

# UNEQUAL BY DESIGN



An Appraisal of Nigeria's Patriarchal Laws

2025



# **AN APPRAISAL OF NIGERIA'S PATRIARCHAL LAWS**



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# Preface

**T**he quest for gender equality and the elimination of discrimination against women in Nigeria has been a defining struggle of the country's democratic journey. From the early days of ascension of democracy in the country, women's groups, civil society organizations, and other advocates for justice have worked tirelessly to dismantle the structural and systemic barriers that restrict women's access to political, social, and economic opportunities. Their efforts through legislative advocacy, litigation, and public mobilization, have yielded moments of progress, yet the ultimate goal of full equality remains elusive in the country.

Despite the introduction of several gender-focused bills and constitutional review efforts, Nigeria's legal and political frameworks continue to reflect gaps that undermine the rights of women. Some legislative initiatives have sought to correct discriminatory clauses or insert new provisions to promote women's participation in governance and public life. However, these efforts have yet to achieve the transformative legislative outcomes necessary to secure the equal status of women in law and in practice.

This dossier provides a critical review of the laws and constitutional provisions that sustain gender-insensitive and discriminatory practices in Nigeria. It traces the trajectory of women's rights advocacy, situating it within broader human rights frameworks and the lived realities of Nigerian women. It also identifies key constitutional provisions that require amendment and highlights existing ones that can be leveraged to advance women's empowerment and leadership.

Ultimately, the dossier calls for renewed commitment and collective action by policymakers, advocates, and citizens alike, to translate decades of advocacy into lasting structural change. It concludes with clear recommendations for policy and legislative reform, offering a pathway toward a more inclusive and equitable Nigeria.

# Executive Summary

**F**or over two decades and since the Nigerian current democratic dispensation, there has been constant struggle for the realization of the rights of women to equality and non-discrimination. Many positive steps have been taken by women groups, Civil Society Organizations (CSOs), and other concerned citizens to address the inequalities and inequities that perpetuate women's limited access to political, social and economic opportunities. Some of the actions are by way of legislative advocacy, others through the courts and those efforts have achieved mixed results.

There have been several sponsored bills targeted at achieving equal opportunities for women and some of these bills sought constitutional review to address discriminatory provisions against women, and in some other cases clauses have been added to existing provisions of the constitution to enhance the opportunities of women to participate in both the administrative and political spaces of the country. Until present, the struggle continues, as all efforts to achieve the required legislative intervention for the rights of women are yet to yield the desired outcomes.

This report highlights some provisions of Nigerian laws that perpetuate, support or

institutionalize gender insensitive and discriminatory practices against women. It also gives a brief background to the struggle for the actualization of the rights of women in Nigeria, citing human rights instruments supporting the struggle of the women and especially the social and political realities of women necessitating the push for legislative intervention. The report also highlights the constitutional provisions requiring amendment and those that need to be leveraged on to enhance the opportunities of women to thrive in their daily lives, and participate in leadership and governance. It finally makes some recommendations on enumerated policies as well as recommendations on more structural practices and how progress can be achieved.

**Key words:** laws, constitution, patriarchy, gender, discrimination, inclusion, equity, equality.

# LIST OF ABBREVIATIONS

<b>ACDEG</b>	African Charter on Democracy, Elections and Governance
<b>ACJA</b>	Administration of Criminal Justice Act
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CFRN</b>	The Constitution of the Federal Republic of Nigeria 1999 (As amended)
<b>ECOWAS</b>	Economic Community of West African States
<b>GEOB</b>	Gender and Equal Opportunities Bill
<b>GEO</b>	Gender and Equal Opportunities
<b>FGM</b>	Female Genital Mutilation
<b>IDS</b>	Institute of Development Studies (IDS), University of Sussex, Brighton, United Kingdom
<b>HBS</b>	Heinrich Böll Stiftung
<b>HBF</b>	Heinrich Böll Foundation
<b>UDHR</b>	Universal Declaration of Human rights
<b>VAPP</b>	Violence Against Persons Prohibition Act 2015

# BACKGROUND

Article 1 of the Universal Declaration of Human rights (UDHR) provides that 'All human beings are born free and equal in dignity and rights.' Also, Article 2 provides that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Interestingly, the principles of equality and non-discrimination are major highlights of several International and Regional Human Rights Instruments. Although, Nigeria is signatory to most of these human rights instruments, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), ratified since 1985 and the Optional Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol), ratified in 2004, the country is still struggling with the actualization of the rights of women. It is important to note that these human rights instruments (CEDAW and Maputo Protocol) guarantee comprehensive rights to women, including the right to participate in the political process, to social and political equality with men. It is therefore unfortunate that Nigerian women still remain victims of several forms of religious, cultural, and politically endorsed discrimination, inequalities and inequities and that these are supported by discriminatory legislations.

The Nigerian Constitution also supports the rights of women to equality and non-discrimination. Section 15(2) of the Constitution provides that accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited,<sup>1</sup> while Section 42(1)(a) provides for right to freedom from discrimination. It states thus:

”

*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, religious or political opinions are not made subject.*<sup>2</sup>

“

<sup>1</sup>See The Constitution of the Federal Republic of Nigeria 1999 Updated with the 1st, 2nd, 3rd Alterations (2010), 4th Alteration (2017) and 5th Alteration (2023), printed by Policy and Legal Advocacy Centre (PLAC): October 2023.

<sup>2</sup>Ibid

Section 17(3)(e) of the constitution on its part provides that “the State shall direct its policy towards ensuring that there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever...” This section attempts to address gender-based disparity in the earnings of women as against men.

In practice however, Nigerian women are yet to enjoy the full benefits of these constitutional provisions on equality and non-discrimination especially in terms of opportunities of participation in politics and other decision-making positions in the country. For example, report has it that Nigeria ranks 184 out of 192 countries and has one of the lowest records for women in parliaments worldwide. In the West African region, the nation has the lowest number of female legislators. The country also finds itself in the bottom ranking 54th in the African continent out of a list of 57 countries.



Ironically, while Nigeria posts this discouraging record, women and girls constitutes approximately half of its population and in spite of this enormous advantage in terms of number, they are disproportionately under-represented in the political space of Nigeria. Report shows that currently, only four out of 109 senators and 17 of the 360 House of Representatives members are women, making elections in Nigeria an indicator of how men dominate politics in the country. More so, it is in the reports that since its independence in 1960, Nigeria has never elected a female president or state governor. Statistics also show that women hold only 9.8% of local government seats and only 30.3% managerial positions nationwide. In addition, Nigerian women rank 27.3% in the financial inclusion index. Similarly, according to Women's World Banking, only six per cent of women in Nigeria have access to credit.<sup>6</sup>

<sup>3</sup><https://placng.org/i/wp-content/uploads/2022/02/Factsheet-on-Specific-Seats-Bill.pdf>; assessed 20 February 2024

<sup>4</sup><https://republic.com.ng/news/nigerian-women-protest-bills>; assessed 20 February 2024

<sup>5</sup>[https://www.thecable.ng/why-the-continuous-rejection-of-gender-equality-bills#google\\_vignette](https://www.thecable.ng/why-the-continuous-rejection-of-gender-equality-bills#google_vignette)

Reported on April 2 2022. Assessed 16 February 2024.

<sup>6</sup><https://www.premiumtimesng.com/news/top-news/683095-only-six-per-cent-of-nigerian-women-access-credit-group.html>. Reported by Saviour Imukudo on April 3, 2024. Accessed 24 July 2024.



Table: Ranking of percentage of female legislators in parliaments in Africa countries

Rank	Country	Women Representation (%)		Average or Total %
		Lower Chamber or Unicameral Legislature	Upper Chamber	
1st	Rwanda	61.3%	34.6%	47.95%
2nd	Senegal	44.2%	-	44.20%
3rd	Mozambique	42.4%	-	42.40%
4th	South Africa	46.2%	37.0%	41.60%
5th	Burundi	38.2%	41.0%	39.60%
6th	Cabo Verde	38.9%	-	38.90%
7th	Zimbabwe	30.6%	44.2%	37.40%
8th	Tanzania	36.9%	-	36.90%
9th	Ethiopia	41.5%	30.6%	36.05%
10th	Uganda	33.8%	-	33.80%
11th	Angola	33.6%	-	33.60%
12th	South Sudan	32.4%	32.1%	32.25%
13th	Chad	31.2%	-	31.20%
14th	Sudan	30.5%	-	30.50%
15th	Cameroon	33.9%	26.0%	29.95%
16th	Guinea	29.6%	-	29.60%
17th	Namibia	44.2%	14.3%	29.25%
18th	Kenya	23.4%	31.8%	27.60%
19th	Eswatini	13.5%	40.0%	26.75%
20th	Mali	26.5%	-	26.50%
21st	Tunisia	26.3%	-	26.30%
22nd	Djibouti	26.2%	-	26.20%
23rd	Niger	25.9%	-	25.90%
24th	Seychelles	22.9%	-	22.90%
25th	Malawi	22.9%	-	22.90%
26th	Somalia	19.7%	23.9%	22.80%
27th	Lesotho	24.4%	21.2%	22.80%
28th	Eritrea	22.0%	-	22.00%
29th	Egypt	27.7%	13.3%	20.50%
30th	Mauritania	20.3%	-	20.30%
31st	Mauritius	20.0%	-	20.00%
32nd	Burkina Faso	19.7%	-	19.70%
33rd	Gabon	15.4%	23.9%	19.65%
34th	Equatorial Guinea	22.0%	16.7%	19.35%
35th	Togo	18.7%	-	18.70%
36th	Democratic Republic of Congo	12.8%	23.9%	18.35%
37th	Morocco	24.1%	12.5%	18.30%
38th	Cote d'Ivoire	14.2%	19.2%	16.70%
39th	Republic of Congo	14.6%	18.8%	16.70%
40th	Comoros	16.7%	-	16.70%
41st	Libya	16.5%	-	16.50%
42nd	Zambia	15.1%	-	15.10%
43rd	Madagascar	18.5%	11.1%	14.80%
44th	Ghana	14.6%	-	14.60%
45th	Sao Tome and Principe	14.6%	-	14.60%
46th	Guinea-Bissau	13.7%	-	13.70%
47th	Central African Republic (CAR)	12.9%	-	12.90%
48th	Sierra Leone	12.3%	-	12.30%
49th	Botswana	11.1%	-	11.10%
50th	Liberia	11.0%	-	11.00%
51st	The Gambia	8.6%	-	8.60%
52nd	Benin	7.4%	-	7.40%
53rd	Algeria	8.1%	4.3%	6.20%
54th	Nigeria	4.4%	3.7%	4.3%

Sources: World Bank, IPU, [www.theglobaleconomy.com](http://www.theglobaleconomy.com)

The challenges faced by women have been alluded to the fact that in spite of statutory provisions supporting equality and non-discrimination, there remains some discriminatory provisions in the constitution, criminal laws and other legislations, which limit the political, social and economic progress of Nigerian women.

