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Abstract

Quoting from Niki Tobi JSC, while delivering a lead judgment in the case of Augustine N.Mojekwu v Caroline M.O. Mojekwu where he said that all human beings, male and female were born into a free world to participate freely without any inhibition on the grounds of sex, race or any other reason(s). Gender has its credibility from the Holy bible and Al Qur'an which affirmatively confirmed that both male and female were perfectly made. Discrimination which has now become the order of the day has set in, thereby upholding some biased native laws and customs which deny women their rights. Despite different statutory provisions, the issues of gender imbalance in different aspect of lives still continues without being addressed. This paper has however, identified the causes of gender imbalance in our society and concluded on a strong note that all limiting factors of traditional beliefs that has been a clog to the potentials of women in our society must be erased totally and appropriate legislation has to be put in place in order to address the issue of gender imbalance in this present age.

Key words: Gender, Religion, Law, Jurisprudential, Approach

Introduction

Being the hand work of God, male and female were created with the mandate to replenish and subdue the earth. Holy bible, in the book of Genesis affirmatively confirmed that, male and female being the creation of God were perfectly made. Despite God's involvement in their creation, women in terms of rights and benefits are still subjected to a lot of discriminatory practices even with respect to rights and privileges already conferred on them by the law. Women being a weaker vessels and helpmate as portrayed by the Holy bible is a fist attempt to short change them in the area of rights and benefits. Also, under customary law of various tribes in Nigeria women as wives and widows are still subjected to unfair treatment in the hands of customary law stakeholders. While women as daughters due to some judicial pronouncements are now being permitted to participate in inheritance practices for instance in South-Western Nigeria, Eastern Nigeria and in some part of South-South Nigeria but women are strictly denied their inheritance right in Benin kingdom where rules of primogeniture operates. In Benin kingdom, male child is given credence over female children and that the property of their deceased father is being inherited by the first son of the deceased irrespective of the position he occupies in the hierarchy of the number of the children. While in Northern parts of Nigeria, Sharia law allocate small quantum of the property of the deceased fathers and husbands to their daughters and widows respectively. As laid down by the Holy Qu'ran, 1/8 of total property is expected to be given to the widows of the deceased and it cannot be changed or modified where the number of wives are many.



This paper however, saw that women have been marginalized for long in different aspects of lives and felt that the time is now that appropriate legislations be made to address the loopholes that have made women to be vulnerable in the first instance. This paper has attempted to provide solution to incessant discrimination against women at various levels.

Introduction

Gender rights

'*Human Rights*' are claims, which every individual has or should have upon the society. They do not differ from Geography or History; Culture or Ideology; Political or Economic Systems; or Stage of Development of any society. "*Fundamental Human Rights*" include equal rights and opportunities for all human beings, irrespective of race, colour, creed, political belief, status, class or gender.¹ These *Rights* attach to a person my virtue of his being human, without regard to the *gender* of individuals and persons concerned and the peculiar position of such persons, which positions are based on their *gender*. There is a plethora of Human Rights Instruments; at international, regional and domestic levels. All these instruments assume that all human beings are equal and are entitled to equal treatment as well as equal protection of the Law, irrespective of *gender*. However, in the application of these Instruments, inequality occurs and there are marked discriminations, based on *gender*. Often, women are at the receiving end of such gender-based discriminations; no thanks to religious and cultural practices.

Recent developments in International Human Rights Law, particularly, in the last decade or more, has shifted attention to issues of *gender* and *Human Rights*. There are efforts to have the claim that "*women's Rights are Human Rights*" accepted and to develop or transform existing concepts and practices to address, more effectively, violations of women's Rights. In recent times, women's Rights have been the central-features of international feminist struggle. On the other hand, gender rights discourse, until recently, often focused, solely, on women's rights and discrimination against women. Gender rights now transcend the issue of women's rights and go beyond discrimination against women. There is a new drive for upholding the rights of gays, lesbians and transgender people. Focus in this Chapter, therefore, would be on gender rights as they relate to women, even though, cursory look shall be taken at *International Bill of Gender Rights (IBGR²)*, which strives to uphold the rights of gays, lesbians and transgender people.

What is Gender?

Sometimes, it is hard to understand, exactly, what is meant by the term: '*gender*'; and how it differs from the closely-related term: '*sex*'. '*Sex*' refers to the *biological and physiological* characteristics that *define* men and women.

¹ Henkins, L. "*Here and There*" (1981) *Columbia Law Review*, 1582.

²IBGR was adopted by International Conference on Transgender Law and Employment Policy (ICTLEP) on 17th June, 1995 at Houston Texas, United of America. However, it is, at best, mere theoretical construction because it has no force of Law; see *IGBR*,www.inquirer.gn.apc.org accessed on 16th June, 2006

'Gender' on the other hand, refers to the *socially constructed* roles, behaviours, activities and attributes that a given society *considers appropriate* for men and women. It refers to the social interpretation of one's biological sex³; and the sum of cultural values, attitudes, roles, practices and characteristics, based on sex; that is, the social interpretation of what it means to be male or female.⁴ 'Male' and 'Female' are sex categories, while 'masculine' and 'feminine' are gender categories⁵. The term has also been said to refer to economic, social and cultural attributes and opportunities associated with being male or female within the family, the workplace and in the public sphere.⁶

Gender identify is socially derived and it is formed through socialization and not by biology. The rules governing the behaviour of male or female have nothing to do with the way our bodies are built. These rules are taught to us, continuously, from birth, the resulting behaviours become defining features of what it means to be male or female; and they have changed, very little, over time.⁷ Gender roles are culturally defined and determined and expectations affect behaviours in relationships, leisure activities and careers. It is common for women to be assigned gender roles, that disregard their desires, needs and feelings. This is related to sexism; that is, the conscious or unconscious assumption that members of one sex are superior to members of the other sex by virtue of their biology.

'Sexism', clearly, reflects a confusion of biology and culture⁸. 'Sexism' leads to creation of stereotypes; and this, in turn, leads to discrimination. Gender difference is seen as a manifestation of *sexism* and a patriarchal creation, used to rationalize inequality between the sexes⁹. For instance, a woman is expected to be soft-spoken, motherly, a great cook, timid, frivolous, sentimental, more prone to tears, having moods, less rational and being responsible for domestic chores. A man should be hard, a dominant partner in a relationship, strong, brave, rough and more rational. When men and women break these stereotypes, they are often forced, by their culture, to either accept them or be ostracized by the community.

'Gender Rights' are a group of Rights attaching to a person, not just by virtue of his or her humanity, but also, more importantly, because of sexual differentiation between male and female. The status of women has, of recent, been a cause of great concern in every culture and in every society and gender Rights advocacy is becoming stronger, vocal and louder. Millions of women throughout the world live in conditions of abject deprivation of, and attacks against, their Fundamental Human Rights for no other reason than that they are

³ See, *Comprehensive Sexuality Education, Trainers' Resource Manual*, (Action Health Inc. Pub., 2003), 304.

⁴ *Supra*

⁵ See, www.inquirer.gn.apc.org, *supra*, accessed on 16th June, 2006

⁶ See, Imasogie, M.O., *A Comparative Study of Aspects of Gender Equality Under the Nigerian and the South African Laws*, Unpublished Doctoral Thesis (Faculty of Law, University of Pretoria, South African, 2000), 15.

⁷ *Comprehensive Sexuality Education, supra*, 304

⁸ *Supra*

⁹ Imasogie, M. O., *supra*, 39

women.¹⁰ Fifty-eight years after *Universal Declaration of Human Rights, UDHR* has been adopted, Governments, all over the world, are yet to acknowledge the pervasive violations of women's Rights and their duty to stop them. There are, at present, many women's Rights Movements and government's articulation of policies supporting women's Rights, yet, many Governments fail to reform laws that discriminate against women¹¹.

