

AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE PROTECTION OF WOMEN'S RIGHTS IN NIGERIA*

Abstract

Women are generally seen as vulnerable part of the society compared with the male counterpart, and the patrilineal nature of the society, especially in Africa coupled with religious and cultural factors, make the rights of women to be given little or no attention. The resulting effect of this is that the dignity of womanhood and right to self-determinism of a woman is often eroded, thereby making majority of women live their lives in abuse, discrimination and molestation. There is therefore a need for change and women should have full right and sense of belonging. It is in line with this that this research attempts to appraise the legal and institutional provisions on women's rights in Nigeria. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was recommended among others that these rights should be adequately enforced and Nigeria should do well by ratifying and domesticating relevant international instruments on the protection of women's rights in Nigeria and the legislators and the judiciary should adopt the sound principles and related provisions in foreign jurisdictions to advance women's rights. Finally, this article was made to be significant to all stakeholders in human right and feminism.

Keywords: Human Rights, Woman, Women's Rights, Legal and Institutional Frameworks.

1. Introduction

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more¹ A woman is defined as a female of any age.² Also a Woman is all the females of the human species who have arrived at the age of puberty.³

2. Women's Rights

Women's rights are human rights. Women are human beings, so they deserve the same basic rights, such as education, a life free of violence, and a fair wage.⁴ Women's rights are also the rights and entitlements claimed for women and girls worldwide. The importance of the protection of women's rights cannot be overemphasized. We shall identify the rights of women in Nigeria as provided under the law. It will also examine the laws (both national and international), policies and institutional mechanisms for the protection of the rights of women in Nigeria.

3. Rights of Women in Nigeria

It is pertinent to note that women's rights are human rights. This section will examine the rights of women as provided under the CEDAW and other international instruments protecting women's rights vis-a-vis the Constitution and other local laws protecting women's rights in Nigeria. The rights of women in Nigeria have been classified thus:⁵ legal rights, political rights, economic rights, health and reproductive rights, and social and cultural rights

Legal Rights

These rights relate to provisions on the legal capacity and status of women, non-discrimination on grounds of sex, equality before the law, access to justice, and elimination of all forms of discrimination in law (including civil, penal laws and evidential rules) and in practice.⁶ Both CEDAW and its protocol reiterate the principles of equality and non-discrimination and re-affirms faith in the dignity and worth of the human person and in the equal rights of women and men. In taking positive action to end discrimination, state parties are encouraged to adopt temporary special measures aimed at accelerating de facto equality between men and women.⁷ Article 9 and 6 of CEDAW and the protocol respectively recognize a woman's right to nationality empowering a woman to either retain her nationality or to acquire the nationality of her husband.⁸ In the same vein, equal protection is guaranteed women in marriage, including during separation, divorce and annulment of

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¹ <https://en.m.wikipedia.org/wiki/humanrights> accessed on 22nd May, 2024

² Equality Act 2010, s.11, s.212(1)

³ <https://medicamondiale.org/violence-against-women/womens-rights-are-human-rights> accessed on 22nd May, 2024

⁴ <https://medicamondiale.org/violence-against-women/womens-rights-are-human-rights> accessed on 22nd May, 2024

⁵ Ezeilo J. N., 'Women, Law and Human Rights: Global and National Perspectives' (Enugu/Abuja: Acena Publishers, 2011) p. 172 - 233.

⁶ CP Iloka, 'Women Perspectives in the Administration of Justice' *Chukwuemeka Odumegwu University Journal of Public and Private Law* (2021) (3) (1) p.61-82 < nigerianjournalonline.com/index.php/COOUJPL/article/view/2011> accessed 18th January, 2025

⁷ Also known as affirmative action; Article 4

⁸ Article 6 (g) of CEDAW

marriage.⁹ Important provisions on access to justice (judicial and legal services), advancing women's legal capacity and equal protection before the law were enshrined in both article 8 and article 15 of the CEDAW.

The 1999 Constitution in its preamble states the resolution of the people of Nigeria to provide a constitution for the purpose of promoting good government and welfare of all persons in society on the principles of Freedom, Equality and Justice. The Constitution enacts its supremacy in section 1 (1) (3) and, Chapter IV of the Constitution provides for fundamental human rights of all the citizens of Nigeria both male and female.¹⁰ Section 42 of the 1999 Constitution as amended provides for the right to freedom from discrimination the grounds of sex, religion, political opinion, place of origin, and other status. Section 42 (1) provides for equality under the law irrespective of sex. Section 17 also provides for equality of rights, obligations and opportunities of citizens under the law. It is worthy of note that the provision of section 42 is not adequate as inherent discrimination exist even within the constitution itself.¹¹ Further, it tends to preserve equal status only in relation to laws¹² and as far as practices, customs or other actions are concerned, there is no protection from discrimination. Thus, despite the de jure equality provided in the constitution, de facto discrimination still persists in laws and practices. This can be seen in section 42 (3) which provide that nothing in subsection (1) of section 42 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 member of the Nigeria police force or to an office in the service of a body corporate established directly by any law in force in Nigeria.¹³ Also, the provision of chapter III of the constitution dealing with citizenship is discriminatory against women as it grants citizenship by registration to any woman married to a citizen of Nigeria in section 26 (2) but no such privilege is extended to any man married to a citizen of Nigeria. Also, section 29 (4) (b) of the Constitution recognizes any woman who is married to be of full age. There is no similar provision regarding a man and this provision thus encourages the girl-child marriage. Another equally discriminatory law against in Nigeria is the section 2 of the Federal Character Commission (Establishment) Act,¹⁴ which provides that a married woman shall continue to lay claim to her state of origin for the purpose of implementation of the federal character formulae at the National level.