Another identified challenge is the fact that the direct application of the ratified international and regional human rights instruments for protection of the rights of women in Nigeria is hindered by the non-domestication of these instruments by the National Assembly of Nigeria as required under Section 12 of the Constitution. Section 12(1) of the Constitution on Implementation of Treaties

provides that: 'No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.'

The non-domestication of these instruments is a major issue hampering the promotion of the rights of women in Nigeria because a direct application of these human rights instruments would have gone a long way in providing the legal basis for the enhancement of opportunities provided to women to participate positively in both political and administrative spaces.

As far back as in 2004, the United Nations Committee on the Elimination of Discrimination Against Women, noted that the Nigerian Constitution continues to contain provisions that discriminate against women, in particular in the area of nationality and employment. It also expressed concern at the slow pace of legislative reform to bring discriminatory legislation into conformity with the provisions of the Convention and the elimination of customary practices that discriminate against women.<sup>7</sup> The Committee also noted with concern the few number of women in political and public life, especially in leadership and decision-making positions and the persistence of stereotypical and patriarchal attitudes, which view men as natural leaders but which precludes women from seeking positions of leadership. The Committee recommended the following to Nigeria amongst other things:

Take proactive and innovative measures, including full domestication of the Convention (CEDAW), to remove contradictions among the three legal systems and to ensure that any conflict of law with regard to women's rights to equality and non-discrimination are resolved in full compliance with the provisions of the Convention and general recommendation 21 on equality in marriage and family relations.

**01.**

Step up its efforts at awareness raising with regard to the Convention in order to create an enabling environment for legal reform and legal literacy.

**02.**

Take measures to increase the number of women in decision-making positions at all levels and in all areas, in the light of General Recommendation 23 on women in political and public life. It also recommends that the State party introduce temporary special measures, in accordance with article 4, paragraph 1, of the Convention (CEDAW) and General Recommendation 25, to strengthen its efforts to promote women to positions of leadership, including in the diplomatic service.

**03.**

<sup>7</sup>Committee on the Elimination of Discrimination against Women Thirtieth session 12-30 January 2004. Excerpted from: Supplement No. 38 (A/59/38) Concluding comments of the Committee on the Elimination of Discrimination against Women: Nigeria Combined fourth and fifth periodic report 274. The Committee considered the combined fourth and fifth periodic report of Nigeria (CEDAW/C/NGA/4-5) at its 638th and 639th meetings, on 20 and 21 January 2004 (see CEDAW/C/SR.638 and 639)

# RELEVANT LAWS AND TREATIES

**1979** **CEDAW.** The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on, and it went into effect on September 3, 1981.

**1999** **THE NIGERIAN CONSTITUTION:** The Nigerian Constitution also supports the rights of women to equality and non-discrimination. Section 15 (2) and Section 42(1), Section 17 (3) (e)

**2003** **THE MAPUTO PROTOCOL** The Maputo Protocol also known as the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, was adopted by the African Union (AU) Assembly of Heads of State and Government on July 11, 2003 in Maputo, Mozambique. It went into effect on November 25, 2015 after being ratified by 15 member states of the AU.

**2015...** **Other Acts** The Violence Against Persons (Prohibition) Act (VAPP) is a Nigerian law that protects citizens from all forms of violence, especially women and girls.

This report is divided into five sections. The preceding section gives a background of the subject matter and proves the existence patriarchal laws in Nigeria. The next section makes a brief attempt at understanding patriarchy in Nigeria. It does not examine the concept with a theoretical lens and the various arguments by scholars, which are in abundance in the literature, but presents the reason why patriarchy has defied every attempt at its deconstruction, even though its existence has marginalized Nigerian women and some men and boys. The third section presents an appraisal of Nigeria's gender insensitive and patriarchal laws from the constitution to laws governing organisations. Some context specific recommendations are imbedded in the various paragraphs in the section. The fourth section lists and reviews international conventions and treaties that the country has assented to, but have not fully domesticated. The last section concludes and offers some recommendations.

# A PEEP AT PATRIARCHY IN NIGERIA

Like everything else in life, the concept of patriarchy originally meant the 'rule of fathers', has evolved and is now used to explain male dominance generally. As dominance connotes superiority, power and influence over others, any inquisitive mind will be curious to know if and how patriarchy has benefitted society. If it has not, why is it so resilient and survived numerous attempts at dismantling it century after century, and civilization after civilization. According to some scholars, patriarchy is adaptive and dynamic,<sup>8</sup> which largely proves its resilient nature.

As patriarchy is deeply rooted in power, to those who reap of the benefits of its privileges, it makes little sense to shift or change patriarchal traditions or norms. Therefore, the tendency exist to abuse it or be less concerned about its effects on those affected. Many Nigeria societies are reputed to be protective and proud of their culture and norms. Unfortunately, most of those culture and norms are patriarchal in nature and they have led to inequalities and inequities over time. Most of those cultures ascribe more importance to men and boys,<sup>9</sup> which leads to the expectation that men should be hegemonic in nature in those places.



Not surprisingly, the impact of the prevalent patriarchal and hegemonic customs and laws are easily felt in Nigerian women's everyday lives<sup>10</sup>. Nigerian women have continued to contend with structural barriers that are also predominantly religious, cultural and legal, which have shrunk their civic space, limited their participation at decision-making tables and leadership opportunities.<sup>11, 12</sup>

However, some scholars have argued that women also play key roles in the entrenchment of patriarchy and in fostering their own oppression in societies.<sup>13</sup> Then again, some others believe that it would only take a lived reality for privileged people (especially men) to understand patriarchy's destructive nature.<sup>14</sup>

It can be deduced from the foregoing that as patriarchy drives and normalizes inequity and exclusion,<sup>15</sup> it provides continuous fodder for deep-seated destructive traditions, which fuels a sense of entitlement in its custodians. This sense of entitlement can be so destructive that it can manifest in tendencies like harassment, assault, conflict and violence; and majority of the recipients of those tendencies are women and children (especially the girl child).

<sup>8</sup> Jerker Edström, Abhijit Das and Chris Dolan (2014) (eds) IDS Bulletin: Volume 45, Issue 1; Special Issue: Introduction: Undressing Patriarchy: Men and Structural Violence, and Jerker Edström, 2014 'The Male Order Development Encounter', in IDS Bulletin: Volume 45, Issue 1; Special Issue: Undressing Patriarchy: Men and Structural Violence.

<sup>9</sup> Ihuoma Elizabeth Obienusi and Chinyere Phillis Chikwendu (2022), 'Patriarchy and Culture: The Position Of Women In The Rural Igbo Community' QDIBENDI: A Journal of Igbo Consciousness: March, 2022

<sup>10</sup> Ekwutosi Essien Offiong, Eyo Itam Eyo and Asibong Essien Offiong (2021) 'Patriarchy, Culture and the Social Development of Women in Nigeria' Pinisi Journal of Art, Humanity, and Social Studies, Vol. 1 No. 4, 2021. Universitas Negeri Makassar

<sup>11</sup> Unpacking Inequality in Nigeria: [https://www.youtube.com/watch?v=lxgfOq3b\\_ps](https://www.youtube.com/watch?v=lxgfOq3b_ps). Heinrich Böll Foundation Abuja, Nigeria

<sup>12</sup> Makama, Godiya Allanana (2013) 'Patriarchy and Gender Inequality in Nigeria: The Way Forward', European Scientific Journal, June 2013 edition, Vol 9, No 17

<sup>13</sup> Frances B. O'Connor and Becky S. Drury (1999), 'The Female Face in Patriarchy: Oppression as Culture' <https://doi.org/10.14321/ji.5501060.5>. Michigan State University Press.

<sup>14</sup> Marc Peters (2014) 'Reflecting on the Oppressor in the Mirror' in IDS Bulletin: Volume 45, Issue 1; Special Issue: Undressing Patriarchy: Men and Structural Violence.

<sup>15</sup> op. cit. – Makama, Godiya Allanana (2013)



In order to understand this concept further, it is pertinent to examine other factors behind entrenched patriarchy and the need to exercise power by some people in our society that may not be too obvious. The famous quote credited to Aung San Suu Kyi, that 'it is not power that corrupts but fear. Fear of losing power corrupts those who wield it...' perhaps points in some way to other *raison d'être* of patriarchy in Nigerian societies. The fear of losing control, dominance and influence is the key motivator by beneficiaries of power to resist the dismantling of a structural social order that oppresses others. The need to protect their power base is paramount to them, and some will argue that by their intrinsic nature some humans love to exercise authority over others.

It is sad to note that women with disabilities experience the effect of patriarchy disproportionately as they have to contend with multiple layers of inequalities. Those women contend that they suffer from historical and systemic marginalization, which are exacerbated by emerging challenges such as conflict, health related issues, climate change or even poly crisis.<sup>16</sup> Their disabilities, which intersects with being female in a male-dominated society like Nigeria have produced many undesirable effects, such lack of access to economic generating opportunities, lack of leadership opportunities, gender based violence, among others.