Women's Rights

Throughout the history of most countries, women only played limited roles in the society; and discrimination against them limited the scope of their Rights. The causes of women's subordination and unequal gender-relations are deeply rooted in history, religions, culture, legal systems, political institutions and social attitudes.¹² The subjugation of women stretches to the dawn of pre-historic culture and it is built into myths, folklore, culture, tradition and in the way of life of many communities. Women were considered to be better suited for childbearing and homemaking, rather than for involvement in the public life of business or politics. The widespread presumption that women were not fully rational was, repeatedly, used as justification for continuing to exclude them from the public sphere.

Most times, women find themselves living within traditional and largely patriarchal societies, which dictates that a woman is subordinate to the man. From birth, females are considered inferior to males. A woman is viewed as being there to bear children, to serve her father, her brother and later her husband and her family, including her in-laws, in some cases. In most cases, women do not have any Property Rights, or if they do, they cannot inherit any property. Patriarchy made man the centre of society, from the level of family unit to the public sphere. Authority derived from the male, the woman was, first, her father's property and then, her husband's property¹³. In Kenya, when a girl is born, a sheep is slaughtered as compared to the cow or bull when a boy.¹⁴ Their representation and participation in various issues, is minimal. Their main role is to give birth to children – preferably boys – who will bear the family name. polygamy is the order of the day and they get married from as young as fifteen years of age. The marriages are often arranged marriages to elderly men. Women's Rights are Rights that establish the same social, economic, and political status for women as for men. Women's Right guarantee that women will not face discrimination on the basis of their sex. In appraising women's Rights in Nigeria, several issues come up for consideration, such as Right to Property and Inheritance, Right to Education, Reproductive Rights, Freedom from Violence and all forms of discrimination amongst others. These issues will, now, be discussed sequentially.

¹⁰*Women's Inheritance Rights in Africa Initiative*, www.hrlawgrp.com, accessed on 9 August, 2004.

¹¹ Imasogie, M. O., *supra*, 3.

¹² Mullenkei, L., "*Indigenous Women's Rights in Africa*" www.cpsu.com, accessed on 9 August, 2004.

¹³ Ikpenne, A., "*Legislative Advocacy on the National Bill on Violence against Women*" being paper delivered at Regional Workshop, organized by Federation of International Women Lawyers (FIDA) on 24th June, 2004, 1; see also; Imasogie, M.O., *supra*, 289.

¹⁴ Munkeljei, Lucy, *supra*.

Rights to Property and Inheritance

In many parts of the world, women's Right to inherit land and other property was severely limited. Women could not own property, independently of their husbands. In the United States of America, married women gradually got greater control over their property from the 1830s, when states passed laws and statutes granting them such Rights. New York State passed *Married Women's Property Act* in 1848, which allowed women to acquire and retain assets, independently, of their husbands. This was the first law that, clearly, established the idea that a married woman had an independent legal identity and this inspired nearly all other states to eventually pass similar legislation.¹⁵ Under most customary laws in many parts of Africa, Nigeria inclusive, women were not entitled to own property, independently, of their husbands. At a man's death, his property is either inherited by his adult sons or, if his children are minors, repossessed by his family. Customary laws, cultural practices and traditional norms are used to justify the disinheritance of girls and widow. Custom is invoked to override statutory or constitutional provisions that may provide women with legal right to inherit. In Nigeria, for example, customary law settles approximately, eighty-percent of land disputes, at the expense of women's rights.¹⁶ However, inheritance practices differ from culture to culture. For instance, a female child may inherit her father's property under the Yoruba culture in equal shares with her male siblings. She cannot inherit, at all, under the Igbo culture. In *Uboma v. Ibeneme*,¹⁷ the court held that women had no rights to inherit under the Igbo culture. Women may be allotted farmland for farming purposes; however, they cannot call such lands their own. Under the Islamic law, a woman may inherit the estate of her father though she is entitled to one-half of the share of a male child. The rationale for this method of sharing is that a male would take care of dependants while a female will have someone take care of her.

Under most cultures, a woman cannot inherit the property of her dead husband except under the Islamic Law where she is entitled to one-fourth of her husband's estate. On the other hand, a widower is entitled to half of his wife's property. This is gross inequality. Although a woman may inherit her husband's property under statutory marriage, several laws dispossess them of this Right as these laws make the cultural practices prevalent in the area override the common law provisions.¹⁸ In *Mojekwu v. Mojekwu*,¹⁹ the Court of Appeal held that the *oli-ekpe* custom of *Nnewi* which permits the son of the brother of a deceased to inherit the property of the deceased to the exclusion of his female child, is repugnant to natural justice, equity and good conscience. *Niki Tobi, J.C.A.*²⁰ said as follows:

¹⁵ Schultheisis, K., *infra*

¹⁶ *Women's Inheritance Rights in Africa Initiative*, www.hrlawgrp.com accessed on 9th August, 2004.

¹⁷ Suit No. 01/150/61 of 12/4/67; (unreported) cited by Niki Tobi, J.S.C., "Women and the Laws: the Judicial Approach" Akinseye-George, Y. and Gbadamosi, G. (eds.), *The Pursuit of Justice and Development* (Diamond Pub., 2004), 183.

¹⁸ See, *section, Wills Law of Lagos State*. The Ogun State equivalent also has the same provision.

¹⁹ [1997] 7 N.W.L.R. (Pt. 512) 283.

²⁰ As he then was

"We need not travel to Beijing to know that some of our customs, including the Nnewi oli-ekpe custom relied upon by the appellant are not consistent with our civilized world in which we live in today, including the appellant. In my humble view, it is a monopoly of God to determine sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority on who should be male or female.

The same position was held in the case of *Muojekwu v. Ejikeme*.²¹ Here, the Respondent sought to rely on the *Nrachi* custom by which a father may keep a female child in his house upon performing the *Nrachi* rites. Such a female child then takes the position of a male child. She cannot marry and she continues to bear children in her father's house for her father. In such an instance, such a female child may inherit the father's property to the exclusion of her other female siblings. *Olatunji, J.C.A.*, in his contribution, said:

"oli-ekpe custom with its moderating antidote of Nrachi ceremony flaunted by the respondents as the winning gambit has been roundly condemned in no uncertain terms in the leading judgement in much the same strain as was done earlier by this court in its celebrated pronouncements on the custom in Augustine Mojekwu v. Caroline Mojekwu (1997) 7 N.W.L.R. (pt. 512) 283 at 304 – 305. I endorse without reservations those structures which are justified by the vicious potentials of such custom in an era in which moral suasion is becoming disturbingly lax. The contribution of the women folk as a proactive medium in the annals of human race imposes a duty on mankind to accord that special breed of Homo sapiens a dignity for which advanced culture provides a model worth emulating".

However, in *Mojekwu v. Iwuchukwu*,²² the Supreme Court reversed the decision in *Mojekwu v. Mojekwu* and held that the *oli-ekpe* custom was not repugnant to equity and good conscience and that it is not all customs that can be regarded as repugnant to equity and good conscience. One wonders at the rationale behind the decision. *The Constitution* guarantees Right to freedom from any form of discrimination which may be based on *sex*.²³ Their Lordships should have averted their mind to this provision and the provisions of *Convention for the Eradication of all forms of Discrimination against Women (CEDAW)*. On the other hand, the *Nrachi* custom legalizes prostitution as the female child involved must not marry, yet, she must bear children in the name of her father, which is often by different men. It also confers undue advantage on the person who performed the rites over the other female children. The practice of *Nrachi* may be compared to the Indian practice of *Jogini* where a female child is dedicated to

²¹ [2000] 5 N.W.L.R (Pt. 657) 402

²² [2004] 11 N.W.L.R. 193.

²³ Section 42(1) 1999 Constitution of the Federal Republic of Nigeria. (CFRN)

the *Yellama* goddess. A *Jogini* rite is usually performed when the child is young and unable to appreciate the import of the performance. Once the rite is performed, 'the *Jogini*' becomes the wife of the goddess and cannot marry. She is seen as public property, free for any male who wishes to have her for as long as he wishes, without any form of responsibility towards her. She has no right to refuse any male advances. Her children are her own and the male have no responsibility towards the children. Most often, they live in abject poverty and as beggars.²⁴ Although the practice has been banned, nonetheless, it still exists in some places.