Discriminatory rules against female police officers in Regulations 121, 122, 125, 126 and 127 of the Nigerian police Act¹⁵. For instance, regulation 127 requires an unmarried female police officer desirous of marrying to first apply in writing to the commissioner of police requesting permission to marry and giving the name, address and occupation of the person she intends to marry. It is noteworthy that this provision of the police Act has no corresponding requirement from male police officers. Gender discrimination can also be found in the Criminal Code on the issue of punishment against personal assaults. If a man is assaulted, it is a felony, but if a woman is assaulted, it is a misdemeanor.¹⁶ The right to freedom from discrimination provided in section 42 is a legally protected interest which every woman is entitled to. Therefore, Nigeria needs to include in its Constitution a definition of discrimination that will conform to the definition in both CEDAW and the protocol it has ratified. Further, it should consider a separate section that will deal with the issue of gender equality, clearly entrenching the principle of equality and non-discrimination, which is standard in modern constitution making.

Political Rights

Articles 7 and 8 of the CEDAW enjoins State Parties to take all appropriate action to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.¹⁷ The Universal Declaration of Human Rights (UDHR) stipulates that everyone has the right to take part in the government of its country directly or through freely chosen representatives. The African Charter on Human and Peoples' Rights (1981) not only reinforced these rights, especially the right to freedom from discrimination, but also expanded gender specific rights in its protocol (2003) on the Rights of Women in Africa. Thus, the right to participate in the political and decision making process is guaranteed and state parties are urged to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action and enabling national legislation and other measures.¹⁸ Under the Nigerian law, women have the constitutional right to participate in politics.¹⁹ According to section 77 (2) of the constitution, every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of registration of voters for purposes of election to a legislative house shall be entitled to be registered as a voter for that election. However, despite the provisions on the equal participation of women and men in political and decision

⁹ Article 16 of CEDAW and Article 7 of the Protocol

¹⁰ See Sections 33 to 44 of the 1999 Constitution of the Federal Republic of Nigeria as amended

¹¹ See the provision of Section 42 (3)

¹² And as such does not discharge the obligation imposed by CEDAW as required under Article 2 (b) (g) and Articles 3 and 2 of the Protocol.

¹³ CP Iloka, 'Legal Framework for combating Trafficking of Women and Children in Nigeria' *De Juriscope Law Journal* (2023) (3) (1) p. 45-58 <nigerianjournalonline.com/index.php/DJLL/article/view/4183> accessed 2nd December, 2024

¹⁴ Cap F7, Laws of the Federation of Nigeria (LFN) 2004, Part II, Section 2

¹⁵ Police Act Cap, 359

¹⁶ See Sections 353 and 360 of the Criminal Code

¹⁷ See article 7 (a) (c) of CEDAW

¹⁸ See Articles 3 and 4 of CEDAW

¹⁹ Section 40 of the 1999 Constitution provides that, 'every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests'.

making, de facto equality has not been actualized. Worthy of note here is the provision of the constitution on government appointment and composition of agencies, section 14 (3) of the 1999 constitution as amended did not include gender consideration in the composition of the government and of its agencies. It has been argued that this exclusion of gender may give room for marginalization of women and prevent affirmative action in favour of women in government appointments. Movements that are promoting greater democracy in political life must take account of women's needs and concerns to ensure a sustainable democratic set up.