Men and boys are not exempted from experiencing the destructive nature of patriarchy. The poor and less privileged among men and boys have felt the negative impact of this phenomenon in their everyday lives, as those who hold power among them, use the power in oppressive manner over their own. This situation has for instance manifested itself in patrimonial politics. In Nigerian politics where men dominate, the so-called 'godfathers' decide who become a standard bearer of a political party and who eventually wins an election as they usually bankroll their candidates' spend in the country's very expensive election process. Those who cannot bow continuously at the feet of the power wielding godfathers are left out in the country's governance, or hounded out of the entire process. A few years past, young people's dissatisfaction with this state of affairs resulted in the #not-too-young-to-run campaign in Nigeria, which brought about the amendment of some sections of the law stipulating age of candidates for some political positions.



In addition, economic opportunities for the youth and Nigerians generally are limited for those without 'connections'. That is, those who are not connected to power brokers who could create access for them. As at last year, Nigeria posted an increased unemployment rate and one of the world's highest misery indexes.<sup>17</sup> Sadly, society exerts unrealistic expectations (especially financial expectations or as providers) from men and boys, and this has caused

<sup>16</sup> In Brief, "No One Is Listening" Experiences of Women With Disabilities In Nigeria During Covid-19; UNWomen, Sightsavers and UN Partnership on the Rights of Persons with Disabilities (UNPRPD). <https://www.unwomen.org/sites/default/files/2022-01/Brief-Experiences-of-women-with-disabilities-in-Nigeria-during-COVID-19-en.pdf>

<sup>17</sup> The Nigerian Economic Summit Group of Feb 23, 2024, 'Nigeria's unemployment rate drifts upwards', <https://nesgroup.org/blog/Nigeria%E2%80%99s-unemployment-rate-drifts-upwards>. Accessed 24 July 2024.



undue stress on the physical and mental wellbeing on the less privileged of this group<sup>18</sup> leading to risky behaviours, as they lack opportunities to reasonable economic generating avenues. Studies point to the various conflicts (such as the insurgency and activities of militia groups), gender based violence, digital economic fraud activities (otherwise known as 'yahoo yahoo'), armed robbery, kidnapping and other vices by the youth in Nigeria, especially young men as outcomes of the high rate of unemployment in the country.<sup>19</sup> In effect, the impact of patriarchy is multifaceted.



A close look at the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Criminal Code, which is effective in southern Nigeria and Penal Code in northern Nigeria, reveal their patriarchal nature. In addition, the Labour law<sup>21</sup> and laws governing bureaucratic and other organisations, such as the military and para-military are considered sexist in nature by some scholars and these laws and policies have been applied to the disadvantage of women.<sup>22</sup>

Combined with the aforesaid are damaging culture skewed in favour of power holders, which have found their ways into some institutions and have produced unhealthy work environments for women.<sup>23</sup> Examples are the various reported stories of assaults and sexual violence coming out of the various arms of military and para-military organisations in the country,<sup>24, 25</sup> that are excruciatingly slow to reforms and evolution.<sup>26</sup> Those systems with ingrained patriarchy in their operations have produced visible effects that are fundamentally disadvantageous and injurious to the women in those places.

<sup>18</sup> Alexandra Kelbert and Naomi Hossain (2014) 'Poor Man's Patriarchy: Gender Roles and Global Crises' in IDS Bulletin: Volume 45, Issue 1; Special Issue: Undressing Patriarchy: Men and Structural Violence.

<sup>19</sup> Onyekwere, Lawretta Adaobi (2021), Effects of Youth Unemployment on the Nigerian Society: The Need for Resourceful Intervention', International Journal of Social Sciences and Management Research, Vol 7. No. 1

<sup>20</sup> 'These Nigerian Laws Are So Unfair to Women' -[https://www.youtube.com/watch?v=Q5MwN0gb1\\_w&t=126s](https://www.youtube.com/watch?v=Q5MwN0gb1_w&t=126s) and 'How Some Nigerian Laws No Dey Favour Women' -<https://www.youtube.com/watch?v=zwaQVtTpZm8&t=128s>. Heinrich Böll Foundation Abuja, Nigeria

<sup>21</sup> Yagba Jane-Frances Terdoo (2021) 'CEDAW and the Labour Act: Protecting Women from Workplace Discrimination in Nigeria' Nnamdi Azikiwe University Akwa, Journal of Commercial and Property Law - NAU.JCPL Vol. 8(3).

<sup>22</sup> Eghosa Osa Ekhaton (2015) 'Women and the Law in Nigeria: A Reappraisal' Journal of International Women's Studies, 16(2), 285-296.

<sup>23</sup> Bright Joseph Njoku (2023) 'Unequal Equals: The Challenge of Patriarchy and Gender Inequality in the Nigeria Police Force, 1955 – 2020'. Zamfara Journal of Politics and Development, Vol 4 /No 2 /2023

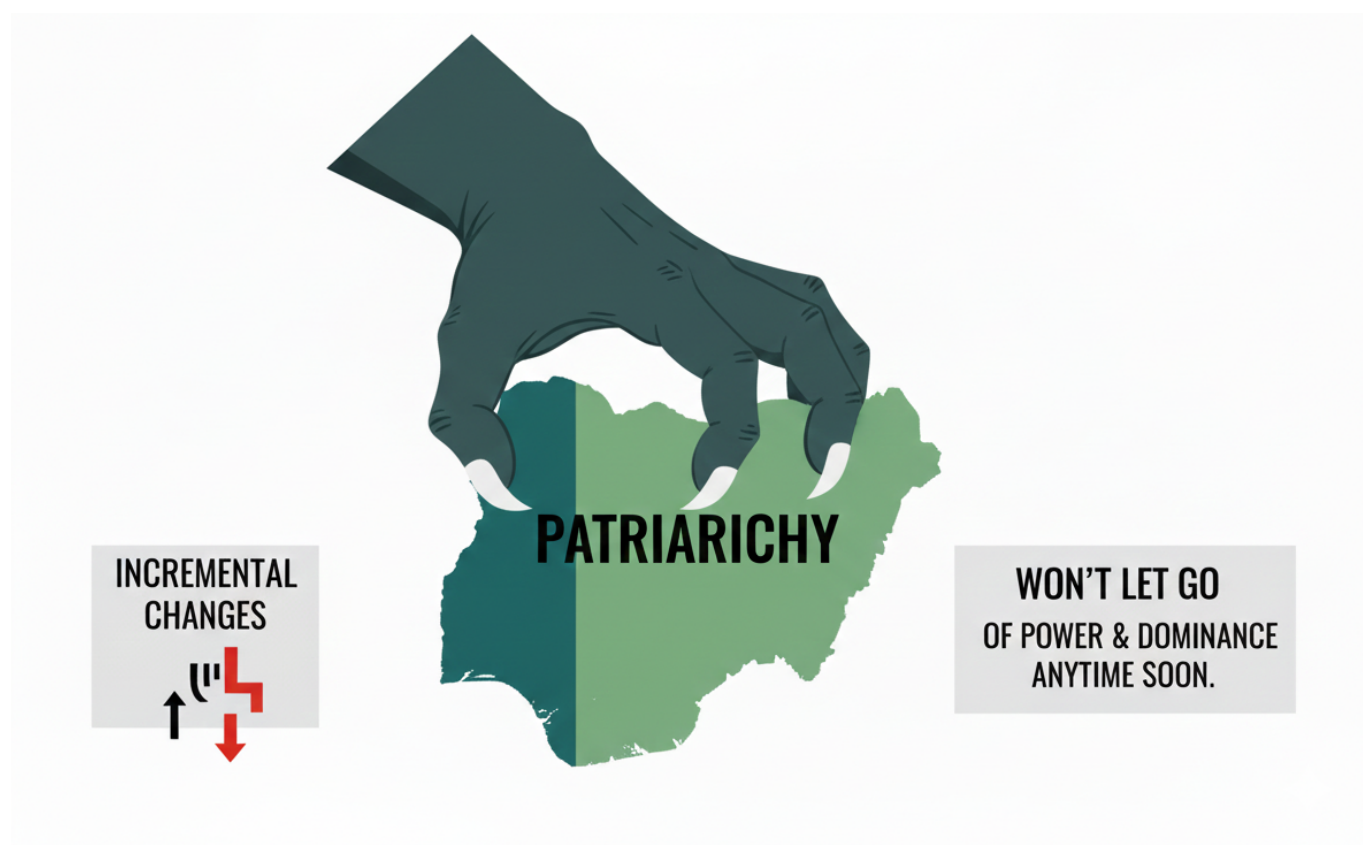
<sup>24</sup> JUD-ECW-CCJ-JUD-11-21-Aircraftwoman-Beauty-Igbobie-Uzezi-vs.-FED.-REP.-of-NIGERIA-30\_04\_21 (ECW/CCJ/JUD/11/21 [2021] ECOWASCJ 10) of 30 April 2021

<sup>25</sup> This Day Newspaper (2024) 'The Plights of Female Nigerian Soldiers', <https://www.thisdaylive.com/index.php/2024/02/11/the-plights-of-female-nigerian-soldiers/>. Accessed 24 July 2024

<sup>26</sup> Yakubu, Funom Rapha (2023), 'Gender issues in the Nigerian Armed Forces: A Literature Review' Corpus Intellectual, Volume 2: Redeemer's University, Osun State, Nigeria.

It has also been said in many public forums that the notion of the rule of law in Nigeria is a myth. It is also in public domain that Nigerian laws are applied differently to different groups of people depending on their gender, socioeconomic status, religion, ability or age. Even the Nigerian Constitution has obvious sections that are skewed in favour of men. The reality is that where people are powerless, they are not likely to get justice timeously if at all they will eventually get it. Also, where those who have power know that they can get away with any offence, they are likely to commit those offences with impunity. This lack or limited access to justice explains why the powerful or 'those who have patriarchy on their side' continue to succeed in their vices.

Some scholars believe that even though important victories have been achieved at the macro and micro levels, culturally and legislatively, in relation to the rights of women and others, such victories do not necessarily mean that the deeply androcentric nature of patriarchy itself has been significantly challenged or altered.<sup>27</sup> Sadly, in countries like Nigeria in the global majority, patriarchy has taken a foothold and incremental changes so far achieved does not mean that it will let go of its powers and dominance anytime soon.