Right to Education

Widespread belief that women were intellectually inferior to men led most societies to limit women's education to learning domestic skills. Well-educated, upper-class men controlled most positions of employment and power in society.²⁵ The claim was that women were sentimental and frivolous and were, naturally, suited to be subordinate companions of men. Women were seen to be less intelligent than men. In response to these claims, an English writer, *Mary Wollstonecraft* wrote *A Vindication of the Rights of Woman*.²⁶ In this book, *Wollstonecraft* argued that, like men, women were naturally rational but their inferior education often taught them to be silly and emotional. Education, she believed, should cultivate the natural reasoning capacity in girls. She also claimed that the best marriages were marriages of equals, in which husband and wife were friends as well as legal partners. *Wollstonecraft* argued, further, and this writer agrees with her, that equality in marriage would only come about with equality of education.

In Africa, the education of the girl child in most communities was seen as waste of resources as women's roles were meant for the kitchen. Until recently, the percentage of educated women to men, was quite low. Also, poverty is a cause for non-education of the female. A situation where having three square meals is seen as luxury in most homes, under such tight economic condition, the girl child in the family is most likely to bear the brunt, as she is the one that is likely to have her education truncated, through early marriage, or forced into hawking of wares and prostitution, to keep the family.²⁷ This is the cause of early marriages by women. Many parts of Africa still practice child marriages where female children are given out in marriage to men who, oftentimes, are old enough to be their fathers and such marriages are mostly polygamous. *The African Charter on the Rights and Welfare of the Child* prohibits child marriages in an attempt to stem this ugly practice. Nigeria has also enacted *Child's Rights Act, 2003* in order to curb this menace. It is now an offence in Nigeria to give out a child in marriage or marry a child. Both the father and the husband would be criminally liable. This is a step in the right direction; however, compliance must be strictly monitored to ensure the effectiveness of the law.

²⁴ *True Love Magazine*, April, 2006 ed

²⁵ See. Schultheiss, K., "Women's Rights" *Microsoft Encarta Encyclopedia* (2002).

²⁶ Cited by Schultheiss, K., *supra*

²⁷ See, Adebimpe, T., a Professor highlighting factors which impede education of the girl child, *Thisday Newspaper* Comment, www.allafrica.com, accessed on 16th June, 2006.

There have been several attempts to improve the educational standard of women in Africa, through the introduction of several policies and affirmative actions. In Nigeria, for instance, several Government policies exist that are geared towards increasing the number of educated women. The enrolment requirements for girls into schools are lower than those of boys, in order to encourage higher enrolment of girls. Some communities offer scholarship to girls to further encourage the education of women. The Federal Government has two Unity Schools in each state of the federation, one of which is devoted to girls whilst the other is co-educational. All these are steps that are geared towards the improvement of girls' education. The Universal Basic Education Programme of Government is also laudable. However, it is one thing to declare free education, it is another to provide qualitative education. A situation where children go to school without books and other necessary learning materials is little better than no education at all; as a child without books is a child not in school. Therefore, more need to be done to improve the measures aimed at assisting indigent students and substantial percentage of this should be allocated to the female sex.

Reproductive Rights

Reproductive health is a state of complete physical, mental and social well-being. It is not merely the absence of disease of infirmity in all matters relating to the reproductive system, its functions and process. It is the ability to have a satisfying and safe sex life, capability to reproduce and freedom to decide if, when, and how often to do so.²⁸ Reproductive Rights have been defined as those which protect the health and well-being of both men and women.²⁹ However, Reproductive Rights are more fundamentally important to women than men, by virtue of the fact that they carry the burden of pregnancy and motherhood. Reproductive Rights include access to voluntary, quality reproductive and sexual health information, education and services.³⁰ Women have, long, been seen as useful, mainly, for reproductive means. This is illustrated by the fact that most Africans marry for the purpose of procreation. In many ethnic groups in Nigeria, marriage ceremonies are performed, only, when the wife is pregnant. It has been argued that it is this reproductive role of women that has been the major cause of acts of oppression against them.³¹ Reproductive Rights includes Right to decide on whether to have children or not, Right to privacy, which includes Fundamental Right to terminate a pregnancy. *CEDAW* expressly entitles women to have access to family planning services and these Rights are widely recognized to include abortion.³² However, in most African countries, abortion is viewed as morally wrong and abortion Rights are faced with restrictive laws. In Nigeria, abortion is illegal, except under certain medical conditions. Nearly half of all abortions carried out, worldwide, are done illegally; and in such situations, the death toll is usually very high.

²⁸*Comprehensive Sexuality Education, Supra 226*

²⁹ Imasogie, M.O., "Reproductive Rights as Human Rights", Nwazuoque, A.N (ed). *Essays in Human Rights Law* (Faculty of Law, Ebonyi State Pub., 2004), 98

³⁰*Supra*

³¹*Supra*

³² Cited by Imasogie, M.O., *supra*, 100

Another aspect of women's Reproductive Rights is the issue of Female Genital Mutilation (*FGM*), which term refers to removal of part or all of the *female genitalie*. Another form of *FGM* is infibulations which consists of *clitoridectomy*. All or part of the *clitoris* is removed, all or part of the *labia manora* and the *labia majora* are cut in order to create raw surfaces which are then stitched together in order to form a cover over the vagina. A small hole is left to allow urine and menstrual flow to escape.³³

The method differs from society to society and, oftentimes, leads to death from hemorrhage as they are often carried out under un-sterilized and crude conditions. Other serious diseases often occur as a result of this ugly practice. The practice of *FGM* is, perhaps, one of the cruelest infringements of women's Rights in Africa. The major reason for the practice is allegedly to reduce promiscuity amongst females. This is grossly unfair, as male children are not subjected to the same form of torture. In most societies where *FGM* is practiced, a woman who refuses to be circumcised is often ostracized and may not be able to get married. In Nigeria, *FGM* is common, mainly, in the Eastern part of the country. Although some parts of Western Nigeria practice *FGM*, this is usually done when the girl is a baby as is done in male circumcision. The practice is an infringement of the Right to the Dignity of the Person, particularly as women are often subjected to cruel and inhuman conditions in the process.

Freedom from Violence and other Forms of Discrimination

Violence against women is defined as *"any act of gender based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to women including threats of such acts, coercion, or arbitrary deprivation of liberty whether occurring in public or private life"*.³⁴ In the past, violence against women was accepted as part of everyday life, especially in the home. Most African cultures allow a man to chastise his wife by beating her. This is, sometimes, backed by law. For instance, *the Penal Code*³⁵ and *the Shari'ah Legal System*, which operate in Northern parts of Nigeria, allow a man to chastise his wife as long as it does not amount to grievous hurt.

Where a woman reports a case of assault on her person against her husband to the Police, the matter is often treated as domestic conflict which should be resolved at home between the parties and the woman, often, has no recourse to Law. on the issue of rape, it has been said that a married woman cannot be raped by her husband. Rape is unlawful carnal knowledge of a girl or woman without her consent. According to *Katherine Whitehorn*, *"the right to reject or accept a man's advances is the most Fundamental right a woman can have"*.³⁶ Until recently, a man could not be guilty of raping his wife. In *R. v. Mille*,³⁷ it was held that there is implied consent to intercourse which the wife gives at marriage which can only be revoked by Order of Court or by a separation agreement. The husband was, therefore, held not liable for rape. However, since

³³*Supra*, 105.

³⁴*CEDAW*, cited by Ikpenne, A., *supra*

³⁵*Section 55(1), Penal Code*.

³⁶ Cited by Niki Tobi, *supra*, 164

³⁷ [1954] 2 Q.B. 282, cited bu Niki Tobi, *supra*, 166.

he was not entitled to use force or violence for purpose of exercising his Right of Intercourse, if he did so, he was liable for assault. It was not until 1992, in *Regina v. R.*³⁸, that the House Lords, in a landmark manner, overruled the previous common law position that a man could not rape his wife. Even in the case of rape against unmarried women or girls, the victim is, often, seen as the culprit and blamed for the assault on her person. Also, because of the secondary victimization attached to it, rape cases, often, go unreported and the victim is left to bear the burden for the rest of her life.