Economic Rights

Article 11 of CEDAW calls for non-discrimination in the field of employment and pays and guarantees job security in the event of marriage and maternity. It also stresses the social services needed, especially child care facilities to enable parents to combine family obligations with work responsibilities and participation in public life. Section 42 of the 1999 constitution prohibits discrimination on grounds of sex. One of the social objectives of the state as entrenched in the constitution is to ensure that all citizens have equal opportunity to secure adequate means of livelihood, as well as adequate opportunity to secure suitable employment.²⁰ The Labour Act²¹ in Sections 53 and 56 offers women some degree of protection and the rights protected therein are maternity leave,²² prohibition from night work,²³ and the employment of women in underground work.²⁴ Maternity leave for a period of twelve weeks is available in the public sector and it is granted with payment of 50 percent of the basic wage provided the women concerned have been continuously employed by the particular employer for at least six months immediately prior to her leave.²⁵ In addition, a nursing mother is entitled to take two and half hours break each day during working hours to care for the child. The Act provides against the loss of employment during the maternity leave period.²⁶ CEDAW in its Article 5, urged state parties to see as a social function and to ensure women appropriate services in connection with pregnancy. However, it has been posited that the provisions prohibiting women from underground work or night work is inherently discriminatory despite the excepted grounds²⁷. Thus, it contradicts section 42 of the constitution and amounts to a denial of one's right to work and freely choose a profession. Therefore, a safe working environment should be ensured. Prima facie, one could say that the employment law in Nigeria is gendered, but close examination reveals disparities between theory and practice. In reality, women are still discriminated against in law and practice relating to employment. There is no gender equality of job opportunities in Nigeria as envisaged by CEDAW owing to the ratio of employment of male and female in the federal civil service.²⁸ Article 14 (1) of CEDAW obliged state parties to take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. Furthermore, under this article, government undertakes to ensure that rural women have access to agricultural credit and loans, marketing facilities, appropriate technology, and equal treatment in land and agrarian reform as well as in land resettlement schemes.²⁹ It is pertinent to note the issue of harassment which has subjected individual female victims to job loss or the threatened loss of job as an impediment to the total enjoyment of the right to work and as a violation to women's economic rights. There is need of legislation on sexual harassment to provide women with a safe environment to work and earn a livelihood.

Health and Reproductive Rights

The World Health Organization (WHO) defines sexual health as a state of physical, emotional, mental and social wellbeing in relation to sexuality. It is not just the absence of disease, dysfunction or infirmity. Sexual Health requires a positive and respectful approach to sexuality and sexual relations, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained the sexual rights of all persons must be respected, protected and fulfilled. Sexual health needs vary according to factors such as age, gender, sexual orientation and ethnicity.³⁰ Building on the jurisprudence of international human rights normative framework, especially the International Covenant on Economic, Social and Cultural Rights (ICESCR)³¹ that recognize the right of everyone to the highest attainable standard of physical and mental health, article 12 of CEDAW mandates state parties to eliminate discrimination against women in the field of health care services, including those relating to family planning. Further, it enjoins state parties to ensure appropriate services to women in connection with pregnancy, confinement and the

²⁰ S. 17 (3) (a) (h) of the 1999 Constitution as amended.

²¹ Cap. L. 1 LFN 2004.

²² Section 54

²³ Section 55: exceptions are provided thereunder.

²⁴ Section 55

²⁵ Section 53(c)

²⁶ Section 53 (4)

²⁷ Section 56 (2)

²⁸ Nigeria's Initial Country Report to the African Union on the Implementation of AU Solemn Declaration on Gender Equality in Africa, in Ezeilo J. N., *Women, Law and Human Rights*, op. cit., P. 209

²⁹ Article 14 (2) (g)

³⁰ Iloka, CP, 'Appraisal of the Legal Framework of the Sexual and Reproductive Health Rights of Women in Nigeria' *Chukwuemeka Odumegwu University Journal of Public and Private Law* (2022) (4) (1) p. 24-40 <nigerianjournalonline.com/index.php/COOUJPLL/article/view/2940> accessed 2nd December, 2024

³¹ Article 12 of ICESCR; the UDHR in article 25(1); Convention on the Rights of the Child- article 24; the African Charter on Human and Peoples' Rights- article 16, and the African Charter on Human and Welfare of the Child- article 14.

post-natal period, granting free services where necessary,³² as well as adequate lactation. Also provides the right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.³³ State parties were obliged to ensure that rural women obtain access to adequate health care services, including information, counseling and services in family planning.³⁴ These provisions in CEDAW on the right to health were expanded upon by the protocol, which has extensive provisions in its article 14 titled 'Health and Reproductive Rights', which obliges state parties to ensure that the right to health of women, including sexual and reproductive health, is respected and promoted. Further obligations on state parties include provision of adequate, affordable and accessible health services, including information, education and communication programmes to women, especially those in rural areas, establishing and strengthening existing pre-natal, delivery and post-natal health and nutrition services for women during pregnancy and while breastfeeding. There is also a duty to protect the reproductive rights of women by endorsing medical abortion in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the unborn child.³⁵ It also prohibits all medical or scientific experiments on women without their informed consent.³⁶

Nigeria has through its adoption of the Regional Reproductive Health Strategy in April, 1998 and the National Reproductive Health Policy in 2003, endorsed all the components except 'the provisions on safe abortion services' which is against the law.³⁷ The fundamental objectives and the directive principles of state policy provide that the State shall direct its policy towards ensuring adequate medical and health facilities for all persons.³⁸ Obviously, this is inadequate to protect the right to health as adumbrated in the instruments above. However, other relevant sections of the fundamental human rights like the right to life, sanctity of human person and dignity are all connected to the enjoyment of physical and mental health.³⁹ Moreover, the National Policies such as National Health Policy⁴⁰ and Strategy, National Adolescents Health Policy⁴¹ and National Gender Policy⁴² provide a comprehensive framework for the creation of an enabling environment for the protection of health and reproductive rights. In spite of efforts, the majority of women especially those in rural areas are still endangered health-wise. The subsidized health services in the government hospitals and health centres are still very expensive for the 'common woman'. The emergency of HIV/AIDS has worsened women's already vulnerable status.