<sup>27</sup>Patrick Welsh, 2014 'Homophobia and Patriarchy in Nicaragua: A Few Ideas to Start a Debate', in IDS Bulletin: Volume 45, Issue 1; Special Issue: Undressing Patriarchy: Men and Structural Violence.

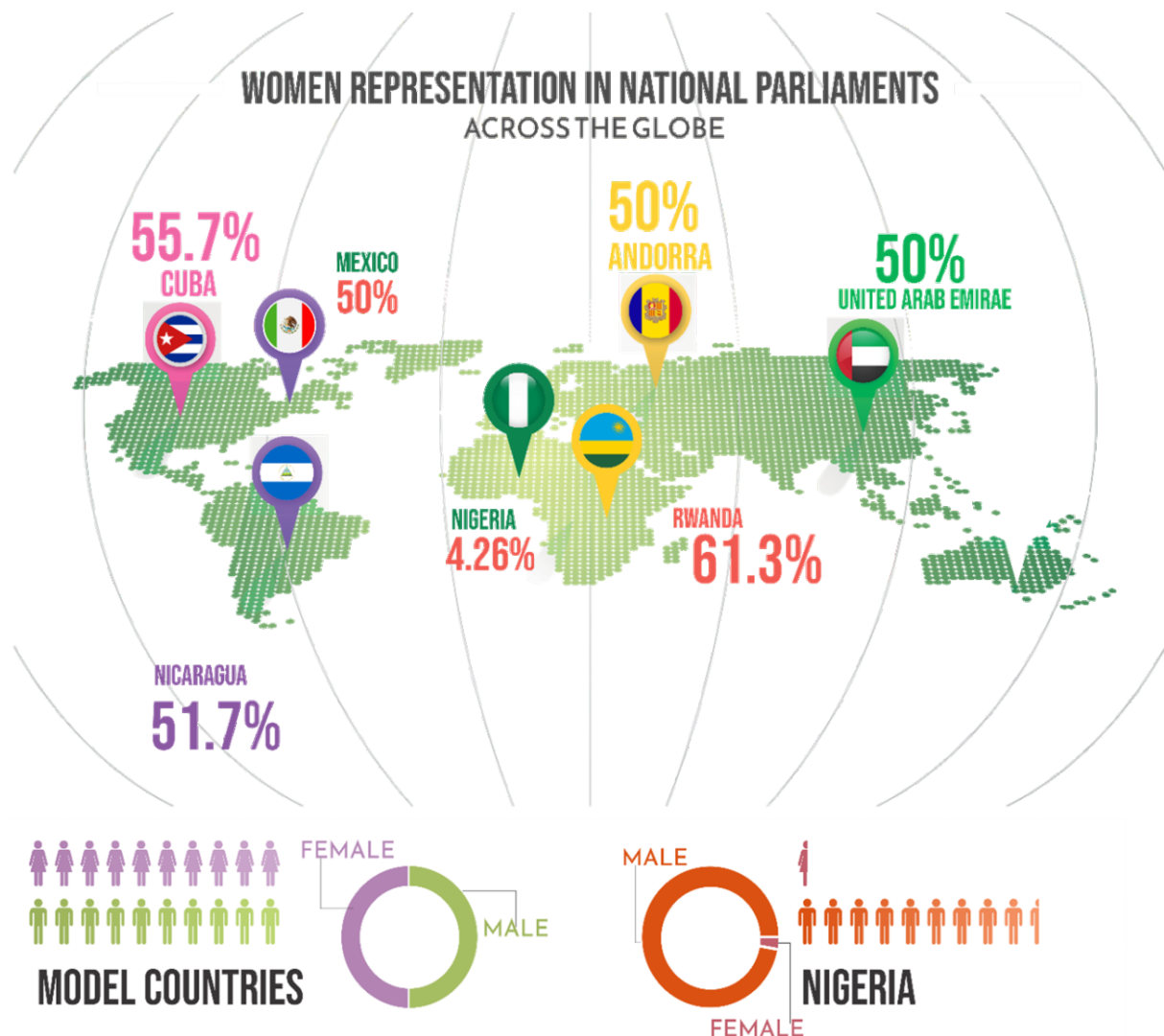
# PART ONE



## PART ONE

### An Appraisal of Nigeria's Gender Insensitive and Patriarchal Laws

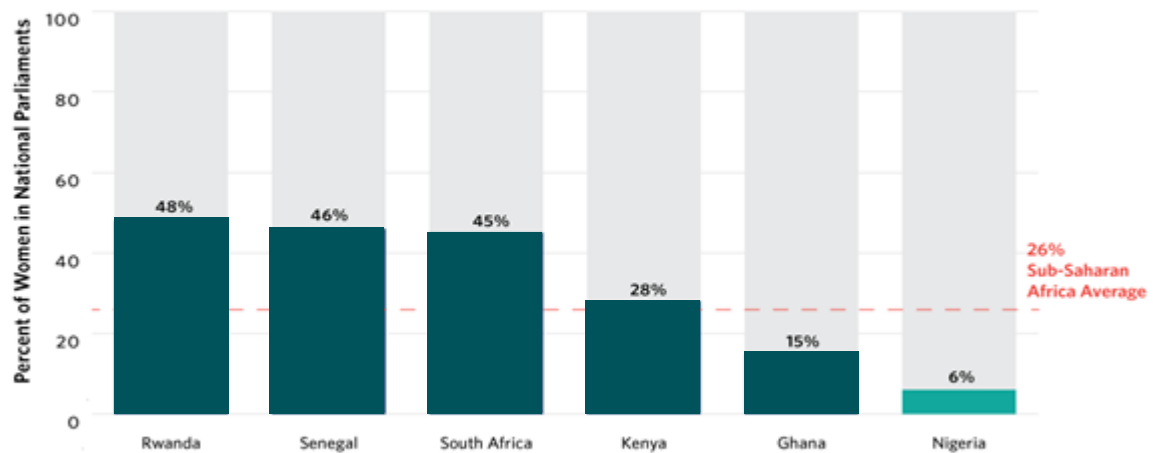
As at December 2023, the percentage of women in national parliaments across the world for the following countries were as follows: Rwanda (61.3%), Cuba (55.7%), and Nicaragua (51.7%). The following countries had achieved equal number of females to males in their national parliaments: Andorra (50%), Mexico (50%), and United Arab Emirates (50%).<sup>28</sup> However, in Nigeria only 4 out of 109 seats in the Senate (3.7%) and 16 out of 360 seats in the House of Representatives (4.7%)<sup>29</sup> are occupied by women. See map below.



<sup>28</sup> <https://www.statista.com/statistics/267028/women-in-selected-national-parliaments/> accessed on 15 February 2024.

<sup>29</sup> <https://placng.org/Legist/worrying-numbers-for-women-in-10th-nass/> accessed on 15 February 2024.

**Figure 1. Women's Representation in National Parliaments in Select African Countries**



Source: Inter-Parliamentary Union (IPU), 2023.

Note: Data for Nigeria is based on the 2019 elections results.

The notion – 'Nigeria's patriarchal laws and policies' finds basis on the fact that the Nigerian parliament has been male-dominated through the years, since males have largely been making laws for the country, those laws (or most of them) have turned out to be patriarchal.

### Definition of terms (Patriarchy)

Patriarchy: a society, system or country that is ruled or controlled by men.<sup>30</sup>

#### Patriarchal:

- i) ruled or controlled by men; giving power and importance only to men: a patriarchal society and
- ii) connected with a patriarch.

In the course of this review, it was discovered that some of these patriarchal laws confer advantages to women than to men but they are mostly paternalistic, and they are a reflection of traditions or norms, as at that time when the law was enacted. However, it must be borne in mind that having the law is one thing, while enforcement of the law is another matter altogether. It should also be noted that it is the non-enforcement and abuse of process that has led to an increased push for inclusion.

<sup>30</sup>Oxford Advanced Learner's Dictionary, 9th Edition, 2015, page 1128.



# THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)

**Use of male pronouns:** The male pronouns he/him are used in the constitution to refer to both male and female sexes. See notably:

Section 5 of the Constitution in stipulating the Executive powers, the male pronouns him and he are used to refer to the President. Young minds reading the Constitution may be unfairly prejudiced to think that the position of President is reserved for males. Positions like President of the Senate, Speaker of House of Representatives (Section 50) are affected by this pronoun also.

**Recommendation:** the language of the Constitution and other laws and policies should be inclusive. In addition, instead of words like “Common brotherhood” in Section 24(c), it should be stated as “common nationhood.”

Citizenship - Section 26 states as follows:

## **Section 26: Citizenship by registration**

*(1) Subject to the provisions of section 28 of this Constitution, a person to whom the provisions of this section apply may be registered as a citizen of Nigeria, if the President is satisfied that:*

- (a) he is a person of good character;*
  - (b) he has shown a clear intention of his desire to be domiciled in Nigeria; and*
  - (c) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution.*
- [Seventh Schedule]*

*(2) The provisions of this section shall apply to-*

- (a) any woman who is or has been married to a citizen of Nigeria; or*
- (b) every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria.*

The benefit conferred on their male compatriots was denied Nigerian women. A woman who is or has been married to a Nigerian citizen may apply for citizen by registration, but this privilege is not accorded to a foreign male who is or has been married to a Nigerian woman (at least it was not clearly spelt out like Section 26(2)(a), which clearly refers to a woman who is or has been married to a citizen of Nigeria).

**Recommendation:** the above section should be amended and steps should be taken to ensure all laws and policies are holistically reviewed, clearly spelt out and not left ambiguous.

## **Attainment of full age - Section 29(4)**

*In Section 29(4), the Constitution states:*

- 'a) full age' means the of eighteen years and above;*
- b) 'any woman who is married shall be deemed of full age'.*

It can be argued and interpreted that this section is covertly endorsing child marriage. In addition, it can be presumed that the age of attainment of adulthood for girls is different from that of boys. Furthermore, it can be assumed that the section endorses discrimination against the girl child.

**Recommendation:** the above section and all other discriminatory sections in the Constitution should be amended or deleted to ensure that the Constitution is unambiguous and inclusive.

## THE CRIMINAL CODE

The Criminal Code is applicable in Southern Nigeria. This report highlights some sections of the code as an indication of the necessity to revise the code.

