the **South West, female children are entitled to inherit in equal share**. Inheritance is either through *Idigi* that is, children take through their mothers, or through *Ori Ojori*, by which children inherit as individual children.¹⁸⁷ The same applies to buildings, money, jewellery, farm implements, etc.

In a matrilineal society, even the woman's property belongs to the man's family. In matrilineal societies, which are in a minority, children can inherit from their maternal uncles.

Whereas among the **Kilba people of Adamawa State**, both male and female children are entitled to inheritance; the **Bachama women of Numan LGA of the same State** are not entitled to inheritance, and where they do, the men are given preference. In **Mbula culture**, the widow does not inherit her late husband's property, as it goes to the maternal brothers of the deceased. In a landmark case in 1989,¹⁸⁸ an **Adamawa State High Court** ruled that the practice is *repugnant to natural justice*. Among the **non-muslims of Kaltungo LGA of Gombe State**, when a man dies, the wife does not inherit the husband's property. Rather, she herself is regarded as an object to be inherited. Also, no female can inherit land, either as a spouse or as a daughter, a practice that technically denies them of any form of identity of claim on the land of their birth by virtue of their sex. In some communities in **Bauchi State**, particularly in **Bogoro LGA**, the younger brother of the deceased inherits his properties, to the exclusion of his wife and children. However, in the **Northern States**, where Islamic Law is in force, women inherit 1/3 of their father's property, i.e. they inherit half of what the male children inherit.

2.10. Single Parenthood

Single parenthood is generally frowned upon, and it is regarded as a taboo. The offspring outside marriage remains a bastard, despite the *constitutional provisions*. However, such children are **legitimated by acts of acknowledgement of paternity, particularly in the South-West**. In the **South East, the offspring remains a child of the girl's family, unless the man pays the dowry on the girl**. In **Akwa Ibom, it is a taboo and the offspring remains a bastard, unless the girl is named and the bride price paid, otherwise, the child remains with the mother**. In the **South of Cross River State, Calabar, Qua**, it is frowned at, but parents have softened.

2.11. Custody of Children

In all patrilineal societies, the man is regarded as the owner of the children. So, in a case where the ages of the children are such that they can stay without their mother, the court will rule in favour of the man and grant custody of the children to their father, that is, where the children are above 6 years.

¹⁸⁷ *Dawodu V. Danmole, op. cit.*

¹⁸⁸ *Op. cit.*

The reason, in patrilineal societies, why custody of children below 6 years are given to their mothers is that they need the emotional and psychological support of their mothers to develop their personality. Even, when the fathers are given custody at 6 years, the practice is for the children to be looked after by a female member of his family. The practice clearly overlooks and jeopardizes the emotional security of both the mother and child. In matrilineal societies, women have custody of the children, such as happens in *Biase* and *Akpampa* in **Cross River State**, *Okpepe* in **Estako East**, *Edda* and *Amasiri* in **Afikpo Division of Ebonyi State**.

2.12. Control of Family Assets

Just as a woman cannot be the head of the family, no matter her position, she cannot also control family assets. Male members of the family control them. However, in the **South-West**, women can be heads of families, in the absence of grown up men.

2.13. Control of Community Property

Community property is controlled by the chiefs, kings or obas, and the principal members of the community. Women, generally do not participate in the control of Community property, except where they belong to the traditional chieftaincy group, which controls the community property with the **King-in-Council**.

3.0. POLITICAL

3.1. Chieftaincy

Chieftaincy titles are generally male dominated. thus reflecting a system for ensuring exclusive male leadership and the perpetuation of patriarchal principles and practices. Women can only take honorary chieftaincy titles, rather than traditional chieftaincy titles, and cannot sit in council with their male counterparts. (What reasons are advanced for these practices/arrangements). However, in the **South-West**, women are conferred with traditional titles, which entitle them to **sit with their male counterparts in the king's Council**, although they are fewer in number than men. In **Benin kingdom**, the only **female Chief** is the **Oba's mother**, with the title of *Iyoba*, that is, **the mother of the Oba**. **But she does not sit in Council either**, because, once her son becomes the *Oba*, she is taken to a different palace, her own palace, where she sits in her own right. In **Afikpo**, a woman may become a *regent*, like the present *Unwana of Afikpo*. In fact, she is **Dr. Akanu Ibiam's daughter**. In **Lagos State**, some top-level traditional offices are held by women, e.g. *Erelu Kuti of Lagos*. Among the **Kanuris of Borno State**, women are appointed to leadership positions in the traditional set up, albeit insignificant ones.