Social and Cultural Rights

Several provisions of CEDAW aim at eliminating attitudes, conducts, prejudices and practices that are based on the alleged inferiority or superiority of either sex.⁴³ It also recommended temporary special measures to speed up equality between men and women, and action to modify social and cultural patterns that perpetuate discrimination.⁴⁴ Social and cultural rights recognized in both CEDAW and the protocol includes: right to education and training,⁴⁵ livelihood empowerment,⁴⁶ protection of rural women,⁴⁷ social infrastructure,⁴⁸ social assistance to vulnerable women⁴⁹ and right to participate in cultural activities.⁵⁰

The patriarchal nature of most Nigerian communities relegates women to the background. However, certain provisions of the constitution seem to have responded to the socio-cultural situation of women in Nigeria and sections 18 and 42 on educational objectives and freedom from discrimination appear relevant to the issue of right to education. Unfortunately, these laudable educational objectives contained in section 18 of the 1999 constitution which include free and compulsory primary and secondary education, are not justiciable, but mere directive principles of state policies to which the state aspires to⁵¹. However, article 15 (1) of the Child Right Act, (CRA) 2003 and the Compulsory Free Universal Education and other related matter, 2004 (UBE ACT) have created a legally binding right to education for girl-children. The Child Rights Act which is intended to provide the Nigeria child with the rights contained in the UN Convention on the Rights of the Child has not been passed into law in all states of the federation. Generally speaking, in the sphere of education and in the empowerment of women, the government has made a number of policies and strategies to ensure equal education of all citizens. For instance, 1981 National Policy on Education, National Gender Policy. Barriers to girls' education include,

³² Article 12 (1) and (2)

³³ Article 11 (f)

³⁴ Art 14 (2) (b)

³⁵ Art. 14 (2) (c).

³⁶ Art. 4 (h).

³⁷ See sections 228- 230 of the Criminal Code and sections 232-234 of the penal code.

³⁸ See section 17 (3) (d)

³⁹ Ezeilo J. N., *Women, Law and Human Rights* (Enugu /Abuja, Acena Publishers, 2011), p. 220

⁴⁰ 1998 and 20004 respectively

⁴¹ Adopted in 1995

⁴² 2006

⁴³ See Articles 5,3,13 and 10, in particular 10(a) and (c)

⁴⁴ See Article 4

⁴⁵ See Article 10 (a-h) of CEDAW and Article 12(1) of the protocol

⁴⁶ Article 15 (a) of the protocol to CEDAW and Articles 13 (a-b) and 14 (g)

⁴⁷ Art. 14 (2) of CEDAW

⁴⁸ Art. 16 of the Protocol and Art. 14 (h) of CEDAW

⁴⁹ Art 13 of the protocol and Articles 14, 22 and 24 of CEDAW

⁵⁰ Articles 13 (c), 14 (f) of CEDAW and Art. 17 of the protocol

⁵¹ See *Archbishop Okogie v. A.G. Lagos State* (1981) 2 NCLR 337; also, s. 6 (6) (c) of the 1999 Constitution

early marriage, low value placed on girls' education, dearth of female teachers as role models and unfriendly school environment. Consequently, one of the objectives of the National Gender Policy is to eliminate cultural beliefs and practices which, due to ignorance and misconception, tend to dehumanize women and militate against their full development. From the foregoing discussion, it is evident that governmental structures exist for the advancement of women. However, the problem lies in implementation.

3. Legal and Institutional Framework for the Protection of Rights Women in Nigeria

The rights of women in Nigeria are traceable to series of documents; international and regional documents applicable in Nigeria, and local laws. These documents provide rights stipulated for the protection of women and they will be examined under these broad headings: international and regional instruments, national laws and policies, and state legislations.

International Instruments

In acknowledgement of the importance of protecting the rights of women, the international community has taken actions and provided instruments directed towards the protection of these rights. The instruments include: the Convention on the Elimination of all Forms of Discrimination Against Women, the Universal Declaration on Human Rights, the African Charter on Human and Peoples' Rights, the Platform for Action from the United Nations Fourth World Conference on Women held in Beijing, the Declaration of the Elimination of Violence Against Women adopted by the UN General Assembly in 1993.