### Section 18

This section prescribes caning for male persons under the age of seventeen who have committed an offence, but leaves it at the discretion of the Honourable Court to order the male person to be caned in addition to or in substitution for any other punishments to which he is liable. The section does not apply to females and a coordinate section for females could not be found.

**Recommendation:** The section is archaic, and should be deleted.

### Section 33

This Section deals with compulsion of husband. It provides the defense of 'compulsion by husband' for a wife of a Christian marriage, if he compels her to do or omit to do an act, which would amount to an offence. Also, such omission or commission would have to be in his presence. This defense is not available for all offences, especially for very serious offences where grievous harm is involved.

**Recommendation:** A married woman should suffice; the type of marriage should not necessarily be a factor. In addition, no coordinate section was found for married men. Here it is assumed that a man cannot be compelled by his wife. Also, the law did not take cognizance of persons who are in domestic relationships, but not married.

### Sections 34 and 36

These sections confer some advantages on husband and wife of Christian marriage, which are not available to other marriages. Section 34 states that husband and wife of Christian marriage are not criminally responsible for a conspiracy between themselves alone. This may be because husband and wife of a statutory marriage are seen as one under law.

### Sections 214–227

These sections spell out offences against morality, and they are found in Chapter 21 of the Criminal code. The Sections deal with the following subheadings:

- 214 - Unnatural offences,
- 215 - Attempt to commit unnatural offences,
- 216 - Indecent treatment of boys under fourteen,
- 217 - Indecent practices between males,
- 218 - Defilement of girls under thirteen,
- 219 - Householder permitting defilement of young girls on his premises,
- 220 - Defence to charge under preceding section,
- 221 - Defilement of girls under sixteen and above thirteen, and of idiots,
- 222 - Indecent treatment of girls under sixteen,

- 222A - Causing or encouraging the seduction or prostitution of a girl under sixteen,
- 222B - Allowing a person under sixteen to be in brothels,
- 222C - Restriction on defence of reasonable belief,
- 223 – Procuration,
- 224 - Procuring defilement of woman by threats or fraud, or administering drugs,
- 225 - Abduction of girl under eighteen with intent to have carnal knowledge,
- 225A - Persons trading in prostitution,
- 225B - Keeping a brothel,
- 226 - Unlawful detention with intent to defile, or in a brothel,
- 227 - Conspiracy to defile

**Recommendations:** These sections should be amended to reflect current realities. The people may want to review their moral codes, to know if they have remained the same or have changed with time. Some of the sections protect females only; males should be protected as well. A Referendum or public debates should be conducted on some of these sections to know if they still reflect the ethos of the people.

Separate terms or classifications are used for the different sexes in defining different offences. This report cannot tell the reasoning of the legislatures as at the time when those classifications were made, but the people should question if those classifications and differentiations are still needed. For example:

- Section 216 talks about indecent treatment of boys under fourteen, while Section 222 talks of indecent treatment of girls under sixteen.*
- Defilement is particularly always used for underage females - (218, 221(1), apart from when the law talks of procuration of defilement of a woman by threats, or fraud, or administering drugs (224). Males (especially underage males can also be defiled).*
- Procuration is assumed to do with females (223, 224). Males can also be procured.*
- Section 221(2) protects a woman or girl who is an 'idiot or imbecile'. Males who are 'idiots or imbeciles' should be protected as well. This report considers the punishment in Section 221 as light. The Section states thus:*

## **221. Defilement of girls under sixteen and above thirteen, and of idiots**

Any person who:

- (1) Has or attempts to have unlawful carnal knowledge of a girl being of or above thirteen years and under sixteen years of age; or*
- (2) Knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her, is guilty of a misdemeanour and is liable to imprisonment for two years, with or without caning.*

It is a defense to a charge of either of the offences firstly defined in this section of this Code to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

A prosecution for any of the offences defined in this section of this Code shall be begun within two months after the offence is committed.

A person cannot be convicted of any of the offences defined in this section of this Code upon the uncorroborated testimony of one witness.

The use of the word 'idiot' and 'imbecile' should be removed and be replaced with an appropriate medical term to describe the above category of persons.

### Sections 228–230 and 233

The above sections deals on:

228 - Attempts to procure abortion, 229 - Attempt to procure own miscarriage, 230 - Supplying drugs or instruments to procure abortion.

**Recommendation:** The sections proscribe abortion and the like, and does not cover for instances when it is in the best interest of the woman to procure the abortion/miscarriage, unlike in the Penal Code. Interestingly, even though the Criminal Code does not explicitly provide exceptions to the provisions on the legality of abortion, Nigerian courts have generally accepted that an abortion performed in 'good faith' to save the life of the mother is not considered a criminal offense. However, this exception is not codified in the Criminal Code. It is recommended that this sections should be amended to reflect current realities.

### Section 295

*Section 295 - Correction of child, servant, etc.*

*A blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction as follows:*

- (1) A father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command;*
- (2) A master may correct his servant or apprentice, being under sixteen years of age, for misconduct or default in his duty as such servant or apprentice;*
- (3) The master of a ship may correct any person on board his ship who is bound to perform any manual labour, for misconduct or disobedience to any lawful command;*
- (4) A father or mother or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward on his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward;*
- (5) A person who is authorised to inflict correction as in this section of this Code mentioned may, in any particular case, delegate to any fit person the infliction of such correction; and*
- (6) No correction can be justified which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction can be justified in the case of a person who, by reasons of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.*

*The section makes no provision for a husband to correct his wife. This is commendable as against the Penal Code, which makes such provision (Section 55 Penal code). In addition, relevant sections should be revised in line with the provisions of the Child Rights Act 2003.*

## Sections 353 and 360

- 353 - Indecent assault on males
- 360 - Indecent assaults on females
- 

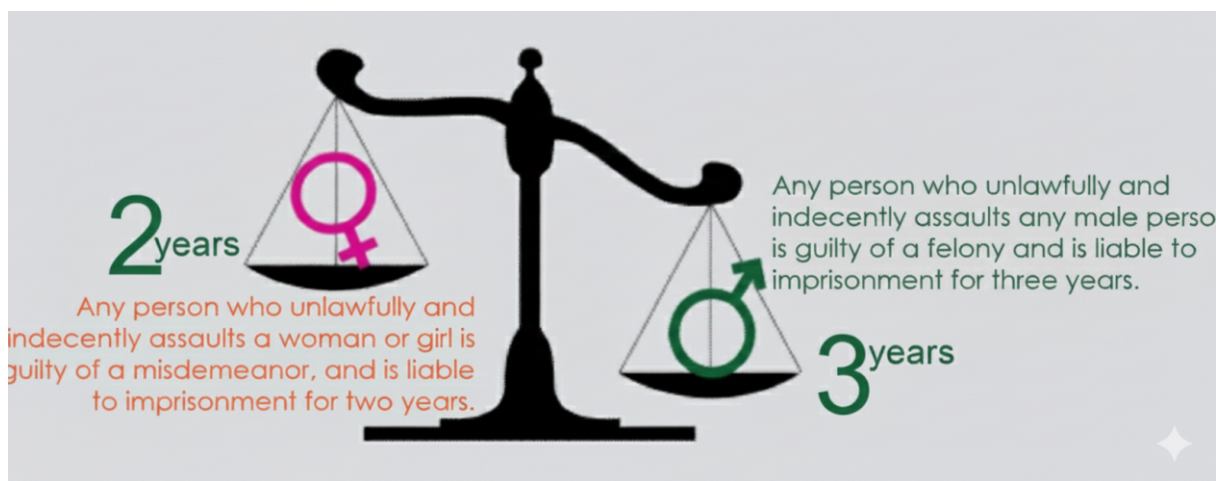
### Section 353 - Indecent assault on males

*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.*

### Section 360 - Indecent assaults on females

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



The law makes a difference in indecent assault of males and indecent assault of females. Indecent assault of a female is a misdemeanor and carries only two years punishment, while indecent assault of male is a felony and carries three years punishment. The latter is seen as more serious than the former. This is discriminatory against females.

Recommendation: both sections of the law should be reviewed to attract similar punishments and line with contemporary practice and in line with the provisions of the Violence Against Persons Prohibition (VAPP) Act, 2015.

### Section 357

#### Section 357 - Definition of rape

*Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.*



The section presumes that:  
**only women or girls  
can be raped.**



The section presumes that only women or girl can be raped. It also does not cover instances when a woman rapes a person. It also does not cover instances of where a man or boy is raped by another man. In addition, marital rape is also not recognized. A good practice to replicate from for instance, is the Criminal Code of France where it recognizes that rape is not sex/gender specific and marital rape is illegal.<sup>31</sup> Both the penal code and the criminal code need to address other forms of sexual assault and violence.

**Recommendation:** The section should be amended to recognize the various aspects of rape and sexual violence as prescribed by the provisions of the VAPP Act 2015 and as reported by the World Health Organisation (WHO).<sup>32</sup>

### Sections 361 – 363

The above sections are about the following:

361 – Abduction; 362 - Abduction of girls under sixteen; 363 - Ignorance of age of girl, or consent is no defense.

**Recommendation:** these sections only protect females; males should be protected as well.

<sup>31</sup>2024 European Institute for Gender Equality, [https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/france-rape?language\\_content\\_entity=en](https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/france-rape?language_content_entity=en) accessed on 15th February 2024.

<sup>32</sup>Krug EG et al., eds. World report on violence and health. Geneva, World Health Organization, 2002

## THE PENAL CODE

The Penal Code is applicable in Northern Nigeria. This report highlights some sections of the code, which are considered non-inclusive, an indication of the need to revise the law.

### Section 4:

Definition of man and woman: the definition of man and woman under the code is constricted. It does not cover hermaphrodites, androgyne and others.

### Section 2:

Gender: the use of the pronoun 'he' and its derivatives are used to denote persons whether male or female.