3.2. Other Forms of Political Participation

The rural women generally do not involve themselves in politics as the social norms and standards do not support women's participation in public and political life. Only women in the cities, who are few, involve themselves. Even then, the number is still very small and very little political space is given to them to contribute actively in shaping the political agenda or economy

4.0. ECONOMIC PARTICIPATION

4.1. Women Economic Participation — Introduction

Women in the **South West** have unfettered access to economic participation. However, in the **South East**, **women are not freely allowed to cultivate yams or other cash crops neither do they engage extensively in economically vibrant activities which are perceived as male suited**. They engage in trading, farming and other jobs not regarded as exclusively within the male domain. In **Akwa Ibom and Cross River States**, child trafficking is very rampant, and the girl-child is refused education, as it is hoped she will be married off, or sent into child labour. So, the girl-child is often used to make money, instead of being educated. They are taken into household services, within and outside the State, or married off for a price. Child labour, and the worst forms of child labour, is still practiced generally in all the **South-South and the South-East Zones**, due to ignorance and poverty, despite the various anti-trafficking laws in place. Hence, the need for more rigorous enforcement of these anti-trafficking laws.

4.2. Manufacture/Production

In the **South West**, children are involved in cocoa plantation labour, as well as the breaking of stones in the quarries. In the **South East**, there is not much production/manufacturing by women, except in the commercial production of palm oil in the various oil mills in which women are involved. However, women of means now get involved in production/manufacture. In **Rivers State**, there is not much production, as oil has dominated the area. In **Akwa Ibom**, oil has also dominated the area. In the **Sout-West** and in **Edo State**, rich women get involved in production/manufacture; whilst in **Cross River State**, not much production goes on for women to participate in.

Photo: NCWD Photo

E. TRADITIONAL

This section is the section on customary practices, which often, have either crystallized in customary law, are in the process of crystallizing, or are yet still to crystallize as customary laws. But the rules and practices here are very similar to those under Customary Laws. In order to facilitate the desired legal reforms, it will be necessary to generate responses to questions such as “when and how do practices crystallize into laws?”; What are the processes involved and yardstick adopted for measuring the transition from practice to customary law?

1.0. CIVIL

1.1. PROPERTY

- * Generally only male children are entitled to inherit or acquire and own both moveable and unmovable properties.
- * In matrilineal societies, women inherit. A woman’s children inherit from her brothers.
- * In the South West, both men and women inherit in equal shares.
- * In the South East both wives and daughters do not inherit.
- * In **Akwa Ibom in the South-South Zone**, males always inherit, and in the absence of a suitable male, an uncle inherits.
- * In **Edo State, an Ishan male inherits absolutely**, and becomes the *father of the house*. The **Benin first son of a titled chief inherits everything**. But the son of an ordinary citizen inherits the dwelling house of the late father, namely, the *Ijogbe*, and the remaining property are shared amongst his siblings. But **inheritance by the first son is only in trust for the other members of the family, particularly the brothers and sisters, to whom he must render account**.
- * In **matrilineal societies, such as Okpekpe Estako East of Edo, Biase and Akamkpa areas of Cross River State, and Amasiri and Edda of Afikpo of Ebonyi State, children inherit through their matrilineal lineage**.

1.1.1. Building

Women are generally not expected to own buildings. But in **Rivers State**, a woman who has the means can build, but men, that is, his sons or brothers inherit. In the **South-Western and the Northern Zones**, women can build and own houses, and their children, both male and female, can inherit. However, in the **South-Eastern** and the **South-Southern states** (outside Rivers State), women cannot build and own houses.

1.1.2. Farms

Farmlands are owned by men. Women are not allowed to buy farmlands or inherit them. However, in the **South West**, women can buy, own and inherit farmlands. In some communities in the **South-South** where women can buy farmlands with their money, the farm land belongs to her husband. In **Ogoja**, women are not allowed to have their own separate farms from their husband, but children are allowed to farm on a nearby family farm. In the **North**, women can acquire and own farms.

1.1.3. Clothes

The woman can own her own clothes. In **Edo-Bini**, the woman does not take the clothes she used as a single girl into her husband's home.