Universal Declaration of Human Rights (UDHR)

The UDHR is a declaration adopted by the UN General Assembly on 10th December 1948. The UDHR although not a treaty, is a human right document that has inspired numerous constitutions and treaties. The experiences of the Second World War led to the birth of the UDHR which represent the first global expression of rights to which all human beings are inherently entitled. The UDHR is a component of the International Bill of Rights which also consists of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and their Optional Protocols. The UDHR has 30 Articles which deal specifically on human rights in general and human rights of women.⁵² Article 1 state that 'all human beings are born free and equal in dignity and rights and they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood' Article 2 provides that everyone is entitled to all the rights and freedom set forth in this declaration without distinction of any kind such as race, color, sex, language, religion etc. Article 3 guarantees the right to life, liberty and security of persons. The non-discrimination clause read together with article 3 and 5 means that, any form of violence against woman which can be construed as threat to her life, liberty or serenity of person or which constitutes torture or cruel inhuman or degrading treatment, is not in keeping with the spirit and purport of the UDHR and is therefore a violation of the international obligations of member states.⁵³

Convention on the Elimination of all Forms of Discrimination against Women⁵⁴

This is one of the two conventions that provide explicitly for the protection of rights of women and girls. It is an embodiment of all conventions, declarations and resolutions that the United Nation has ever adopted concerning women. The CEDAW is generally described as the international Bill of Rights for Women and was adopted in 1979 by the United Nations General Assembly but came into force on 3 September 1981. The CEDAW is the most extensive instrument dealing exclusively with the rights of women as it sets out practices regarded as discriminatory and lists actions to be taken to remedy the situation. Nigeria signed and ratified CEDAW on June 13, 1985 but has not domesticated it and so the CEDAW is not part of Nigerian domestic law by virtue of the provisions of the constitution which 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.⁵⁵ The CEDAW developed the legal norm of non-discrimination from a woman's perspective. According to Idirisu:⁵⁶

CEDAW explicitly acknowledges the continued existence of extensive discrimination against women; it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. CEDAW provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities, in political and public life including the right to vote and to stand for election as well as education, health and employment.

The list of the provisions of CEDAW to protect women against discrimination and violence is almost endless. Articles 1 to 16, all deals with different provisions aimed at eliminating all forms of discrimination against women. For instance in article 4, state parties are urged to adopt measures aimed at accelerating de facto equality between men and women, not allowing unequal separate standards.

⁵²Iloka, CP 'Gender Mainstreaming Digital Legal Education' *IJOLACLE Journals* (2023) (4) p. 21-29 <nigerianjournalonline.com/index.php/IJOLACLE/article/view/3689> accessed 4th February, 2025

⁵³ Nnadi I., 'Legal Instruments against Gender Discrimination and Violence against Women in Nigeria: How Adequate?' (2016) LFRP Vol. 1, Zubic Infinity Concept, Owerri, p. 74.

⁵⁴ Also known as CEDAW

⁵⁵ Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria, Cap. C23, LFN, 2004

⁵⁶ Idirisu J., quoted in Nnadi I., 'Legal Instruments against Gender Discrimination and Violence against Women in Nigeria: How Adequate?' (2016) LFRP Vol. 1, P.77

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

The optional protocol to the CEDAW came into force in 2000.⁵⁷ Nigeria ratified the optional protocol to the CEDAW ON November 22, 2004.⁵⁸ The protocol permits the CEDAW committee to deliberate on petitions from individuals or groups who have not attained justice in their national jurisdictions. Upon the filing of a complaint, the committee has the discretion to adopt interim measures to protect the complainant from gender-based discrimination. Whether the activities of the committee will be practicable or not is a different issue considering the issue of internal jurisdiction of courts and non-domestication.⁵⁹

Regional Instruments

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is another instrument that seeks to protect the rights of individuals on the African continent. Article 2 of the charter enshrines the non-discriminatory clause. Article 18(3) provides that: 'The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions'.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is also known as the Maputo Protocol. It was adopted by the African union on the 11th of July 2003 at its second summit in Maputo, Mozambique. On 25th November 2005, after ratification by 15 member states of the African Union, the protocol entered into force. The Protocol focuses on the enforcement and protection of women's rights and provides that it is the duty of the state to ensure that women are afforded equal opportunities with men. The introductory note on the Draft Protocol to the African Charter on Human and peoples' Rights on the Rights of Women in Africa explains that to date, no African instrument relating to human rights proclaimed or stated in a precise way what the fundamental rights of women in Africa are. The Protocol therefore guarantees women's rights on the continent as the emergence of this protocol was as a result of the plight of women in Africa in terms of human rights⁶⁰

National Laws and Policies

In Nigeria, there are laws enshrined in the constitution and other statutes ostensibly geared at curbing the incidence of gender-based discrimination and violence against women, thus, protecting the rights of women in Nigeria. Some of these laws and policies will be examined.