**Recommendation:** Sections 4 and 2 should be amended and made inclusive.

### Section 55:

Correction of child, pupil, servant or wife:

*55. (1) Nothing is an offence which does not amount to the infliction of child, pupil, grievous hurt upon a person and which is done-*

*(a) by a parent or guardian for the purpose of correcting his child or ward that child or ward being under eighteen years of age; or*

*(b) by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge; or*

*(c) by a master for the purpose of correcting his servant or apprentice, the servant or apprentice being under eighteen years of age; or*

*(d) by a husband for the purpose of correcting his wife such husband and wife being subject to any customary law in which the correction is recognized as lawful.*

*(2) No correction is justifiable which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction is justifiable in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.*

Section 55(d) permits a man to correct his wife as long as it does not amount to the infliction of grievous hurt upon any person. This is not only discriminatory, but entrenches harmful cultural practices. It fails to take cognizance of emotional and psychological hurt/harm and other hurt/harm that may not be grievous but still harmful. It may provide latitude for gender /sex-based violence.

**Recommendation:** this section should be expunged from the penal code. Furthermore, the Child Rights Act 2003 should provide guidance on the treatment of a child.

### Section 232: Causing miscarriage

This Section encroaches on the right of the woman to her body or bodily autonomy.

**Recommendation:** the section should be revised.

### Sections 275, 276 and 281

The sections deal with the following issues:

- 275 - *Procuration of minor girl.*
- 276 - *Importation of girl from foreign country.*
- 281 - *Traffic in women.*

The report could not find coordinate sections that protect males as well.

**Recommendation:** these sections above protects females only, but males should also be protected.

### Section 282

Rape and Unnatural and Indecent Offences against the Person:

*282. (1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-*

*(a) against her will;*

*(b) without her consent;*

*(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;*

*(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;*

*(e) with or without her consent, when she is under fourteen years of age or of unsound mind.*

*(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.*

**Recommendation:** The penal code also assumes that only a man is capable of rape. It does not cover instances of where a man or boy is raped by a woman or another man. Marital rape is also not recognized. Again, the example of the Criminal Code of France which recognizes that rape is not sex/gender specific and marital rape is illegal can be adopted here.<sup>33</sup>

### Section 383

This Section deals with situations when a man deceitfully induces a woman to believe that she is lawfully married to him. By the dictates of the section, it is assumed that it is only men that are capable of committing the offence. This should not be so, a woman who deceitfully induces a man to believe that she is lawfully married to him, should be punished as well.

**Recommendation:** the above section should be revised and should apply to women as well. This report notes that the patriarchal nature of that law is such that it considers a woman incapable of deceitfully inducing a man to believe that she is lawfully married to him. Just as the section on rape (282) does not consider a woman capable of committing rape.

### Sections 389 and 400

The above sections deal with the following issues:

- 389 – *Enticing or taking away or detaining with criminal intent a married woman.*
- 400 – *where a person either by word, gesture or act intends to insult the modesty of a woman.*

**Recommendation:** The report could not find coordinate sections that protect males. The section should also apply to men. The modesty of a man should be considered important to the law as well.

<sup>33</sup>op. cit. 2024 European Institute for Gender Equality.

## EVIDENCE ACT

The study found nothing out of the ordinary that protects females in the Act. However, this report recommends that rules of evidence should be formulated that protect reception, handling and storage of evidence related to sexual offences. That is, how evidence is received, protection of the identity of the victim and perhaps other persons involved, how long such evidence should be kept before being destroyed, among others. These are not contained in the Evidence Act.



ACT DOES NOT  
PROTECT FEMALES



**FORMULATE** RULES OF EVIDENCE  
FOR SEXUAL OFFENCES  
(Reception, Handling, Storage)

## VIOLENCE AGAINST PERSONS PROHIBITION ACT (VAPP ACT)

The Act is very pertinent and reflects current realities. It has been domesticated in the Federal Capital Territory (FCT) and in 35 States of the Federation<sup>34</sup> except in Kano state where the provisions of the Act has been harmonized with the penal code and awaiting assent as at the time of writing this report. The act has been domesticated by Ekiti and Lagos states in a similar manner as follows: Ekiti State - Gender-Based Violence (Prohibition) Amendment Law 2019; and Lagos State - Protection against Domestic Violence Law of Lagos State 2007.

### Section 1

The Act broadens the definition of rape. Anybody can be raped, both male and female. Male or female can be the rapist, as against the Criminal Code and Penal Code where only males could rape. Group rape is also recognized. In addition, the Act increases the punishment for rape.

The Act recognizes offences such as:

- Emotional, verbal and psychological abuse, Section 14
- Harmful widowhood practices, Section 15
- Abandonment of children, spouse and other dependents without means of sustenance

### Section 16

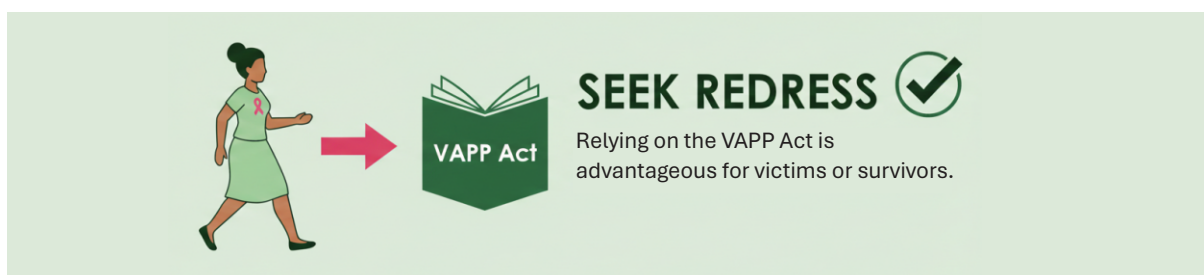
- Stalking, Section 17
- Intimidation, Section 18
- Spousal battery, Section 19
- Harmful Traditional Practices, Section 20
- Political violence, Section 23, amongst others.

The Act also gives power to victims/survivors and others to apply for protection order Section 28.

### Section 45(2)

In Section 45(2) the Act makes its provisions superior to any other provision on similar offences in the Criminal Code, Penal Code and Criminal Procedure Code. It states thus: 'Any provision of the Act shall supersede any other provision on similar offences in the Criminal Code, Penal Code and Criminal Procedure Code'.

**Recommendation:** It is advantageous for victims or survivors to seek redress relying on the VAPP Act. It is modern, reflects current realities and offers better protection.



<sup>34</sup> <https://www.premiumtimesng.com/news/headlines/673358-gender-matters-across-nigeria-march-2024-edition.html?tztc=1> accessed on 5th April, 2024.



## LABOUR ACT

The Labour Act is the main law that provides guidance to the rights, benefits, working conditions, among others, for workers set by the government; it majorly guides employment relations in Nigeria. However, like other Nigerian laws, there are sections that are favourable and unfavourable to women.

Sections 54 to 58 deals on the employment of women. Section 58 provides that a pregnant woman the right to leave her work (temporarily) if she produces a medical certificate by a registered medical practitioner stating that her confinement will probably take place within six weeks (a), and she shall not be permitted to work during the six weeks following her confinement (b).



**Recommendation:** The Labour Act should be reviewed and amended to reflect current realities (including the increase in number of days for maternity leave, inclusion of sufficient days of paternity leave for new fathers, most especially single fathers). It should also offer protection from sexual exploitation, abuse and harassment in work places, whether physically or virtually, among others.

# PART TWO

TREATY  
RATIFICATION



DOMESTIC  
APPLICATION

## PART TWO

### Appraisal of Nigeria's Implementation of International Treaties

Nigeria is a signatory to several international treaties that seek to uphold the rights and equal status of women. However, also Section 12(1) of The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) states that “no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the national assembly.” This provides the condition precedent for the application of any international treaty in Nigeria.

This section delves into Nigeria's ratification and implementation of international treaties that promote women's inclusion. Emphasis would be laid on the status of the treaty, implementation and the challenges that hinder the implementation.

### The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as:

”

*...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

“

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:<sup>35</sup>

- A. To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- B. To establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and

<sup>35</sup><https://un.org/womenwatch/daw/cedaw/cedaw.htm> assessed on 26th march 2024

- C. To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

Nigeria's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985 marked a significant step towards gender equality. The optional protocol to the CEDAW was ratified by Nigeria in 2004. Despite the ratification, full implementation remains a work in progress; this is evidenced by the rejection of the GEO bill and the so-called Five Gender bills by the Ninth Assembly.<sup>36</sup> There are still areas that need attention such as reproductive rights, participation in public life, and women's political inclusion.

## The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights ((ACHPR) also known as “The Banjul Charter”), establishes a framework for the promotion and protection of human rights in Africa). The Charter came into force on 21 October 1986. The ACHPR, adopted in 1981, is a cornerstone document for human rights in Africa. The ACHPR recognizes the rights of individuals as outlined below:

### Individual Rights and Freedoms:

- 01. Non-discrimination (Article 2):** All persons shall be equal before the law, without any distinction of race, ethnic group, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 02. Right to Life (Article 4):** Human beings are inviolable. Every human being shall be entitled to respect for his life. No one may be deprived of his life intentionally except in accordance with law.
- 03. Right to Dignity (Article 5):** Every individual shall have the right to the inherent dignity of his person and to be treated with respect.
- 04. Right to Liberty and Security of Person (Article 6):** Every individual shall have the right to liberty and security of his person. No one may be deprived of his liberty except for reasons and conditions previously laid down by law.
- 05. Right to Fair Trial (Article 7):** Every individual shall be entitled to have his cause heard. In particular, he shall have the right to be heard and to defend himself before a competent, independent and impartial court or tribunal established by law.

### Peoples' Rights:

1. Self-determination (Article 20): All peoples shall have the right to self-determination. They shall have the right to freely determine their political status and to pursue their economic and social development according to their own choice.
2. Right to Development (Article 22): All peoples shall have the right to their economic, social and cultural development, with due regard to human rights and fundamental freedoms. States parties shall have the duty, individually and collectively, to ensure the exercise of the right to development.