2.0 Single Parenthood

Single parenthood is a taboo in most Nigeria societies, as it is considered irresponsible. However, in **Kalabari kingdom** as among other Nigerian Communities single parenthood is preferred on the ground that abortion is considered to be a worse evil. But the children of single parents belong to the mother and her family among the **Kalabaris**. The position is the same among the **Yorubas**, unless the Father legitimates the child by acknowledgement of paternity and assumption of responsibility for the child. Also, communities in **Ishan** and **Etsako** axis consider single parenthood a taboo. This position contrasts with the position of their **Bini** neighbours. In the **South East** it is frowned at, while in the **South West**, it is frowned at, but it is generally condoned. The only instance where single parenthood are generally not abhorred is that of the **widow parent**. . A comparative social analysis of these different social systems will help to identify the merits and demerits if any of single parenthood.

3.0. Marriage

3.1. Consent

Originally, girls were married off without their consent. Even the symbolic handing over of a glass of wine by the girl to her prospective husband may not be said to be consent. Consent of the girl was not material. But the recent trend is for children to come with their partners to seek their parent's consent. Women usually do not have a say in their children's marriage. The consent of the Father is the material one.

3.2. Age of Marriage

Age of marriage is not material in the traditional society, and there is no specific age. But in the **South East** and the **South-South**, the *Customary Marriage Special Provisions Law* has made the age of marriage to be sixteen years.

In the **South West**, only adults get married, and child marriage is non-existent. However, there is no specific age defined for adulthood.

3.3. Spousal Relationship

In the traditional setting, the male is the head of the family. His decisions are final. But in the matrilineal societies, females influence decision-making, and have authority.

3.4. Dowry/Bride Price

Payment of dowry/bride price legalizes a marriage relationship. Where dowry is not fixed, the males decides the amount of bride price to be collected. In some areas, like the **South-South**, dowry is not collected when a bride is pregnant, as it is assumed that the baby is another person's; and the bride price is meant only for the bride, not for the baby. However, on delivery of the baby, payment of dowry makes the baby belong to the father.

3.5. Divorce

3.5.1. Initiator/Applicant

Marriage is usually not between two individuals, but between the families. Marriage is for life, till death do them part, and divorce is not encouraged. However, divorce may be initiated by the man and the woman upon certain conditions. In the **South West, Edo and the South East**, anyone can initiate a divorce at anytime. In some communities, like the **Kalabari Kingdom**, the *Iya-marriage*, which is the ultimate marriage, as opposed to the *Igua* and the *Olo* marriages, there is no divorce, marriage is for Life. Even, if the couples separate, they are still regarded as husband and wife. However, with the *Igua* marriage, parties can break up only with the consent of their parents. But *Olo* is just co-habitation.

In **Akwa Ibom**, a woman who initiates a divorce, is regarded as a wayward woman.

3.5.2. Effect of Divorce on Dowry / Bride Price

At the determination of marriage the dowry is refunded. But the drinks and food are said to *die*. In the **South East** and **South-South**, non-refund of dowry makes the children born by the woman, the children of her husband, despite the fact that he is not their natural father. This has been adjudged to be repugnant to natural justice, equity and good conscience. *Edet V. Essien*.¹⁸⁹

3.5.3. Grounds for Divorce

3.5.3.1. Adultery

Adultery is not an offence by the man; it is regarded as an expression of his virility. Adultery by the women is the only offence, and it is usually frowned at. It is regarded as an abomination. It is a ground for divorce. In the **South-East** and **South-South**, a woman caught in adultery may be accepted upon appeasing her husband and his ancestors. In **Akwa Ibom**, a woman is put under a spell, and it is believed that she would experience difficulty at child birth.

3.5.3.2. Frigidity

Although little data or information exists on the subject matter and even less investigation has been conducted on the topic, most Nigerians consider frigidity to be an alien phenomenon. It is hardly ever discussed. But in the States of **Akwa Ibom** and **Cross River States**, frigidity is not a problem, because the courses at the fattening rooms, prior to marriage, puts frigidity in check.

3.5.3.3. Impotence

Impotence is a ground for divorce: Traditionally, if a man is incapable of having sexual intercourse with his wife, an arrangement can be made for somebody to be sleeping with the wife on his behalf. But this is done discreetly. The same can be arranged in cases of male infertility. However, in cases of female infertility, the man simply takes another wife. Current discourse however, claims an increasing record on homosexuality which may not be unrelated to the problems of impotence and frigidity. Further study on the linkages between these problems will help to provide insights for informed interventions to address gender discrimination on the basis of biological shortcoming.