Constitution of Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria⁶¹ contains a bill of rights in its chapter four known as the Fundamental Human Rights.⁶² These provisions contain rights and entitlements claimed for women in the international arena (although not conclusively) and can ordinarily be used to curb acts constituting gender discrimination and violence against women.⁶³ Section 42 of the 1999 Constitution as amended deals with the right to freedom from discrimination, and in its subsection (1), prohibits any discrimination on the grounds of ethnic group, place of origin, sex, religion or political opinion. This provision deals with equality irrespective of sex and gender. The provisions of section 42 and section 15 (2) of the 1999 constitution as amended are *pari passu* as regards prohibition of discrimination on grounds of sex and other status. Section 17 (2) (a) states that 'every citizen shall have equality of rights, obligations and opportunity before the law'. However, it is pertinent to note that, the provisions of the fundamental objectives⁶⁴ are not justiciable by reason of the same constitutional provisions⁶⁵ and so whatever they serve to protect are merely rhetoric as any action brought under them will be nugatory and government is not obligated to act on them. According to Augie: these are noble ideals set out in the Constitution, and on paper, which is all it is...⁶⁶ Albeit the existence of these provisions for the protection of women's

⁵⁷ Nnadi I., 'Legal Instruments Against Gender Discrimination and Violence Against Women in Nigeria: How Adequate?' (2016) LFRP Vol. 1 P. 79.

⁵⁸ *Ibid.*

⁵⁹ Iloka, CP, 'Understanding the Concept, History and Dimensions of Domestic Violence Against Women' *ACARELAR Journal* (2022) (3) p. 41-47 <nigerianjournalonline.com/index.php/ACARELAR/article/view/2666> accessed 10th December, 2024

⁶⁰ Nnadi I., 'Legal Instruments Against Gender Discrimination and Violence Against Women: How Adequate?' *op. cit.* P. 82

⁶¹ 1999 Constitution, Cap. C23, LFN, 2004.

⁶² Chapter IV of the 1999 Constitution as amended.

⁶³ Iloka, CP, 'Legal Protection For Raped Victims: Imperatives of Domestic and International Laws' *Nnamdi Azikiwe University Journal of Public and Private Law* (2024) (1) (2) p.141-156 <nigerianjournalonline.com/index.php/NAUJPLP/article/view/4378> accessed 15th December, 2024

⁶⁴ Chapter II of the 1999 Constitution as amended.

⁶⁵ Section 6 (6) (c)

⁶⁶ Augie A., quoted in Nnadi I., 'Legal Instruments against Gender Discrimination and Violence against Women in Nigeria: How Adequate?' *Op. cit.* P. 85

rights, they are mere letters as their implementation is almost impossible. This has been a handicap in the efforts towards making government accountable for the neglect and discrimination against women.⁶⁷

Criminal Code

The criminal code is applicable in the Southern parts of Nigeria and contains certain provisions that are intended to protect women from violence, punish perpetrators of such sordid violence against women and in so doing, protect the rights of women.

Section 357 of the criminal code⁶⁸ defines the offence of rape as:

any person who has 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 of intimidation of any kind, or by means of false or 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 punishment for the offence of rape is provided for under section 358 which stipulates life imprisonment. To constitute rape however, there must be evidence of unlawful carnal knowledge and proof of penetration. By section 6 of the code, penetration however slight will suffice. This was the decision in the case of *Edet Okon lko v. State*.⁶⁹ One dismaying factor for the proof of the offence of rape is the requirement of corroboration in the absence of which accused persons are discharged and acquitted. The provisions of section 252 of the criminal code dealing with assault also protect the woman from assault and violence to her person. On its part, section 218 of the Criminal code deals with the offence of defilement of girls less than 13 years of age. Sections 219, 221, 222, 224, 224, 225, 255(a), 226, 227 are all provisions in the criminal code that seeks to protect the rights of women by criminalizing acts that amounts to violence against women.

Penal Code

The penal code⁷⁰ is applicable in the Northern parts of Nigeria and in it are embedded certain provisions that criminalize conducts and actions that violate the woman and girl in the society. Under section 282(1) of the penal code, the offence of rape is provided for. However, the requirement of corroboration in proof of the offence, is one issue that whittles down the effect of the provisions of section 282 dealing with rape which is a violation of the dignity of the woman.⁷¹ Sections 278 and 280 of the Penal Code on hiring minors for immoral purposes are also instructive. Sections 262 to 270 of the penal code deals with assault and this can also be seen as protecting the woman from violence to her person.

Child's Rights Act 2003

The Child's Rights Act⁷² is a domestic legislation in Nigeria that is in tandem with the UN convention on the Rights of the Child.⁷³ The interpretation section of the Act⁷⁴ defines a child as 'a person under the age of 18 years'. In protection of the child, the Act prohibits child marriage⁷⁵ and child betrothal,⁷⁶ tattoos and skin marks among others.⁷⁷ The principle of non-discrimination against the child is also emphasized by the Act.⁷⁸ Section 11 of the act although not specific on girls, can be seen as a major provision in the protection of girls against the violence of rape, defilement, prostitution and all other inhuman violent treatment meted out to the girl child. Consequently, the Act can be used effectively in the protection of the girl child from abuses and human rights infringements. Several states on their part have enacted the Child's Rights Law that are in tandem with the Child's Rights Act.