Another form of harmful cultural practice is widowhood rites practiced in most parts of Nigeria. In some cultures, women have to shave their hair, sleep on bare floor for a number of days, and sometimes, when suspected of complicity in the death of their husbands, may be asked to sleep in the same room with their husband's corpses for several days amongst other acts of torture.³⁹ Meanwhile, same treatment is not applicable to a widower. In fact, in some cultures, a widower is given a woman to keep him company immediately his wife dies.⁴⁰

Social and Political Rights

Oppression of women has not only been cultural, rather it has, also, extended to Social and Political Rights. There are several behaviours which are acceptable for men and are frowned upon for women. On the political scene, women are still at the backstage in spite of the increased awareness of their Rights. The percentage of African women in place of high authority is still very low. One reason for lack of women in places of seniority and authority is, undoubtedly, the fact that professional women still have the primary responsibility for both housekeeping and child care. Despite the changing patterns of the workplace, women still, routinely, perform a higher proportion, if not all of the household chores. Africa only produced her first Female President in 2005, that is, *Helen Johnson-Sirleaf of Liberia*. Most of the political positions held by women are minimal and are, merely, to placate the political positions held by women from complaining of oppression. For instance, in Nigeria, we have never had a female governor and presently out of 36 State Governors, none is female and only two female are Deputy Governors. Most women who venture into politics are often seen as easy prey for men's sexual targets.

In spite of the fact that nearly forty percent of those called to the Bar are women, there has never been a woman at the Supreme Court of Nigeria.⁴¹ This phenomenon is not limited to Nigeria alone. Even western countries which claim to have better women's Rights face the same sort of discrimination. For instance, in Britain, out of one hundred and twenty one Queen's Counsel appointed in 2003, only nine were female and the first ever female member was appointed to the House of Lords, only, in 2003.⁴²

³⁸ [1992] 1 A.C. 599.

³⁹ This is prevalent among the *Igbo People*.

⁴⁰ This practice is common among the *Yoruba People*. The man is not expected to sleep alone so that the ghost of the dead wife would not disturb him.

⁴¹ Booth, C., "Women's Rights are Human Rights" *Access to Justice*, (British Council in Nigeria, 2003), 11.

⁴² *Supra*, 10.

The oppression mentioned above is worst for rural women who are a minority in any society in Africa. It is a difficult situation to enable them to be visible. Despite legal reforms in most of the African countries, women's social and economic status continues to be defined, largely, by customary rules that are deeply rooted in a country's specific historical, economic and social factors.⁴³ Even though women have always been partners in the struggle especially, in the last few years, they have taken responsibilities for the survival of their people, in bringing the family together, even in times of conflict; they have been in the forefront of giving hopes to their families.

Poverty, which has drastically increased over time, due to over exploitation of the scarce natural resources available, has resulted in frequent droughts; due to sudden climatic changes, conflicts in some parts of the African Region, illiteracy, funding, lack of access to better health care and HIV/AIDS. There are several other forms of discrimination against women on the basis of religion. In some places, women are restricted from movement because of one festival or the other. For instance, *oro* and *agemo* festivals in *Ijebuland* in the South-West Geo-Political Zone of Niger, whose demands restrict the movement of women. Some towns place a curfew on women for some days during some of these festivals.⁴⁴ It would be recalled that the Sagamu mayhem of 1999 between the Hausa settlers and the indigenes was a result of a curfew imposed owing to an *Oro* festival. Hundreds of lives were lost in the process. In spite of these, there has been no legislation against such practices.

Discriminatory Legislation against Women

Aside from the cultural forms of discrimination, there exists, also, several discriminatory legislation against women. For instance, *the Nigeria Police Regulation*⁴⁵ provides the qualification which must be possessed by a woman in order to be eligible for enlistment in the Nigerian Police Force as a recruit Constable. *Subsection (g) thereof* provides that the woman must be unmarried. Thus, married women are precluded from enlistment. Meanwhile, no similar provision is applicable to male. *Section 127 of the Regulation* provides that an unmarried woman Police who becomes pregnant shall be discharged from the Force and shall not be re-enlisted except with the approval of the Inspector-General of Police. A woman Police desirous of marrying shall apply to the Commissioner of Police for the State Command in which she is serving, requesting to marry and also supply the name, address and occupation of the spouse to be. Permission may be granted if the intended spouse is adjudged to be of character and the woman Police has served for minimum of three years. Again, no similar provision is applicable to male.⁴⁶ *The constitution*⁴⁷ gives

⁴³*Women's Inheritance Rights Initiative, supra.*

⁴⁴ For instance, in Odogbolu, Okun-Owa, Aiyeye, towns and some other parts of Ijebuland in the South-West Geo-Political Zone of Nigeria, there exists what is called: "*asemo*", literally meaning: "curfew", which restricts the movement of women from Friday night until Sunday morning.

⁴⁵*Section 118, Cap. N359, Laws of the Federation of Nigeria, 2004.*

⁴⁶ Nwazuoke, A.N., "*Equality and Discriminatory Legislation Against Women in Nigeria*", Nwazuoke, A.N. (ed.), *Essays in Human Rights Law* (Faculty of Law, Ebonyi State, 2004), 142.

⁴⁷*Section 42(3), 1999 Constitution of the Federal Republic of Nigeria.*

backing to what would otherwise be an unconstitutional provision. *Section 42 (1)* provides that

“a citizen of Nigeria of a particular community, ethnic group, place of origin, sex,⁴⁸ religion or political opinion shall not by reason only that he is such a person

(a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex,⁴⁹ religions, or political opinion are not made subject”.

Section 42(1) (b) provides that a person shall not be accorded any privilege or advantage on the same basis. However, what *the Constitution* gave with one hand, it took with the other hand, by the provisions of *section 43(3)*, which states that “*Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force to any office in the service of a body corporate established directly by any law in force in Nigeria*”.

In another vein, *the Criminal Code* also contains discriminatory legislation against women. According to *section 353*:

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

On the other hand, *section 360* provides that

“any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor and is liable to imprisonment for two years”.

It is submitted that this is the height of male chauvinism. It means the male is seen as superior to the female; hence, the different degrees and punishments attached to the same offence.

Another area of discrimination against women is the issue of acquiring citizenship by marriage. A foreign woman married to a Nigerian man may become a citizen merely by an of registration.⁵⁰ However, a Nigerian woman's foreign husband has no such Right. Such a person may become citizen, only, by naturalization and the conditions are much more stringent. As such, the Nigerian woman is not afforded the same opportunity as her male counterpart. Women have also been discriminated against in the application of *Shari'ah Penal Codes*. The flogging of *Bariya Magazu* in Zamfara State who was convicted for adultery and the death sentence passed on *Safiya Hussaini Tungari* by the

⁴⁸ Emphasis supplied

⁴⁹ Emphasis supplied

⁵⁰ *Section 26(1) and (2), 1999 Constitution of the Federal Republic of Nigeria, supra.*

Tudubya Shari'ah Court in Sokoto on similar charge of adultery, are some of the cases normally cited. The case of *Amina Lawal* is also a notorious case being cited by Human Rights Groups against *the Shari'ah*. The fact that these women were convicted on mere charges of being pregnant out of wedlock and the men were left to go free after denying any relation with the women, without more, has led credence to this fact. In the present age, there are several methods of confirming the paternity of a child. The Court should have had recourse to these methods before discharging the men.

One of the most prominent principles in Human Rights' discourse is that all persons are equal before the Law and entitled to the same legal protection. This principle is also embodied in *section 42 of the Constitution*. The same principle is expressed in international Human Rights Instruments. For instance, *International Covenant on Civil and Political Rights (ICCPR)* provides that "all persons shall be equal before the courts and tribunals."⁵¹ It provides further that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law."⁵² *African Charter on Human and Peoples' Rights (ACHPR)* also provides that "every individual shall be equal before the law and every individual shall be entitled to equal protection of the law"⁵³. Nigeria is a signatory to these Conventions, yet, these discriminations exists in favour of the male gender.