¹⁸⁹ *Ibid.*

3.6 Widowhood Practices

Widowhood practices, in most societies in Nigeria, are dictated by the dictates of the dominant religions of Christianity and Islam. However, some traditional rites still find their way into the system. The greatest abuses of widowhood practices can be found in the **South Eastern States**, and the **Cross River and Akwa Ibom States in the South-South**. Upon the death of a woman's husband -

- The widow is locked up in the room alone with the remains of her husband in **Ikot Ekpene and Eket**
- The woman is made to drink the water used to bath the remains of her late husband just to prove her innocence, as the woman is always the prime suspect for his death.
- Sometimes, the widow is made to swear on the corpse or jump over the corpse of her late husband, all in a bid to show that she did not kill him.
- In most cases, sharing of the deceased estate becomes contentious, as his brothers immediately take over his property, to the exclusion of his wife and children.
- In some societies, such as those in **Uyo and Ikot-Ekpene in Akwa Ibom State**, a widow is compelled to choose any of the brothers-in-law as husband, and where she refuses, she forfeits everything. The funeral is put on hold until she names her next husband.
- The widow cannot remarry unless she pays a fine that is determined by the late husband's family.
- In **Edo and Rivers States**, once a man's house is in order, the deceased is buried. But where there is a dispute, then there will be no burial until the dispute is settled.
- On the other hand, in some societies, when a woman dies, no matter the years of marriage, her remains are taken back to her people for burial. Most Nigerian societies recommend a period of confinement for the widow, and no such period of confinement for the widower.

However, general practice allows widows to remarry. However, practices in some communities allow the brother of the deceased to inherit the wife along with the children. In Islam, a period of confinement is prescribed. In communities where customary practices are performed, the widow shaves her hair, stays in her room, is scantily clothed, dressed in black for one year, sleeps on the bare floor, and is expected to weep and wail (the louder the better). Even traditional institutions, such as the *Oba of Benin*, are now calling for better treatment of widows.

3.7. Custody of Children

The custody of children, in most Nigerian societies, is vested in the man. However, in matrilineal societies, such as in some of the communities in **Cross River State** and the **Etsakos in Edo State** in the **South-South Zone** and some other communities in the **South-East Zone**, women have custody of their children, even if the children are living with their mother. In a **patrilineal society**, the father has

the right to the custody of the children. Same applies to children in a matrilineal society, even if they were living with the father. Even in the **North**, where Islam predominates, distinction is still made between the age at which a male child is returned to his father, which is 7 years, as against 16 years for the girl-child.

4.0. Succession and Inheritance

The cardinal principle of inheritance/succession in the **South-East** is primogeniture, that is, succession by the first born male. Inheritance generally in the **South-East** is **patrilineal**. Existing practices in most communities subject wives and other women to the control of the eldest male child upon the death of the father. Female children do not inherit communal properties and houses. But in the **South West**, female children also inherit some interests in their father's land, even if this is controlled by the eldest male child. Wives can only inherit through their male children with the result that, where a woman does not have a male child, she becomes a *visitor* in her own home. Whereas among the **Kilba people of Adamawa State**, both male and female children are entitled to inheritance. **Bachama women of Numan LGA of Adamawa State**, however, are not entitled to inheritance, and where they do, men are still given preference. In the **South-West**, all children inherit. In **Mbula culture**, a woman does not inherit her late husband's property. However, in a **landmark case in 1989**, an **Adamawa State High Court** ruled that this practice is against natural justice. Among the **Kaltungo people of Gombe State**, a woman rather than inherit, is herself viewed as an object to be inherited. Also no female can inherit land either as a spouse or as a daughter. In some communities in **Bauchi State** particularly among the **Sayawas of Bogoro LGA**, the younger brothers of the deceased inherit his properties, to the exclusion of his wife and children.

5.0. POLITICAL

5.1. Chieftaincy

In all Nigerian societies surveyed, titles are exclusively for males and are passed from fathers to sons in most societies.

6.0. ECONOMIC PARTICIPATION

6.1. Forms Of Economic Participation

In most Nigerian Societies, women are engaged in economic activities at the subsistence level. They farm, trade and manufacture goods of economic value. Most of Nigerian crafts are still produced by women.

7.0. CONTROL OF FAMILY ASSETS

Just as women cannot head families and inherit land, farm implements and other properties, women cannot control family assets.