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act

The Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003⁷⁹ is another domestic legislation in Nigeria intended to protect the rights of women and girls. Human trafficking is a very serious form of organized crime that involves the exploitation of people in the society especially the vulnerable. As a result of the monotonous nature of trafficking both internally and externally, the Federal Government of Nigeria in 2003 passed the Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003⁸⁰ which established the National Agency for Prohibition of Trafficking in Persons and other related matters. The NAPTIP Act is operational throughout the country. It is a major instrument in Nigeria tackling trafficking of women and girls for prostitution. Victim protection is central to combating trafficking effectively and accordingly the Act provides certain reliefs for victims of trafficking.

⁶⁷ Iloka, CP, 'Responses and Their Adequacies to Gender Violence: A Critical Appraisal' *Unizik Law Journal* (2023) (19) (2) p. 115-126 <journal.ezenwaohaetorc.org/index.php/ULJ/article/view/2295> accessed 6th January, 2025

⁶⁸ Cap. 38, LFN, 2004

⁶⁹ (2001) 14 NWLR (part 732) 221.

⁷⁰ Cap. P3, LFN 2004.

⁷¹ *Okpanefe v. State*, (1969) 1 All NR 420

⁷² Child's Rights Act 2003, Cap 50 LFN. 2004.

⁷³ 20th November 1989 but entered into force September 2, 1990.

⁷⁴ Section 277

⁷⁵ S. 21.

⁷⁶ S. 22.

⁷⁷ S. 23.

⁷⁸ S. 10

⁷⁹ Cap. T23, LFN, 2004

⁸⁰ Also known as the NAPTIP Act.

Violence against Persons (Prohibition) Act

Until the enactment of Violence against Persons (Prohibition) Act⁸¹, there was no comprehensive federal law addressing sexual harassment and domestic violence pointedly in Nigeria. The Violence against Persons (Prohibition) Act provides a framework for the protection of all forms of violence against vulnerable persons, especially women and girls. Under the newly enacted law, spousal battery, forceful ejection from home, forced financial dependence or economic abuse, harmful widowhood practices, female circumcision or genital mutilation, harmful traditional practices, acid baths, political violence and violence by state actors are offences. Victims and survivors are entitled to comprehensive medical, psychological and legal assistance by accredited service providers and government agencies, with their identities protected during court cases. It needs to be noted that, the issue of application of the Violence against Persons (prohibition) Act outside the Federal Capital Territory is still a matter of legal debate and whether it needs to be passed in all the 36 States of the Federation is unclear.⁸²

National Gender Policy

In 2006, the Federal Ministry of Women's Affairs pushed for the adoption of the National Gender Policy to replace the National Policy on Women, which was adopted in 2000. The goal of the policy is to build a just society devoid of discrimination, harness the full potentials of all social groups regardless of sex or circumstance, promote the enjoyment fundamental human rights and protect the health, social, economic and political wellbeing of all citizens in order to achieve equitable rapid economic growth; evolve an evidence – based planning and governance system where human, social, financial and technological resources are efficiently and effectively deployed for sustainable development. One of its policy objectives is to include the principles of United Nation's Convention on the Elimination of all forms of Discrimination against Women and other global and regional frameworks that support gender equality and women empowerment in the country's laws, legislative processes, judicial and administrative systems. Albeit the laudable ideals of the policy, the National Gender policy on Affirmative Action is yet to be translated into action in the percentage stipulated by the policy. There is no state or federal legislation on the affirmative action.

State Legislations

In addition to the Constitution and federal statutes, many states in Nigeria have also introduced laws to further strengthen women's rights protection. These laws cover such areas as marriage, female circumcision or genital mutilation, widowhood, maternal care, prostitution and sexual exploitation, respectively. The State Laws on the protection of women's rights include the following:

- i. The Girl-Child Marriages and Female Circumcision (prohibition) Law, Cross River State, 2000;
- ii. Women's Reproductive Rights Law, Anambra State, 2005;
- iii. The Female circumcision and Genital Mutilation (prohibition) Law, Edo State, 1999;
- iv. The Female Genital Mutilation (prohibition) Law, Bayelsa State, 2000;
- v. Edo State Maternal Mortality Monitoring Law, 2001;
- vi. Rivers State Reproductive Health Service Law, 2003;
- vii. The Criminal Code (Amendment) Law, Edo State 2000 – prohibits prostitution and sexual exploitation;
- viii. The Prohibition of Infringement of Widow's and Widower's Fundamental Rights Law, Enugu State, 2001;
- ix. The HIV/AIDS Anti-Discrimination and Protection Law, 2008.