The Struggle for Women's Rights

Until the second half of the nineteenth century, women, in most societies, western societies inclusive, were denied some of the Legal and Political Rights accorded to men.⁵⁴ The denial of equal of rights to women met with only occasional protest and drew little attention from most people. This is because most women lacked the educational and economic resources that would enable them challenge the prevailing social order and they accepted their inferior status as their only option. This is, perhaps, as a result of the gender roles society and religion had forced on them. At the time, women shared these disadvantages with the majority of working class men, as many Social, Economic, and Political Rights were restricted to the wealthy elite.

In an attempt at remedying these inequalities among men, Political Theorists and Philosophers asserted, in the eighteenth century, that all men were created equal and, therefore, were entitled to equal treatment under the Law. In the nineteenth century, as Governments in Europe and North America began to draft new laws guaranteeing equality among men, significant number of women began to demand that women be accorded equal rights as well.⁵⁵

At the same time, the Industrial Revolution in Europe and North America further divided the roles of men and women. Before the Revolution, most

⁵¹Article 14, ICCPR

⁵²Article 26, ICCPR

⁵³Article 3, ACHPR

⁵⁴*Women's Inheritance Rights in Africa Initiative*, www.hrlawgrp.com, accessed on 9th August, 2004; see also, Schultheiss, K., *supra*.

⁵⁵ Schultheiss, K., *supra*.

people were farmer or artisans, both of which took place in or near the home. Men and women, usually, divided the numerous tasks among themselves and their children. Industrialization led male workers to seek employment outside the home in factories and other large-scale enterprises. The growing split between home and work reinforced the idea that women's 'rightful place' was in the home, while men belonged in the public world of employment and politics.⁵⁶

Organized efforts by women to achieve greater Rights occurred in two major waves. The first wave began around the mid-nineteenth century, when women in the United States and elsewhere campaigned to gain suffrage, that is, the Right to vote. This wave lasted until the 1920s, when several countries granted women suffrage.⁵⁷ The second wave gained momentum during the Civil Rights Movement of the 1960s, when the struggle by African-Americans to achieve racial equality inspired women to renew their own struggle for equality. The struggle for women's Rights in Europe began in the eighteenth century during a period of intense intellectual activity known as the Age of Enlightenment.⁵⁸ During the Enlightenment, Political Philosophers in Europe began to question traditional ideals that based the Rights of citizens on their wealth and social status. Leaders of the Enlightenment argued that all individuals were born with natural Rights that made them free and equal. They maintained that all inequalities that existed among citizens were the result of an inadequate education system and an imperfect social environment.

Though the radical ideas about equality and the Rights of citizens helped inspire both the American Revolution in 1775 and the French Revolution in 1789, it had little impact on the legal and political status of women.⁵⁹ In the early nineteenth century, the vast majority of married women throughout Europe and the United States still had no legal identity apart from their husbands. This legal status, known as '*coverture*', prohibited a married woman from being a party in a lawsuit, sitting on a jury, holding property in her own name, or writing Will. In custody disputes, Courts, routinely, granted permanent custody of children to the father.⁶⁰

In Africa, the struggle for women's Rights started early in the twentieth century, long before the International Conferences, in Nairobi, in 1985 and in Beijing in 1995, that focused greater attention on Women's Rights in Africa, as well as around the world.⁶¹ In Nigeria, *the Yoruba Women* resisted British-made Laws which they considered inimical to their interest. The uneducated women aligned themselves with their educated-elite counterparts to fight their cause, including press campaigns and petitioning the Colonial Office and Government Authorities in Britain.⁶² Militant Women Organisations like the Lagos Women's Party and the Abeokuta Union, pressed further, for female representation in

⁵⁶ Schultheiss, K., *supra*.

⁵⁷ *Supra*.

⁵⁸ *Supra*.

⁵⁹ *Supra*.

⁶⁰ *Supra*.

⁶¹ "Strategic Action Issue Area: African Women's Rights", www.africaaction.com, accessed on 9th August, 2004.

⁶² Imasogie, M.O., *supra*

Local Government Bodies and the Right to Vote in Municipal Elections.⁶³ *Bunmi Fatoye-Matory* wrote, and rightly in this writer's view, that the popular stereotype of "the silent and voiceless African woman", was unfounded.⁶⁴ *Fatoye-Matory* recalled the 1939 Aba Women's Demonstrations Against Colonial Taxation in Eastern Nigeria, which came "decades before the current tide of Western Feminism",⁶⁵ and that South African women protested against the Apartheid Laws in the 1950s.⁶⁶ There are also several women in African History who have, at one time or the other, made appreciable impact in the society as a result of their activism. For instance; *Queen Amina of Zaria*, who was well-known for her prowess at war,⁶⁷ *Madam Efunroye Tinubu* and *Mrs. Olufunmilayo Ransome-Kuti*. These women were Women's Rights and Welfare Activists of note and they made their mark, as Leaders on the shores of Africa, long before the advent of Western Feminism.

Women's Rights Struggle: The Journey So Far

Over the past twenty-years, World Conferences on women have contributed to the progressive strengthening of the Legal, Economic Social and Political dimensions of the role of women in a society. Gender equality has been asserted in all of the most important International Human Rights Instruments. *UDHR*⁶⁸ continues to form the cornerstone of modern International Human Rights Law. The preamble to this *United Nations Charter of 1945* reaffirms "faith in fundamental human rights, the dignity and worth of the human person, and in the equal rights of men and women".⁶⁹ In addition, by the terms of the *Charter*, member-states of the United Nations pledge themselves to promote and encourage respect for Human Rights and Fundamental Freedoms for everyone, without distinction as to race, sex,⁷⁰ language or religion⁷¹. *UDHR*,⁷² *ICCPR*,⁷³ and International Covenant on Economics, Social and Cultural Rights (*ICESCR*) all affirm the principle of non-discrimination on the ground, *inter alia*, of sex.

Perhaps the most important International Instrument on Women's Rights is *CEDAW*.⁷⁴ However, despite the progress made, women's concerns are still being given second priority almost everywhere. Although, women constitute seventy-percent of the world's poor, their plight is exacerbated by profound discrimination and marginalization which still confront them in many area. High rate of illiteracy among women, particularly, in Africa, still prevails in Africa. In the business-world, women, barely, account for more than one or two percent of the top executive positions. Too many women lack access to

⁶³*Supra*.

⁶⁴ See, *Fatoye-Matory, B., I am no Just an African Woman*, cited in "Strategic Action Issue Area: African Women's Rights", *supra*.

⁶⁵*Supra*.

⁶⁶*Supra*.

⁶⁷ *Boateng, J.A., History of West Africa*.

⁶⁸*Supra*

⁶⁹ See, *Imasogie, M.O., supra*, 50; emphasis supplied.

⁷⁰ Emphasis supplied

⁷¹*Supra*

⁷²*Supra*

⁷³*Supra*

⁷⁴*Supra*

reproductive health services. In developing countries, particularly, African countries, maternal mortality is highly prevalent among women of reproductive age. The World Health Organization (*WHO*) estimates that more than half-a-million women die, yearly, in childbirth. An African woman's lifetime risk of dying from pregnancy-related causes is 1 in 23; while a North American woman's is 1 in 4,000.⁷⁵

The denial of Inheritance Rights to women has resulted in the descent of millions of women and their families into extreme poverty and is a major cause and consequence of violence against women in Africa. The number of those affected by discriminatory inheritance practices continues to rise because of war and HIV/AIDS. It has been estimated that between 80 and 90 percent of the 16 million children that have lost at least one parent to HIV/AIDS is living in Sub-Saharan Africa. Young girls, orphaned by the epidemic, have become heads of impoverished and vulnerable households. Elderly women have also been affected, since the responsibility for supporting grandchildren, often, falls on the shoulders of the elderly.⁷⁶

Women, despite all, have tried to be visible. There are several women organizations set up to fight these imbalances. One of such is the formation of the African Indigenous Women Organization, one of whose objectives was to create awareness of their existence and the role they play in their different communities. They have organized training for their own members and most of them have had a voice. Women have seen too much human suffering and this has made them address their issues as equal partners from different political, cultural and religious backgrounds. In Nigeria, there are several Non-Governmental Organizations, aimed at improving Women's Rights, such as FIDA⁷⁷, Women's Rights Advocacy (WRA), Baobab for Women's Rights (BWR), Women in Nigeria (WIN), to mention a few. Some of these organizations have joined forces to present a Bill before the Nigerian National Assembly, for the eradication of violence against women.