F. RELIGIOUS LAWS

1.0. INTRODUCTION

Religious Laws or Practices can be described as those rules, precepts and beliefs by which a given sect is generally known, identified and bound. In Nigeria, there are predominantly Christian, Islamic and Traditional systems of religion.

This Study has, therefore, limited itself to these three aforementioned religions, and they are the only religions which have been covered by this Project.

2. CHRISTIANITY

2.1. Property Rights

Movable and immovable properties can either be jointly or separately owned by the spouses in the Christian marriage. However, it is generally believed that such ownership should be to the knowledge of either spouse. But, in practice, it has been seen that spouses own properties separately, sometimes without the knowledge of each other. The rising level of distrust and differing economic power of spouses has been responsible for this development. Also, there is the fear of extended families' interference in the nuclear family matters in the event of death, divorce or unforeseen problems, which may eventually lead to dispossessing the woman of hitherto jointly owned properties. For this very reason, even, rather than jointly owning properties which they have jointly bought, husbands and wives now agree to buy such properties in each others' names, in turns. This is to ensure that whatever property has been bought in the wife's name cannot be taken from her by the husband's relatives on his demise. In this way, couples are protecting themselves against the obnoxious customs and practices.

2.2. Marriage

The general *Bible* reference regulating Christian Marriage is found in **Ephesians, Chapter 5 : 21-33**. In these biblical precepts, **a man is enjoined to love his wife to the point of being able to lay down his life for her; while the wife should, in turn, submit to her husband in everything**. Christian marriages are monogamous, where the two spouses are regarded as one, to the exclusion of all others. (**Genesis, Chapter 2 : 24**).

The place of children in Christian religion is that of obedience to their parents. They are also admonished to obey their fathers and mothers (**Ephesians 6 : 1-2**). Parents, in like manner, are enjoined not to maltreat their children (**Ephesians 6 : 4**). Our **Field Report** shows that, in practice, Christian parents and their children have been influenced by societal values to the point that the above injunctions have been devalued significantly.

2.2.1. Age of Marriage

Only two consenting adults (male and female) can be joined in Holy Matrimony in the Church.

2.2.2. Dowry/Pride Price

In spite of its general misconception in Nigeria, **dowry** is the money and/or property brought by the bride to her matrimonial home, whereas **bride price** is the money customarily paid by a bridegroom on his bride.

Therefore, dowry/bride price is more traditional than religious. Thus, the Church does not interfere with such practices, although it is elaborately celebrated usually in the home of the bride's parents, even before the solemnization of actual Christian marriage in Church. It should be noted, however, that Christian marriage should not be confused with marriage under the *Marriage Act*,¹⁹⁰ even though both are monogamous in nature.

2.2.3. Spousal Relationship

There is no discriminatory prescription in spousal relationships in Christian marriages. But due to abuses by spouses, there may be need for more awareness on the part of Christian couples on what the *Bible* prescribes on spousal relationship, which can be found in **Ephesians, 5 : 21 – 28**.

2.2.4. Divorce

Divorce is disapproved of in Christian marriages, except on the grounds of adultery (**Matthew 19 : 8-9**).

2.2.4.1. Failure to Provide for Spouse

In a Christian marriage, it is expected of the husband to provide for his wife and his entire household (**I Timothy 5 : 8**). But, in practice, some men abdicate this responsibility, giving reasons of economic instability or loss of jobs.

2.2.4.2. Violence

Christianity enjoins couples to live in love and harmony. Violence, however, erupts often due to misunderstandings between the parties, and disrespect to the fundamental Christian principles. More often than not, it is the women and children who suffer the consequences of such violence. This can only, and should, be controlled by law.

2.2.4.3. Impotence

Impotence is treated in Christian marriage as a challenge of spousal responsibility to one another, although they are not discouraged from seeking medical attention. In practice, however, this is a potent source of deep-seated dispute, which could lead to the break-up of the marriage.

2.2.5 Property Rights

2.2.5.1. Inheritance of Movable/Immovable Property

By reason of Christian marriage being monogamous, inheritance rights are normally exercisable by either spouse, who succeeds the deceased partner. Children too can inherit from their parents. However, extended family members' interfere, on the premise of cultural prescriptions, poses a lot of problems, especially to women and children.