<sup>36</sup> <https://placng.org/Legist/nass-rejection-of-women-bills-blights-constitution-review/assessed,26thMarch2024>

3. Right to Peace and Security (Article 23): All peoples shall have the right to international peace and security. The existence of colonial and alien domination or exploitation hinders both the full realization of the right to self-determination and the enjoyment of other rights and freedoms as enshrined in the present Charter.
4. Right to a Favorable Environment (Article 24): All peoples shall have the right to a generally satisfactory environment conducive to their development, and shall have the duty to preserve and improve the environment in which they live.

Nigeria has ratified and domesticated the ACHPR.<sup>37</sup> Also, Nigeria was the first country in Africa to incorporate the African Charter as is into its national laws in 1983.<sup>38</sup> Experts<sup>39</sup> opine that, 'the African Charter is the only comprehensive human rights treaty that has been domesticated in Nigeria.'

## The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa – The Maputo Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol on Women's Rights (adopted in 2003), provides comprehensive rights for women and girls in Africa. The Protocol guarantees extensive rights to women, including the right to take part in the political processes, to social and political equality with men, improved autonomy in their reproductive health decisions, and an end to harmful traditional practices such as female genital mutilation, among others. It covers a broad spectrum of civil, political, economic, social, cultural, and environmental rights and is considered one of the most progressive human rights instruments globally.

The Maputo Protocol was drafted to complement and strengthen the commitments to women's rights made in the African Charter on Human and Peoples' Rights ("The Banjul Charter"). Article 18 of the Banjul Charter specifically calls on states to eliminate discrimination against women and to protect women's rights in alignment with international declarations and conventions. It addresses the issues outlined below:

- 01. Equality and Non-discrimination (Article 2):** Women's rights are an integral part of human rights. States shall combat all forms of discrimination against women and ensure their equal enjoyment of all rights and freedoms.
- 02. Reproductive Rights (Articles 14-18):** Women have the right to decide freely and responsibly on the number and spacing of their children and to have access to appropriate information, services and education. This includes the right to safe abortion services in certain circumstances, as defined by national legislation. (Note: The specific circumstances allowing for abortion may vary by country.)

<sup>37</sup>The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983.

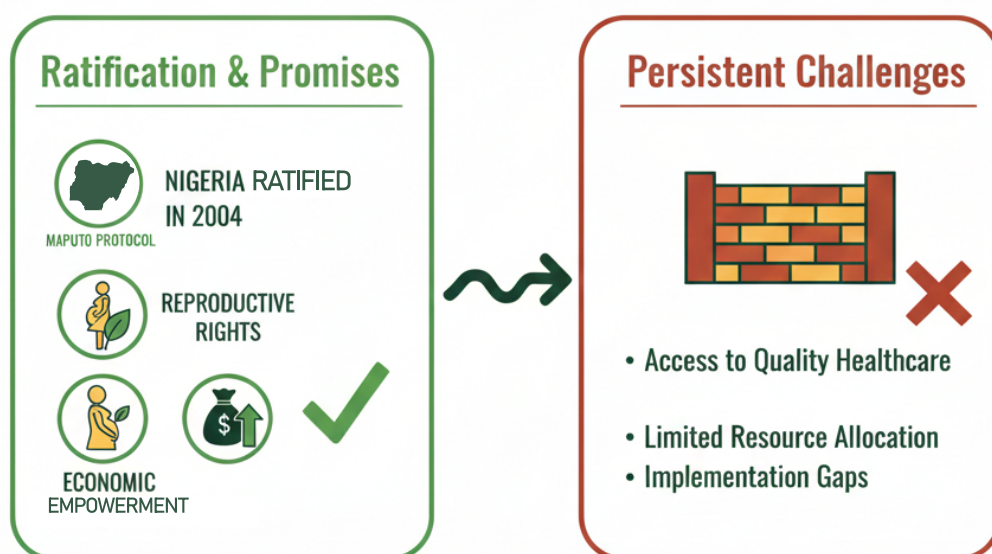
<sup>38</sup>Viljoen (n 6), Victor Ayeni 'The impact of the African Charter and Women's Protocol in Nigeria' in Centre for Human Rights The impact of the African Charter and Women's Protocol in selected African States (Pretoria University Law Press 2012)

<sup>39</sup>Chidi Odinkalu 'The Impact of Economic and Social Rights in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights' in Gauri, V and Brinks, D.M. (eds) Courting Social Justice: Judicial Enforcement of Social and Economic Rights in Developing World (Cambridge University Press 2008).



- 03. Elimination of Harmful Practices (Articles 5-6):** States shall take all necessary legislative and other measures to prohibit all forms of harmful practices that affect women, such as female genital mutilation, harmful traditional widowhood practices, and forced marriage.
- 04. Violence Against Women (Articles 4 & 19):** States shall take all appropriate measures to prevent, punish and eradicate all forms of violence against women, both public and private. This includes violence within the family, sexual harassment, and harmful cultural practices.
- 05. Economic Empowerment (Articles 10-11):** Women have the right to economic and social development, and states shall ensure their equal access to resources like land, credit, and vocational training.
- 06. Political Participation (Article 13):** Women have the right to participate in political and decision-making processes. States shall take measures to ensure women's equal access to and participation in political and decision-making processes.
- 07. Peace and Security (Article 12):** Women have the right to live in a peaceful environment free from violence. States shall ensure the participation of women in peace and security initiatives.
- 08. Education and Training (Article 9):** Women have the right to education and training. States shall take measures to ensure women's equal access to and participation in education and training, including health and family life education.

The Maputo Protocol serves as a vital framework for advancing women's rights in Africa. Nigeria ratified this protocol emphasizing reproductive rights and economic empowerment in 2004. However, challenges persist in areas like access to quality healthcare services and resource allocation for its provisions. Even though challenges persist in its full domestication and implementation, it represents a critical step towards achieving gender equality on the continent.



## The African Charter on Democracy, Elections and Governance: A Focus on Gender Provisions

The African Charter on Democracy, Elections and Governance (ACDEG), adopted in 2007, but came into effect in 2012, emphasizes democratic principles and good governance in Africa. The charter was ratified by Nigeria in 2011. The ACDEG contains provisions that promote women's inclusion in democratic processes. Below is a breakdown of some key points:

- 01. Gender Equality as a Democratic Principle (Article 3(2)):** The Charter recognizes the importance of promoting gender equality as a fundamental principle of democracy. This establishes a foundation for integrating gender considerations throughout the document.
- 02. Equal Participation in Elections (Article 13(2)):** States are encouraged to take measures to ensure the equal participation of women in elections, both as voters and candidates. This includes promoting women's voter registration and access to polling stations.
- 03. Promotion of Women in Public Office (Article 13(3)):** The Charter encourages states to take measures to increase the representation of women at all levels of decision-making, including government and public institutions. This acknowledges the importance of women's voices in shaping policy.
- 04. Accountability for Gender Equality (Article 23(2)(c)):** When submitting reports to the African Union on their adherence to the Charter, states are encouraged to include information on measures taken to promote gender equality in their electoral processes and public institutions. This transparency mechanism fosters accountability for progress on gender inclusion.

Overall, the ACDEG, though not an exclusively gender-focused treaty, nor solely dedicated to gender equality, recognizes the importance of women's participation in democratic governance.

## SUPPLEMENTARY ACT RELATING TO EQUALITY OF RIGHTS BETWEEN WOMEN AND MEN FOR SUSTAINABLE DEVELOPMENT IN THE ECOWAS REGION

The Supplementary Act on Equality of Rights between Women and Men for Sustainable Development in the ECOWAS Region is a key instrument for advancing gender equality across West Africa. The act was adopted by the 47th Ordinary Session of the Conference of the Heads of State and Government held in Accra, Ghana, on May 19 2015, and it commits all ECOWAS member states to the promotion of gender equality and equity in all sectors through appropriate policy and legislative formulation and reviews as well as strategy alignment.

The Act was made in furtherance of the Article 63 of the Revised ECOWAS Treaty<sup>40</sup> on "Women and Development" which mandates Member States "to formulate, harmonize, coordinate and

<sup>40</sup>Revised treaty of the Economic Community Of West African States (ECOWAS)

establish appropriate policies and mechanisms for the enhancement of the economic, social and cultural conditions of women”. The Act promotes equal rights for women and men in all sectors to achieve sustainable development within the ECOWAS region. It also emphasizes the need to harmonize national policies and legislation with international and regional commitments on gender equality for ease of implementation. The key provisions are outlined below:

Key Areas of Action (Article III-XIV):



**Guarantee of Individual Rights (Chapter II):** Calls for the elimination of discrimination based on gender and guaranteeing women's fundamental rights. It also requires that the principle of parity between women and men is applied in the composition of government and in the private sector. It takes steps to guarantee the socio-economic protection of women's interest, access to justice and the protection of marginalized groups.



**Governance And Decision Making (Chapter III):** This chapter encourages women's equal participation in political and decision-making processes, in public and private sectors. It enjoins states to use affirmative action and legislative measures to ensure equal participation of women in appointive and elective positions.



**Education and Training (Chapter IV):** Promotes girls' access to education and training opportunities, and directs the provision of special budgetary allocations for the education of the girls and other vulnerable groups. It also mandates the equal participation of women in education systems.



**Women's Access to Resources and Employment (Chapter V):** Advocates for women's equal access to land, credit, and economic opportunities. It also promotes the use of legislative and regulatory measures to ensure women's equal access to all economic and profit-making opportunities in the areas of trade and entrepreneurship, including access to public markets and in the formulation and implementation of economic and social policies.



**Youth and Development (Chapter VI):** Underscores the importance of empowering young women for their full participation in development. It enjoins member states to define a gender-sensitive vision for the youth in the political, economic, social and cultural spheres.



**Gender-Based Violence (GBV) (Chapter VII):** Calls for measures to prevent, punish, and eradicate all forms of violence against women. It also makes provision for support services for survivors of GBV. It also prohibits human trafficking and enjoins states to criminalize and penalize same and other sexual offenses.



**Health and HIV/AIDS (Chapter VIII):** The Act enjoins states to adopt and implement frameworks, policies and programmes for the provision of adequate, affordable and gender-sensitive health care services, in order to promote women's access to quality healthcare services, including sexual and reproductive health services, and to reduce maternal mortality.