The boldest attempt at protecting Women's Rights at the global level is the *CEDAW*.⁷⁸ Fifty-seven nations signed the Convention in 1980, at the United Nations World Conference on Women in Copenhagen.⁷⁹ *CEDAW* came into force on 3rd September, 1981 and by November, 2000, one-hundred-and-sixty-seven countries had ratified it. Some countries like Pakistan ratified *CEDAW* with reservations, such that where *CEDAW* conflicts with Islamic Law,⁸⁰ the latter prevails. However, Nigeria ratified *CEDAW* without reservations, yet, there many cultural practices that discriminate against women still persist in Nigeria and legislation which have the flavor of gender-bias against women also abound in the country's legal system, sadly, with constitutional backing.

⁷⁵ "Strategic Action Issue Area: African Women's Rights", *supra*.

⁷⁶ See, *Women's Inheritance Rights in Africa Initiative*, *supra*.

⁷⁷ *Supra*

⁷⁸ *Supra*

⁷⁹ Imasogie, M.O., *supra*, 33 to 34

⁸⁰ Which is predominantly operational in Pakistan

*ACHPR*⁸¹ also, does not help the women, as it contains claw-back provisions. *The Charter* recognizes cultures, most of which are discriminatory against women. However, recently, in Nigeria, NGOs seem to be taking a step in the right direction as a *Bill on Prevention of Violence Against Women* is, currently, before the Nigerian National Assembly. Maybe when the Bill is passed into Law, some form of violence hitherto referred to as domestic would become punishable offences.

Right to Define Gender Identity

Having discussed extensively on Women's Rights, we shall, now, consider Gender Rights from the perspective of the Gays, Lesbians and Transgender people. This is particularly imperative because of the proposed criminalization of same-sex relationship in Nigeria. *IBGR*⁸² strives to express Human and Civil Rights from a gender perspective. However, the ten Rights enunciated in it are not to be viewed as Special Rights applicable to a particular interest group, not are these Rights limited, in application, to persons for who gender-identity and gender-role issues are of paramount concern. *IBGR* was first drafted in Committee and adopted by ICTLEP⁸³ at that Organization's second Annual Meeting, held in Houston, Texas, United States of America in 1993.⁸⁴ *IBGR*, however, remains mere theoretical construction which has no force of law except it is, specifically, adopted by Legislative Bodies or its principles are specifically recognized by Courts of Law, Administrative Agencies and International Bodies, such as United Nations. As indicated earlier, *the Bill* enumerates ten Rights, which are as follows:

- 1) Right to Define Gender Identity;
- 2) Right to Free Expression of Gender Identity;
- 3) Right to Secure and Retain Employment and To Receive Just Compensations;
- 4) Rights of Access to Gendered Space and Participation in Gendered Activity;
- 5) Right to Control and Change One's own Body;
- 6) Right to Competent Medical and Professional Care;
- 7) Right to Freedom From Psychiatric Diagnosis or Treatment;
- 8) Right to Sexual Expression;
- 9) Right to Form Committed, Loving Relationships and to Enter into Marital Contracts; and
- 10) Right to Conceive, Bear, or Adopt Children; Right to Nurture and Have Custody of Children and to Exercise Parental Capacity.

IBGR declares that all human beings carry, within themselves, an ever-unfolding idea of who they are and what they are capable of achieving. The individual's sense of '*self*' is not determined by chromosomal sex, genitalia, assigned birth sex, or initial gender role. Thus, the individual's identity and capabilities cannot be circumscribed by what society deems to be masculine or feminine behaviour.

⁸¹*Supra*

⁸²*Supra*

⁸³*Supra*

⁸⁴ See, *International Bill of Gender Rights*, www.inquirer.gn.apc.org, accessed on 16th June, 2006, *supra*.

It is fundamental that individuals have the Right to define, and to redefine as their lives; unfold their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role.⁸⁵ Therefore, all human beings have the Right to define their own gender-identity, regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role; and further, no individual must be denied Human or Civil Rights by virtue of a self-defined gender-identity, which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.

All the ten Rights enumerated carry, basically, the same prohibition of discrimination, on the basis of a self-defined gender-identity. However of these Rights, the one that is most important to us in this Chapter is *Article 9*, which is "*Right to Form Committed, Loving Relationships and to Enter into Marital Contracts*". In January 2006, the Attorney-General and Minister of Justice of Nigeria, *Chief Bayo Ojo*, proposed a Bill, entitled: "*Same Sex Marriage (Prohibition) Act*." It was approved by the Federal Executive Council and was sent to the country's National Assembly for 'expeditious consideration' "*because the problem has become topical and embarrassing in recent times*".⁸⁶ Among other things, the Bill provides for five-years imprisonment term for any person who "*goes through the ceremony of marriage with a person of the same sex,*" "*performs, witnesses, aids or abets the ceremony of same sex marriage,*" or "*is involved in the registration of gay clubs, societies and organizations.*" The Bill also prohibits any public display of a "*same-sex amorous relationship,*" as well as any form of adoption by Lesbians or Gays.⁸⁷

This Bill generated heated debates amongst Gay Rights' Groups on the one hand and Religious Organizations on the other. *The Bill*, virtually, polarized the Anglican Church, for instance. It is noteworthy, here, that of the world's most vocal opponents of homosexuality and supporter of *the Bill*. He denounced same-sex marriage and is the leader of a conservative movement within the worldwide denomination that sprang-up, following the election of a Gay Bishop of New Hampshire in the United States. On the other hand, an American Bishop, *Chane*, was critical of *Akinola's* support of the Bill, accusing him of supporting a harsh Bill which suppresses Rights of the minority.⁸⁸ In response to *Chane, Rt. Rev. Robert Duncan*, Bishop of Pittsburg came to *Akinola's* rescue. He opined as follows:

"Bishop Chane's comments betray a profound lack of empathy or understanding for the position that Archbishop Akinola and all Christians find themselves in... it should be noted that while the proposed law sounds harsh to American ears, the penalty for homosexual activities in those parts of Africa under Islamic Sharia law (such as the Sudan and portions of Northern Nigeria for that matter) is death. It is precisely the imposition of these much harsher Sharia laws

⁸⁵Article 1, IBGR, *supra*.

⁸⁶ See, *Letter to His Excellency, Joseph U. Ayalogu, Ambassador, the Permanent Mission of the Federal Republic of Nigeria*, www.ilganews.org, accessed on 16th June, 2006.

⁸⁷ See, Nigeria: *Obasanjo Must Withdraw Bill to Criminalize Gay Rights*, www.hrw.org, accessed on 16th June, 2006.

⁸⁸ See, *The Moderator's Defense of the Archbishop*, www.anglicanfuture.blogspot.org; www.thelivingchurch.com, accessed on 16th June, 2006. s

that Archbishop Akinola and other Anglican leaders in Africa have resisted so strongly for many years with little publicity or support from the West. It is jarring, to say the least, to see church leaders, who claim to champion the primacy of local understanding and culture, demanding that foreign sister churches give up their own local understanding and culture and be judged by an American understanding of individual rights. There is a word for the one-way imposition of values – *colonialism*.⁸⁹

Several arguments have been proffered against *the Bill*. It has been argued, for instance, that *the Bill* would violate the principle of non-discrimination, enshrined in all main International Human Rights Instruments, which is, also, a cornerstone of Human Rights Law. It would also, clearly, restrict freedoms of expression and association of Human Rights Defenders and members of Civil Society, when advocating Rights of Gays and Lesbians. *The Bill* will, also, potentially, criminalize Civil Society Groups that engage in fighting against HIV/AIDS through prevention programme. It is difficult, however, to see how homosexuality will help prevent HIV/AIDS.