¹⁹⁰ *Ibid.*

2.2.6. Widowhood

Upon the death of a partner in Christian marriage, the Church assists in organizing befitting rites of passage. Widows are generally given assistance in the Church, as harmful widowhood practices are incompatible with Christian marriages. But harmful cultural practices have infiltrated to wreak havoc on the widows and their children, even in Christian marriages.

2.2.7. Single Parenthood

The Church does not normally approve of single parenthood, except it is Brought about by the death of either spouse. Other forms of single parenthood are frowned at, and are regarded as consequences of fornication and/or adultery. But the problem of single parenthood seems to be compounded in the Church by reason of the latter's opposition to abortion.

2.2.8. Chieftaincy Titles

Chieftaincy titles, which are the hallmark of traditional customary practices, are strange to Christianity. Nevertheless, the influence of societal values on the Church seems to have watered down this stringent position of the Church on members' assumption of chieftaincy titles. In fact, some orthodox Churches, e.g. the African Church and the Anglican Communion, now have and confer their own Church Chieftaincy titles on their deserving members.

2.2.9. Other Forms of Political Participation

The Church encourages women to aspire to and occupy appointive and elective positions. Christian Association of Nigeria (CAN) has been quite vociferous about this. Children are also exposed to leadership training programmes, e.g. Boys' Scouts, Girls' Guides, Boys' Brigade, Girls' Brigade, etc.

2.2.10. Economic Participation

The Church does not restrict women's participation in any form of economic activities.

2.2.11. Burial Practices

The Church normally accords appropriate burial rites to a dead member; be this man or woman. However, denominational doctrines vary in the degree of participation, e.g. in the Catholic Church, a non-wedded woman cannot be accorded full Catholic burial rites.

2.2.12. Custody of Children

Since Christian marriages are monogamous, the custody of children resides with the couple, that is, their parents. In case of separation, which is generally unacceptable to Christianity, the age of children and the decision of Church Elders determine who keeps any/or all of the children. In difficult cases, the customs and traditions of the couple can eventually be allowed to influence decisions on the children. Also, any of the partners can seek judicial redress or assistance.

2.2.13. Control of Family Assets

The Church does not normally interfere, as these are left for political/communal authorities to administer.

CONCLUSION

It was observed that laws promulgated in some States affect the legitimacy of children born out of wedlock under Christian doctrine, by legitimizing such children. Examples of such laws can be found in the **South East** and **North West Zones**, i.e. *Legitimacy Laws of Eastern Nigeria* and *Legitimacy Laws of each of Kaduna, Sokoto, Kano and Zamfara States*.

3.0. ISLAM

3.1. INTRODUCTION

This Research Project, to start with, established that the Islamic religion provides for the rights of women and children as human beings.¹⁹¹ *Surah Al-Nisa'l, Chapter 4 : 1*

Other aspects of the assignment were recorded as follows:

3.2. MARRIAGE

3.2.1. Spouse

Islamic religion encourages parties to either hold themselves together on equitable terms or separate with kindness. (See *Surah Baqqrh, 2 : 229*).¹⁹² Critical opinion has drawn attention to the multiplicity of women attachable to one man (the *Holy Quran* allows one man to be married to a maximum of **four** women) as a major limiting factor in the quest for equity, even though the injunction is that the man should love and treat them equally.

3.2.2. Movable/Immovable Property

A woman has the right to acquire property, as provided in *Sura Al-Nisa'l, Chapter 4 : 32*.¹⁹³ It was confirmed that this religious injunction is respected by both spouses. This freedom extends to buildings, farms, clothes, etc.

3.2.3. Consent in Marriage

The consent of a woman to a marriage is vital—*Surah Baqqrh, 2 : 229*.¹⁹⁴ The effect of marriage contracted with a girl-child seems to be at variance with this religious rule. The problem lies in the incapacity of a child to legally enter into any contract, except through her legally recognized *next friend*. *Consent* not directly obtained from a partner to a marriage is not in conformity with this injunction.

¹⁹¹ Surah – Al-Nsa'al, Chapter 41.

¹⁹² *Surah Baqqrh*

¹⁹³ *Salika*

¹⁹⁴ *Ibid.*

3.2.4. Age of Marriage

Islamic religion is said to permit in the States visited child marriage. In the States visited (in the **North West Zone**), the practice is backed up by law, titled *The Infant Law* (e.g. *Infant Laws* of **Kaduna, Sokoto and Zamfara States**).