**Conflict Prevention and Management, Peace and Security (Chapter IX):** This chapter enjoins states to adopt the necessary measures to ensure women's equal representation and participation in key decision-making positions on conflict prevention and management, peace building and security in accordance with the United Nations resolutions on Women Peace and Security amongst others.



**Media, Information and Communication (Chapter X):** Encourages the use of media to promote gender equality. It enjoins member states to prohibit the use of media in a manner that is demeaning to women, including pornographic content. It also guarantees women access to information, communication and information and communication technology, regardless of race, age, religion or social class.



**Water, Environment, Sanitation and Climate Change (Chapter XI):** Emphasizes women's participation in environmental decision-making and adaptation to climate change. This chapter also encourages the use of renewable energy (use of solar) and rural electrification in a bid to reduce the burden of work on women and to improve the competitiveness of businesses managed by women;



**Agriculture and Sustainable Development (Chapter XIII):** Supports women's role in agricultural development and food security. It also ensures women's access to land, markets and the active participation of women in the formulation of agricultural policies, strategies, programmes and projects.



**Infrastructure, Energy and Mining (Chapter XIII):** Promotes women's participation in these sectors. It enjoins member states to take measures to ensure the regulation and equal access of women and men to infrastructure, by improving their access to alternative infrastructure (ICT and air, rail, river and road transport), as well as the inclusion of women in the industry value chain.

The Supplementary Act represents a significant commitment to gender equality in the ECOWAS region as it is a harmonization of several international treaties on the protection and promotion of the rights of women. Unfortunately, full implementation in Nigeria is yet to be attained and requires ongoing efforts from governments, civil society organizations, and the Nigerian people public.

# CHALLENGES IN IMPLEMENTATION OF INTERNATIONAL TREATIES

## Non domestication of ratified treaties:

As stated above, the Constitution<sup>41</sup> provides that 'no treaty between the Federation and any other country shall have the force of law [in Nigeria] except to the extent to which any such treaty has been enacted into law by the National Assembly’.

In the case of *Abacha v. Fawehinmi*,<sup>42</sup> the Supreme Court of Nigeria held that:

”

an international treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly... before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justiciable in our courts.

“

The implication being that non-domestication of ratified treaties by the legislature creates a major hindrance to the implementation of those treaties because it creates a gap between international commitments and national enforceability. More so, it would amount to usurpation of the legislative powers of the National Assembly if a treaty that is ratified by the executive is allowed to have the force of law in Nigeria without the intervention of the National Assembly.

## Non-justiciability of socio-economic rights:

Socio-economic rights are provided for under Chapter 2, Sections 13-24<sup>43</sup> of the 1999 Constitution. The chapter is titled “Fundamental Objectives and Directives Principles of State Policy”. Specifically, Sections 16 provides for Economic Objectives, 17 for Social Objectives, 18 for Education Objectives. A combined reading of these sections immediately reveals their alignment with the treaties in consideration. Unfortunately, Chapter 2 of the Constitution is declared non-justiciable by Section 6(6)(C) of the constitution.<sup>44</sup> This simply means that citizens cannot directly go to court to enforce the provisions in this chapter, even if they align with ratified treaties. In the case of *Archbishop Anthony Okogie v. Attorney General of the Lagos State*,<sup>45</sup> it was held that:

<sup>41</sup> Section 12(1) Constitution of The Federal Republic of Nigeria 1999 (As amended)

<sup>42</sup> Supreme Court of Nigeria, *Abacha v. Fawehinmi*, 28 April 2000, No. SC45/1997

<sup>43</sup> Sections 13-24 of the Constitution of The Federal Republic of Nigeria 1999 (As amended)

<sup>44</sup> Constitution of The Federal Republic of Nigeria 1999 (As amended)

<sup>45</sup> (1981) 2 NCLR 337 at 350



”

While Section 13 of the Constitution makes it a duty and responsibility of the judiciary among other organs of government to conform to and apply the provisions of Chapter 2, section 6 (6) (c) of the same constitution make it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that section 13 has not made Chapter 2 of the Constitution justiciable.

“

Since Chapter 2 is not directly enforceable, translating treaty obligations into reality requires the National Assembly passing specific laws and even constitutional amendments. This legislative process is slow and susceptible to political considerations. Priorities and agendas might shift, delaying or even preventing the passage of necessary laws to implement treaty provisions.

Although the general rule in Nigeria is that signed treaties require domestication (enactment into domestic law) to be directly enforceable in the country's courts. However, there are exceptions where treaties can be applied without explicit domestication, particularly concerning the application of international law within the Nigerian legal system.

Exceptions to the General Rule include:

1. **Treaties Affecting Fundamental Human Rights:** some argue that treaties relating to fundamental human rights may be directly enforceable without domestication, particularly if they align with constitutional provisions.
2. **Treaties Implemented by Existing Legislation:** if a treaty's provisions are already covered by existing Nigerian legislation, it may be applied without further domestication.
3. **Treaties Given Effect by Judicial Decisions:** in some instances, Nigerian courts have, through judicial interpretation, given effect to certain treaty provisions even without explicit domestication.
4. **Treaties Incorporated into Domestic Law by Implication:** in some cases, treaties may be considered incorporated into domestic law through other legal instruments or processes, effectively bypassing the need for explicit domestication.

### Religious and Cultural limitations:

The country's deeply rooted cultural norms and certain religious dispositions act as barriers to consensus amongst law makers on issues like child marriage, female reproductive rights and female genital mutilation (FGM), despite their violation of the provisions of ratified treaties.

## Political Participation Lags:

Women remain under-represented in leadership positions, and in the legislature, highlighting issues like limited access to education and resources for female candidates. This limited or in some cases non-existent representation of women in federal and state legislatures makes it difficult to pass women centered legislation or provide adequate gendered perspectives to national issues.

## Resource constraints:

Insufficient resources allocated for implementing domesticated treaties is another obstacle to full implementation of these treaties. This is so because treaties often require dedicated government departments, trained personnel, and robust monitoring mechanisms. Without sufficient resources, these capacities can be limited, hindering the ability to develop and execute effective implementation plans. Also, many treaties require the implementation of specific programs and initiatives. For instance, a treaty promoting girls' education might necessitate building new schools or providing scholarships for female students. Insufficient resources can make it difficult to fund these programs and ensure they reach the target beneficiaries, collect data and conduct monitoring and evaluation activities.





Challenges in implementation of International treaties in Nigeria

# CONCLUSION AND RECOMMENDATIONS

This report concludes that it is pertinent for the Nigerian nation to examine and amend all patriarchal, paternalistic and non-inclusive laws. There is need to engage with policy makers and cultural gate keepers and institutions at all levels: traditional and religious institutions, and legislators. Also awareness creation on these laws are necessary as well as supporting women to have agency to demand amendments of the laws.

The report has stated some recommendations hereunder which could be considered. Further, it is necessary to domesticate and fully implement all international treaties which the country has ratified as they are beneficial to the development of the country.

## Actionable Recommendations:

### 1. Strengthening Domestic Legal Frameworks:

This includes:

- Constitutional amendments to make Chapter 2 of the constitution justiciable and to incorporate the pending five gender bills.
- The Penal Code and Criminal Code are the principal legislation on crime in the north and in the south of the country, they should be amended to respond to current realities. Detailed recommendations in the body of this report should be taken on board and necessary amendments made.
- Use of sex and gender inclusive or neutral pronouns in our laws.
- Rules of evidence should be formulated that protect - reception, handling and storage of evidence related to sexual offenses. How evidence is received, protection of the identity of the survivor/victim and perhaps persons involved, how long such evidence should be kept before they are destroyed.
- Referendum or vigorous public debates on Nigerian laws, especially the laws that touch on societal norms and ethos. Norms and ethos evolve with society, and the Nigerian people need to decide if theirs have evolved or are still static.

### 2. Addressing Implementation Gaps - International Treaties:

- Conduct comprehensive legal reviews to identify inconsistencies between domestic statutes and ratified treaties.
- Develop clear national implementation plans with specific goals, timelines, and resource allocation for each ratified treaty.

- Establish robust monitoring and evaluation mechanisms to track progress on treaty implementation and identify areas requiring further action.
- Prioritize the passage of legislation that effectively translates treaty provisions into actionable measures at the national level.
- Enhancing Resource Mobilization:
- Prioritize treaty implementation within national budgets and allocate resources accordingly.
- Seek international cooperation and support from donor countries and organizations to bridge resource gaps.
- Explore public-private partnerships to leverage additional resources and expertise from the private sector.
- Encourage innovative financing mechanisms to support treaty implementation programs.

### **3. Promoting Public Awareness and Cultural Shifts:**

- The government should work collaboratively with civil society organizations and community leaders to engage in grassroots advocacy and promote cultural shifts that support women's rights.
- Utilize media strategically to challenge gender stereotypes and promote positive portrayals of women's empowerment.
- Launch comprehensive public awareness campaigns to educate the public about the provisions of ratified treaties and their importance for achieving gender equality.
- Implement gender quotas for political offices, encourage party compliance through sanctions, and provide leadership training and mentorship programs to build women's capacity in governance
- Enlighten and encourage women to seek for the enforcement of ratified treaties (whether domesticated or not) in court.





## AFTERWORD

The reader is strongly encouraged to check the following videos where the above subject matter is elaborately discussed in digital format.

- Explaining FIVE GENDER BILLS Rejected by Nigerian Lawmakers:  
<https://www.youtube.com/watch?v=FKTM87rgU28>
- These Nigerian Laws Are So Unfair to Women:  
[https://www.youtube.com/watch?v=Q5MwN0gb1\\_w&t=3s](https://www.youtube.com/watch?v=Q5MwN0gb1_w&t=3s)
- How Some Nigerian Laws No Dey Favour Women (in Pidgin English):  
<https://www.youtube.com/watch?v=zwaQVtTpZm8>
- Unpacking Inequality in Nigeria (in Spoken Word):  
[https://www.youtube.com/watch?v=lxgfOq3b\\_ps](https://www.youtube.com/watch?v=lxgfOq3b_ps)
- How Nigeria is Failing to Keep its Promises on Gender Equality  
<https://www.youtube.com/watch?v=DWE7R1bfJI0>



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