Another argument against *the Bill* is that homosexuality is already a crime in Nigeria. Under Islamic Law, Gay-sex is punishable by death.⁹⁰ *Section 214 of the Criminal Code*⁹¹ also penalized consensual homosexual conduct between adults with fourteen years imprisonment. They wonder at the need for another legislation on the matter. However, according to *Frank Nweke, Jr.*, Nigeria's *Information Minister*, Government took the 'pre-emptive step' because of developments, elsewhere, in the world – a tacit reference to legalization of same-sex marriage in countries like Belgium, Spain, The Netherlands and Canada.⁹²

Nigeria is not alone in this regard. In Uganda, the criminalization of those in same-sex marriage came as an unannounced change to the Constitution. The purpose of this, and perhaps the Nigerian Legislation, is to take care of those who have contracted partnerships, elsewhere. On the issue of violation of Freedom of Association, Government can, hardly, make an act unlawful and allow for the lawful campaigns of such act. Everything must stand or fall together if Government, indeed, desires to succeed in its aim.

The most vocal opponents of *the Bill* are Americans who, invariably, would not be affected by *the Bill*. From cultural-relativism point of view, Western concept of Human Rights is not the same as Africans'. In most cultures in Nigeria, same-sex relationships, lesbianism, homosexuality and its likes, are regarded as reprehensible and abominable. To impose western values on the country is a direct attack on our cultural identity, and as *Rt. Rev. Robert Duncan* insisted⁹³, smirks of colonialism. According to *Martin Reynold*:

⁸⁹*Supra*; emphasis supplied.

⁹⁰ See, www.globalgayz.com accessed on 6th July, 2006

⁹¹ Applicable in states constituting defunct Southern Nigeria.

⁹² See, www.fidh.org, accessed on 6th July, 2006

⁹³*Supra*.

“sorry to have to pour cold water on so many liberals’ feelings, but I would like to point out in the clearest terms possible that Human Rights are just the “rights” that governments have currently agreed to give their citizens. There is nothing magic or sacred about them! As far as Christians are concerned, “Human Rights” do not have canonical authority; they are just human-made laws, or maybe the ruling principles of this world, by another [prettier] name...”⁹⁴

And in the words of to *Akin Ibidapo-Obe*:

“The West’s ongoing attempts to universalize human rights should thus be treated with circumspection. Is the universalist argument some form of subtle cultural imperialism? What right has the Western world to champion human rights when they are the worst abusers? For four hundred years, they traded in human beings forcibly captured from the Coastal areas of Africa before their hearts suddenly softened to the preaching of the anti slavery movement at the Berlin Conference in 1885, slave trade was outlawed by international treaty but alas at the same table in Berlin, the whole of African territory was amongst the European powers (with America’s tacit approval) for the plunder and exploitation of her rich human and material resources”.⁹⁵

However, Omonubi-McDonnel’s work⁹⁶ examined the status of women in South-western Nigeria from a legal perspective. The study is based on the premise that the huge disparity in the socio-economic development of the women in South-Western Nigeria is a consequence of inadequate legal protection. The study found that constitutional and statutory laws do indeed provide substantial protection for women; however, some statutory laws exclude women married under customary laws. The conclusions drawn from these findings are that factors including, but not limited to, the inadequacy of legal protection, are key elements to which the socio-economic and political backwardness of women may be attributed. The factors include a lack of gender-specific legislation to emancipate women from the shackles of patriarchy; ignorance and lack of awareness of awareness of existing protection; biased customary laws which are pro-male and which inhibit the socio-economic and political advancement of women and customs which reinforce gender inequality.

She established that the economic mode of capitalism and the ideological mode of patriarchy have largely been responsible for the subjugation and oppression

⁹⁴ See, Reynold, M., *Comments on Same Sex Marriage Bill*, www.thinkinganglican.com.

⁹⁵ Cited by Augie, A., “*The Application of International Law to Develop Domestic Equality Jurisprudence*”, Akinseye-George, Y. and Gbadamosi, G. (eds), *The Pursuit of Justice and Development*, (Diamond Pub., 2004), 210. Akin Ibidapo-Obe, an Associate Professor of Law, is a renowned expert in African Legal System and Practices and notable Human Rights Activist.

⁹⁶ Omonibi-MiDonnel, M. Spectrum Books Ltd, Ibadan, 2003, *Gender Inequality in Nigeria*

of African women and Nigerian women in particular. In addition, there are still many socio-cultural impediments that infringe on the rights of women; that obstruct the advancement of women in the Nigerian society. Again, the existing legal systems still uphold and sustain patriarchal domination of women. Women are still rated and treated as second-class citizens in spite of the constitutional rhetoric that declares every Nigerian equal irrespective of sex. She expose and condemn those cultural, ideo-political, socio-economic and legal frameworks that inhibit the growth and development of the Nigerian woman. She further examines African woman's battle against sexism and the attending complexities of the struggle.

Against the background that African women have suffered various forms of discriminatory practices which are inherent in customary and traditional norms of their society despite the presence of statutory laws that provide at least, limited protection of women's right to inherit property, a book published by *The Gender Action Programme of Shelter Rights Initiatives*⁹⁷, contains four papers. Paper one of the book⁹⁸ examines the *Nigerian Justice System and Inheritance, Women's Inheritance Rights and Marriage Under the Matrimonial Causes Act, Inheritance Rights of Women Married Under the Act Where Husband Dies Without Making a Will, Women's Inheritance Rights and Customary Law Marriage, Women's Inheritance Rights and Islamic Law Marriage. The Imperative of Making a Will, Deed of Gift, Education of the Girl Child and Maintenance of Good Family Life* were stressed as some of the strategies towards safeguarding interest of the Women.

The paper equally emphasizes the need for the courts to re-engineer laws relating to women's inheritance rights under customary law since customs are not static as the Supreme Court's decision in *Akinubi b. Akinubi*⁹⁹ seemed to suggest but dynamic as the Court of Appeal highlighted in *Muojekwu v. Muojekwu*¹⁰⁰. The second paper treats *International Human Rights Standards Pertaining to Women's Inheritance Rights such as Universal Declaration of Human Rights (1948), The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant of Economic, Social and Cultural Rights (ICESCR) (1966) and the International Covenant on Civil and Political Rights (ICCPR) (1996), African Chapter on Human and People's Rights*. The third paper discusses the *Experiences and Challenges of Litigating Inheritance Rights of Women* while the last paper examines *Women's Inheritance Rights from an Analytical Perspective*. The book's position in summary is that inheritance is the birthright of all members of the human family. It is inextricably linked to the enjoyment of all other categories of rights because the wealth and knowledge of one generation usually assists the new generation to lay a solid foundation, build and improve upon before handing over the baton to another generation. Denial of inheritance rights impoverishes the woman and makes her less economically secure. In cases of agricultural land tenure

⁹⁷*Women and the Rights to Inheritance in Nigeria*; being the report of a one day workshop to mark the African Women's Day/Day of Action for the Inheritance Rights of Women sensitizing women (and men) on the national and international standards that protects women's inheritance rights, and options available at various levels in Nigeria.

⁹⁸*Women's Inheritance Rights – The Nigerian Situation and Options Available At All Levels*

⁹⁹ (1997) 2 NWLR (pt 486) 144

¹⁰⁰ (1997) 7 NWLR at p. 283

where the women who work upon land have no inheritance over it, there is no motivation for sustainable interventions. Give the woman an inheritance and the world will become more equitable.

Gender Gaps In The 1999 Constitution of Nigeria summarizes the proceedings of the training workshop on gender and constitutional reform.¹⁰¹ The papers presented at the workshop dwelt on several issues: First, the workshop examined the status of women in general. It concluded, that although women constitute about half of the Nigerian population, they are poorly represented in the labour force with the majority working in rural agriculture. The same goes for education in which fewer girls are enrolled in schools than should be the case given the female population. This under representation is further reflected in the areas of politics and governance, a fact that is not surprising given the long spells of military dictatorship, and the dominant patriarchal socio-cultural framework that promotes and reinforces the subjugation of women in the name of culture.