3.2.5. Dowry/Bride Price

The word *dowry* is generally misconstrued. Whereas the actual meaning of it is the money and other property brought in by a wife to her husband upon marriage, it is widely believed that it is the money specified in the *Quran* for the groom to pay on his bride, which the latter is bound to refund in the event of a divorce at her instance. Therefore, this so-called “dowry” paid by the bridegroom on his bride should better be known as **Bride Price**. This, according to Islamic puritans, is the only required payment sanctioned by the *Quran*. Thus, in the case of *Wadatau V. Tama*, it was held at the Zamfara State Court of Appeal that payment of dowry in the presence of two witnesses validates the marriage under Islamic law and gives the man access to be in contact with the woman as husband and wife¹⁹⁵

However, local traditional practices have pronouncedly influenced this Islamic practice that it is now the rule rather than the exception for brides to **reciprocate** their groom’s bride price with valuable movable property she brings into her matrimonial home.

3.2.6. Spousal Relationship

Islamic religion allows a man to marry up to **four** wives. However, Prophet Mohammed (SAW) was reported to have said in his farewell address that man should maintain and treat women fairly because they are *your helpers*. In practice, spousal relationship in Islam has been troubled by the multiplicity of wives who compete with one another for one man, and the resultant inter-wives jealousy operating in such relationships.

3.3. Significance of Dowry/Bride Price

Whereas Bride Price is prescribed by the holy *Quran*, the dowry is **not**. Thus, the cost of the latter has become a social burden on both the bride and her parents, as it is now the social index to determine how *successful* a wedding is. In fact, some Northern States, particularly Sokoto, Zamfara and Kano States, have enacted legislations designed to control marriage expenses in their respective States, thereby emphasizing that the only legitimizing payment for marriages is the bride price, otherwise known as *Sadaq*¹⁹⁶. Even then, among enlightened families, the bride price is always rejected on the ground that their daughters are not for sale.

3.4. Divorce

Islam upholds the choice of either spouse to remain in or opt out of marriage. There is a discriminatory practice which compels the wife to return the bride price if she initiates and procures

195. (2002) NNLR, 461, at Page 468 - 470.

196 See, for example, the *Marriage (Customary Practices) Control Law, Cap 90, Laws of Sokoto State, 1996*, which is also applicable in Zamfara State. See also the *Marriage (Customary Practices) Control Law Cap 91 Laws of Kano State, 1991*.

the divorce. This practice is known as *Khul'u*. Thus, in the case of *Fumilayo Ejide V. Alhaji Kareem*, the Kwara State Sharia Court of Appeal, at Ilorin, held that it is a condition for a woman's release from her marriage for her to refund the dowry to her husband /respondent.¹⁹⁷ This position of the law has also been confirmed by the court of appeal, Kaduna Division, in the case of *Alhaji Dikko Setto V. Motsibbe*¹⁹⁸ However, the man pays nothing, even if he is the one who initiates the divorce. It is, in fact, easier for the man to divorce his wife, either by pronouncing *talaq* three times in the presence of witnesses, or writing her a divorce letter.

3.4.1. Grounds for Divorce

3.4.1.1. Adultery

Adultery is a recognized ground for divorce, especially where the man is the one suing for the divorce. For the woman, this reason may be tenuous because of the excuse available for the Moslem man is that he is entitled to marry up to **four** wives.

3.4.1.2. Violence

Although Islam permits the husband to minimally chastise his wife, violence is ground for divorce. It was noted that, even with the above permission said to be allowable only to husbands, the indulgence had been abused over and over again by men as they quickly reside under that defence.

3.4.1.3. Failure to Provide for Spouse

The Islamic marriage compels the husband to provide feeding and accommodation for his wife and household – irrespective of the wife's wealth. Thus, the Sharia Court of Appeal, Kaduna Statee, in the case of *Bulani V. Mohammed* held that the court would grant divorce to wife on the ground of the failure of the husband to provide for her maintenance. The court also held that cruelty was also a valid ground for divorce under the Sharia.¹⁹⁹ The only exception here is where the wife, of her own volition, volunteers to assist her husband in this respect. Of course, this will not be a case of failure by the husband, which will ground a divorce for a spouse, particularly the wife. However, the return of the bride price by a divorcing wife, who has been forced to encounter problems created by her husband, works hardship against the woman. It is unfair for her to be burdened with such a repayment after having carried the burden of her husband's irresponsibility.

3.4.1.4. Impotence

Impotence is a sure ground for divorce by the wife of the impotent man.²⁰⁰

¹⁹⁷ (2002) NNLR, 206, at page 208.