4. Institutional Mechanisms for the Advancement of Women's Rights in Nigeria

Accountability to gender equality and women's empowerment as recognized in several international and regional instruments is primarily the responsibility of government and is dependent on a several range of institutions, especially public to give meaning to it. The key institutions responsible for the protection and advancement of women's rights are namely:

- i. Federal Ministry of Women Affairs (FMWA);
- ii. the National center for Women Development (NCWD);
- iii. the National Human Rights Commission (NHRC);
- iv. the National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP)

Federal Ministry of Women Affairs

In 1989, a National Commission for Women was established by the National Commission for Women Act, 1989 (later repealed by the National Commission for Women's Decree, 1992).⁸³ The Commission also stems from the late Maryam Babaginda's Better Life Programme and, under the Act, was later upgraded to a full-fledged ministry known as the Federal Ministry for Women's Affairs and Social Development (FMWASD). In 1996, gender units were established in federal and ministries with a view to promoting gender equality in all aspects of social life. In 1997, State Ministries of Women's Affairs and Social Development were established. The institution was mandated to ensure codification of laws to protect women and children, facilitate the domestication of all conventions, treaties, charters, and declarations to which Nigeria is

⁸¹ Signed into Law on May 25th 2015.

⁸² Iloka, CP, 'Exposition of the Menaces of Sexual Assault: An Awareness Approach' *Chukwuemeka Odumegwu University Journal of Public and Private Law* (2023) (4) (1) p. 144-167 <nigerianjournalonline.com/index.php/COOUJPL/article/view/2944> accessed 12th January, 2025

⁸³ Now National Commission for Women's Act, 1992, No. 42, Cap N23, LFN, 2004

a signatory and, initiate policies, carry out programs/projects and provide services towards total elimination of all socio-cultural practices that discriminate against women; promote their economic and political empowerment and accelerate peaceful attainment of general parity in national development processes.

National Centre for Women Development (NCWD)

NCWD started as the brainchild of a former First Lady, Dr. (Mrs.) Maryam I. Babaginda and was commissioned on October 17th, 1992 as the Maryam Babaginda Centre for Women Development. It is a practical manifestation of its founder's goals for women emancipation through education, self-achievement and mobilization under the former Better Life Programme for rural women which she founded in 1987. The NCWD was legally established through the National Centre for Women Development Act, 1995,⁸⁴ for the general purpose of designing developmental programmes and activities for the advancement of women in Nigeria.

National Human Rights Commission (NHRC)

The NHRC was established by the National Human Rights Act, 1995 in line with the resolution of the General Assembly of the United Nations which enjoins all member States to establish Human Rights Institutions for the promotion and protection of human rights. The Commission serves as a mechanism for the enhancement of the enjoyment of human rights. Its establishment is aimed at creating an enabling environment for extra-judicial recognition, promotion and protection and enforcement of human rights, treaty obligations, and provision of fora for the public enlightenment and dialogue on human rights issues.

National Agency for the Prohibition of Traffic in Persons and other Related Matters (NAPTIP)

Trafficking is a very complex phenomenon caused by a diverse set of circumstances such as a person's status, income disparities, gender inequalities, discrimination and asymmetries of information, as well as political, social and economic disadvantages. Trafficking is a great violation of human rights and mostly affects vulnerable persons such as women and girls.

NAPTIP is a crime-specific agency established pursuant to the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (TIPLEA).⁸⁵ The law is a fulfillment of Nigerian Government's obligation and commitment to the United Nations Convention against Transnational Organized Crime and its Supplementary protocol. Its goal is to prevent, suppress and punish traffic in persons, especially women and children. It also arose as a result of the Federal Government's resolve to stem the growing wave of modern slavery and its practices.

4. Conclusion and Recommendations

Subsequent upon the pre-existing laws (international and national) and policies, one may conclude that the rights of women are adequately protected. Albeit the existence of these laws and policies aimed at safeguarding the rights of women and reducing the abuse or infringement of her rights to the barest minimum, there are still viable instances of the infringement on her fundamental rights prevalent in our society. It is therefore sustained that these provisions of the law alone are inadequate in protecting the rights of women due to challenges incumbent in our society. For example, Implementation challenges, Litigation challenges, discrimination against women visible under the body of our laws and perpetuated through culture.

- a. Extensive Legal Reforms
- b. Re-orientation and Enlightenment to eradicate Cultural Discrimination against Women
- c. Amendment of Educational Curriculum
- d. Eradication of Poverty
- e. Equal Access to Education for Male and Female Children
- f. Adequate Participation of Women in Politics
- g. Appointment of more Female Judges

It is further suggested in relation to the nationality or *indigeneity* of a married woman that marriage should not automatically render her Stateless or foist upon her the nationality or State of origin of her husband. She should be free to choose which nationality she wishes to retain. This is in line with such international instruments like CEDAW⁸⁶ and the Convention on the Nationality of Married Women.⁸⁷ There is also need to domesticate these instruments in Nigeria to enable them have the force of law. Also, Legal Aid fund should be set up by the ministry of justice through the Legal Aid Council to provide effective redress to women whose human rights have been violated as well as enlighten and sensitize the public through the media, civil society and human rights advocacy groups.

⁸⁴ June 15, 1995 Law No. 11, Cap N15, LFN, 2004

⁸⁵ No. 24 of 14th July, 2003 as amended in 2005

⁸⁶ Article 5

⁸⁷ Articles 1,2 and 3