The workshop then studied the history of constitution making in Nigeria from ninety nine years prior to independence in 1960, and the postcolonial era leading up to the present day. Both periods were characterized by the undemocratic machination of British colonial government, then military governments, which severely restricted participation in the constitution making process through exclusively or largely appointed male dominated committees. Earlier constitutions actually went as far as reflecting the then existing forms of international marginalization of women by imposing gender, age and income criteria that excluded women from the democratic process. Although universal adult suffrage in Nigeria took effect from the 1979 constitution, women were subsequently excluded completely from the making of the 1999 constitution. Not surprisingly the elections based on the 1999 constitutions resulted in less than 15 percent of all public offices being held by women.

By way of comparative analysis with several countries such as the United States, France, India, Congo Brazzaville and so forth, the workshop went on to look into the role of the constitution in the domestic application of international human rights standards. The lead paper enunciated the reluctance of Nigerian courts to apply international human rights standards unless the National Assembly has enacted them into national law. As a result, both broad international human rights standards such as the Universal Declaration of Human Rights and Women specific standard such as the Convention for the Elimination of Discrimination Against Women (CEDAW) offer no protection to Nigerian women. There is therefore no legal backing for the calls by women organizations and gender sensitive human rights groups and organization to end widespread

¹⁰¹ The workshop was organized by the *Women Advocates and Research Documentation Centre* (WARDC) in Abuja in April 2002. The workshop was organized in order to enable the participants and their organizations focus on the problems of constitutional reform, what should and can be done to ensure the full participation of women in the constitution making process, and for women's issues to be positively reflected in the polity of the nation. Although the workshop examined the general framework of constitutional processes in Nigeria, it also focused on the flaws of the military created 1999 constitution, and the equally flawed attempts by the Olusegun Obasanjo led civilian government to review it.

discrimination against women including domestic exploitation and violence in the home and society. The paper concluded, that the National Assembly needs to be enlightened to the need for it to domesticate international rights standards that have been signed and ratified by the country. Other issues were discussed by the workshop, which are not reflected in the papers published here. These include, rape in and outside marriage, forced marriage, female genital mutilation, discriminatory inheritance practices and the negative role of the media in relation to promoting stereotypes and subservience of women.

Arguably the most important of these issues, is the role of the media in reinforcing the social, economic and political marginalization of women. The lead discussant argued, that journalists and therefore the media are not separate from the larger society and therefore reflect many of societies prejudices. There is therefore an urgent need to enlighten the media through individual journalists about why discrimination against women exists, why it is necessary to end it, how this can be done and the role the media can play in this. Participants criticized the use of stereotypes in the media that reinforced prejudice against women, and the invocation of 'culture' and 'religion' to support the myth of male superiority.

However, it was not all doom and gloom. The workshop participants noted the increasing political consciousness of women and the importance of translating this into political consciousness of women and the importance of translating this into political capital. Participants concluded, that a key way of achieving this is to strive to accelerate the growth and strength of the advocacy network on gender and constitutional reform promoted by the workshop. Ezeilo's work¹⁰² highlights the problems of gender based inheritance laws and practices that continue to deny women and girl-children equal rights to inherit property upon the death of a husband or a father. The paper noted that throughout Nigeria there is no gender equality in respect of right to inheritance. Discrimination between males and females persists even in the most benevolent culture and tradition. The paper expresses the hope that the case of *Mojekwu v. Mojekwu*¹⁰³ (decided by the Court of Appeal Enugu in 1997) recognizing women's right in an area where the customary norms prescribes otherwise may indeed mark the beginning of an end to this inequality and injustice that runs contrary to principle of equality, dignity, justice and democracy.

Another book by Ezeilo¹⁰⁴, *A Cry For Justice*, documents proceedings of the national women's court event in five chapters. Chapter one evidences the reality of rape and sexual violence against women in Nigeria, while chapter two documents WACOL's services to survivors of rape in conflict torn communities where women were tortured and sexually violated. Chapter three examines the crucial role of media in reporting rape crimes. Chapter four titled: "*Public Opinion on Rape and Sexual Offences*" is a synthesis of the expert papers presented during the national women's court. The final chapter views zero

¹⁰² Ezeilo: J, *Laws And Practices Relating to Women's Inheritance Rights in Nigeria* (Women's Aid Collective (WACOL) Occasional Working Paper Series), 2003

¹⁰³ (2000) 5 NWLR pt. 657 p 402

¹⁰⁴ Ezeilo J, *The Truth About Sexual Violence Against Women In Nigeria, 2004.*

tolerance to violence against women as the way forward. Obiora's work¹⁰⁵ is an attempt at simply articulating rights of women and children in Nigeria with a view to assessing how far Nigerian government has gone in promoting respect for women's rights and the extent, children also enjoy their human rights in Nigeria.

The Federal Government's *National Policy on Women*¹⁰⁶ is significant as a way of redirecting public policies to promote gender equality and enhance complementary role women and men should play in development. Before this time, gender issues in development received little attention in national planning in Nigeria until the declaration of the United Nations Decade for Women. Hitherto, Women's reproductive, productive and community management roles and potentials were marginalized and left out of the system of national planning. Therefore, development planning since the colonial period had been gender insensitive, as a result of the continuous interaction between the indigenous culture and the inherited patriarchy from the colonial administration, as well as the strong inhibiting effect of traditionalism and capitalist ideologies. Until the last decade and a half, the gains of women from development were minimal and temporal while the entire process intensified existing gender inequalities even in period of national prosperity. Although the United Nations Decade for Women increased awareness about the strategic and practical needs of women, there was little commitment to incorporate these into national and sectoral policies until the mid-1980s, when there developed the yearnings for a National Women in Development Policy to facilitate the full integration of women into the social economic and political life of the nation. This National Policy on Women fulfils all the yearnings as well as efforts of Federal, State and Local Governments, Non-Governmental Organisations (NGOs), International Development Partners, the private sector, concerned corporate bodies and individuals to integrate women fully into national development in order to remove those gender inequalities that have evolved in the society over time through structure and processes created by patriarchy, colonialism and capitalism.

The Policy is expected to consolidate largely salient revolutionary changes already stimulated by past and current women in development programmes. This national policy articulated women's problems in Nigeria and importantly recognised that cultural practice; illiteracy, low social visibility inhibits women though they are primary providers of services. Their concern are often overlooked by policy makers and implementers. The overall goals and objectives of the policy includes ensuring the elimination of all forms of discrimination against women, ensuring that the principles and provisions as contained in the Nigerian constitution are effectively enforced; and mainstreaming gender perspectives in all policies and programmes based on a systematic gender and analysis at all levels of government. The policy thrust is equity, social order and social well-being. The laudable objectives contained in the policy should inform social and legislative changes. It is the belief that the policy would provide an enabling environment particularly for women's organizations to engage with law and policy makers in the quest to transform some of the policy objectives

¹⁰⁵ *Women and Children's Right in Nigeria*

¹⁰⁶ Obiora U. *Women and the Right to Inheritance in Nigeria*. Shelter Right Initiative, 2001.

into a more binding law. If the policy strategic objectives were translated into action it would be a forward looking strategies for promoting gender equality and development in all its ramifications. It is hoped therefore, that effective machinery should also be put in place for implementation.

Conclusion

It is submitted that Nigeria must not succumb to American blackmail. For instance, in the United States of America, where the system finds its greatest expression, the society falls, hopelessly, into corruption, moral decay and social disintegration. *"The lax standard among undergraduate and faculty staff on many a college campus are only one symptoms, of the times, only one example of the weakening moral fibre of those forces that traditionally sustain civilization."*¹⁰⁷ The statement also mirrors state of affairs in Nigeria today. A visit to most University campuses, would reveal the pitiable moral decadence into which the Nigerian society has degenerated.

¹⁰⁷ Sulaiman, I.K.R., *"The Shariah and the 1979 Constitution"* Syed Khalid Rashid (ed.), *Islamic Law in Nigeria: Application and Teachings* (Islamic Publication Bureau, 1986), 55, 65, quoting, Cook, F.J., *The Corrupted Land - The Social Dilemma of Modern America*, 239 to 249, where substantial emphasis was placed on the threatened disintegration of the American society.