¹⁹⁸ (2002) 6 NWLR (Part 762) 121.

¹⁹⁹ 980). *Sharia Law Reports* 4.

²⁰⁰ See Kobo V Maimako (1980) 1 Sharia Law Report, 16

3.4.1.5. Frigidity

It is up to the husband to determine whether or not to divorce a frigid wife. But he has a lot of room to maneuver, since he can marry up to four wives.

3.5. SUCCESSION

3.5.2. 1. Succession : Movable/Immovable Property

Succession in Islam covers the whole estate of the intestate (whether movable or immovable), after funeral expenses, debts, legacies and other charges have been deducted. The shares are inherited in fractions prescribed by the *Holy Quran* and interpreted by experts on the subject. The *Quran* in *Surah al-Nisai*, **4:7**²⁰¹ assures its adherents as follows:

From what is left by parents and those nearest relatives, there is a share for man and woman, whether the property be small or large, a determined share.

These movables and Immovables include: land/landed property, building(s), farm(s), farm implements, clothes, money, jewelry, etc. According to the *Ilizakari formula*, the fractions are **ratio 1 : 2 in favour of boys**, that is, girls inherit half of what boys inherit (i.e. 1/3 of the Estate, whilst **boys inherit 2/3** of the estate).

3.5.2.2. Widowhood

This is regulated in Islamic religion. The widow is expected to keep a chaste period of 4 months and 10 days, in order to observe her mourning period and clears all doubts about possible pregnancy for the late husband. Child delivery after the husband's death, even before the burial of the deceased, frees her from the latter obligation.

3.6. POLITICAL

3.6.1. Chieftaincy

These are customary or traditional titles, which have nothing to do with Islam. Therefore, the two are mutually exclusive. But the nature and symbol of of chieftaincy in Nigeria, with such paraphernalia like turbaning, which is distinctly male. So, evidence abounds that women are not accorded chieftaincy status in Islam, which is discriminatory against women.

3.6.2. Other Forms of Political Participation

Although Islam does not encourage lobbying and mindless campaign, it actively allows its adherents to participate in politics.

²⁰¹ *Ibid.*

3.7. ECONOMIC PARTICIPATION

3.7.1. Economic Activities

Women are free to participate in every lawful economic activity so long as she is islamically dressed and behaves in accordance with Islamic tenets.

3.8. SINGLE PARENTHOOD OUTSIDE MATRIMONY

This is strange to Islam, and it, in fact, constitutes a Capital Criminal Offence punishable with death by stoning, or with lashes.

3.9. CUSTODY OF CHILDREN

In cases of divorce, Islam permits the custody of children under 18 years automatically to reside with the mother. Even at the death of the mother of such children, Islam accords the pride of place of custody to the maternal offsprings of the deceased. In either case, the man stands **seventh** in line of custody. It was found, in the course of this Study, that customs and traditions have been allowed to pollute the sanctity of these hallowed religious principles. The **disadvantaged parties** in this illegality are the women and children, as the men take custody of the children well before 15 years.

3.10. CONTROL OF COMMUNITY PROPERTY

Community property is left for community leaders and traditional chieftains to control and administer.

CONCLUSION

The expansion of the jurisdiction of the *Sharia Law* to include criminal aspects of the law (in some States in Northern Nigeria) has resulted in the passing of sentences in criminal cases, which tend to discriminate against women.

Findings from Moslems interviewed in the course of this Study have revealed that the problem was not with the *Sharia* System; but with its application. It was even further revealed that that religion and its laws have high regard for women. Examples are found in **Chapters 4 : 124** and **3 : 195** of the *Holy Quran*, which state the equality of both man and woman before God.

Also, in the cause of this Project,²⁰² it was noted that some States in the **North** have written Laws, which regulate custody and legitimacy of the child in **Kaduna, Sokoto, Kano** and **Zamfara States**.²⁰³

Equally, the findings of this Study have established the existence of a Law titled *Infant Law* designed to legitimize girl-child marriage in each of **Kaduna, Sokoto** and **Zamfara States**.

All the **four North Western States** covered by this Study had in existence an **Islamic Law of Inheritance**, enacted to advance the *Ilizakari formula*, which favours a male beneficiary to have twice of the female share.

²⁰² Quran, *ibid*.

²⁰³ Infants Law, Cap. 68 *Laws of Sokoto State, 1996*.