

## LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF THE CONSTITUTIONAL RIGHTS OF WOMEN IN NIGERIA

By

**Ekeanyanwu, Obianuju Maureen\***

**Martina Ebikake-Nwanyanwu\*\***

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### Abstract

*A Constitution proclaims the rule of law and the fundamental ideals of freedom, justice, equality and participatory system of governance upon which any nation is built. Hence, the Constitution seeks to implement the rule of law and governs the legitimacy of actions carried out in any society. This implies that all actions can only be premised on pre-fixed legal rules. These pre-fixed rules frown at the discrimination of any individual on the basis of sex, gender, religious or ethnicity. However, it is observable that despite the legal and institutional frameworks guiding and protecting every citizen in Nigeria from discrimination, women's rights are repressed and there is gross inequality which is a total shift from what is obtainable in any known democratic state. Although Nigeria is a signatory to some regional and international laws seeking to protect women, these international laws are not infused into our local laws thereby still granting the Constitution, prerogative over them. There is a dire need to strengthen the judiciary which has the arduous task to implement the laws where the institutions protecting these rights fail to carry out their duties.*

**Keywords:** *Constitutional rights, women's rights, legal and institutional framework.*

### 1.0 Introduction

The Nigerian Constitution<sup>1</sup> creates concepts through which practices about justice, rights and individual sovereignty lean. To this end, the Constitution can be said to be the structure through which state institutions are appraised and cautioned. The Constitution abhors any violation of individual fundamental human rights and provides specifically against discrimination on grounds of sex or gender necessitating the need to decry the violation of the rights of the women.

The existence of legal and institutional frameworks protecting the rights of women has not brought a total stop to the violations thus some women till date still experience female genital mutilation, child marriages, denial of succession rights, domestic violence to mention but a few. In this article, a cursory look will be taken of the existing laws and institutions in Nigeria which aid in the protection of these legitimate rights and how they have been able to affect the women folk.

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\*LL.B, BL, LLM, ACIPM, FIMC e-mail [ujujasiegbu5@yahoo.com](mailto:ujujasiegbu5@yahoo.com) +234 8033204036

\*\*LL.B, BL, LLM, PHD PG Coordinator, Faculty of Law Rivers State University, Chairman Legal Team Etche Local Government Area Rivers State e-mail [ebikake-Nwanyanwu@ust.edu.ng](mailto:ebikake-Nwanyanwu@ust.edu.ng)

<sup>1</sup> Constitution of the Federal Republic of Nigeria, 1999.

## 2.0 Constitution of the Federal Republic of Nigeria 1999

The Nigerian Courts have in *FGN v. Osahon*<sup>2</sup> posited that the Constitution of any country is the embodiment of what people desire to be their guiding light in governance, their supreme law, fountain of all their laws. In that light, where any law or act is inconsistent with the provisions of the constitution, it is presumed inconsistent to the extent of such inconsistency and as such null and void.<sup>3</sup> This section of the Constitution was best interpreted in the case of *Eleso v Government of Ogun State*<sup>4</sup> to mean that all persons and authorities are bound by the provisions of the Constitution. The same stance on the superiority of the Constitution was similarly taken in the cases of *Attorney General of Ogun State v. Attorney General of the Federation*<sup>5</sup> and *FRN v Ifeagwu*<sup>6</sup>

The most essential legal framework for the protection of women's right in Nigeria is basically the Constitution. Over time, there have been alterations in the Constitution to accommodate contemporary innovative modifications. These modifications notwithstanding as specified in various sections of the 1999 Federal Republic of Nigeria Constitution (as amended), guaranteeing liberties and equality for all citizens are challenged as to whether the constitutional provisions have attracted the prominence of human rights and the anticipated level of gender parity for women in Nigeria. While offering hope to the fight for equality, *Section 42(1)* of the 1999 Constitution provides for the right to freedom from discrimination in respect to ethnic group, place of origin, sex, religion or political opinion.

By virtue of the inclusion of this provision in the Constitution, Nigeria took a bold step in her fight against discrimination, although the Constitution was vague in its definition of the term 'discrimination'. Despite this constitutional provision, women in Nigeria are faced regularly with an array of discriminatory practices. *Section 42 (3)* of the Constitution however has some under tone of encouragement for some of these discriminatory practices as the section specifies:

*Section 42 (3)* provides that nothing in this sub-section 1 of this section shall invalidate any law by reason only that the law imposes restriction with respect to the appointment of any person to any other under the State or as a member of the Armed Forces of the Federation, or member of the Nigerian Police Forces or to an office in the service of a body corporate established directly by any law in force in Nigeria.<sup>7</sup>

This sub-section indirectly promotes discrimination as it prevents a person from challenging laws which are discriminatory against women with respect to any office in the Armed Forces, the Nigerian Police Force or a body corporate established by any law in force in Nigeria. In *Yetunde Tolani v. Kwara State Judicial Service Commission and Ors*<sup>8</sup> the Court of Appeal held that the appointment of the female

<sup>2</sup> (2006) 10 NWLR (PT674) p. 264

<sup>3</sup> *Section 1(1) (3)* of the 1999 Federal Republic of Nigeria Constitution (as amended)

<sup>4</sup> (1990) 2NWLR (pt 133) 420.

<sup>5</sup> (1982) 1-2 SC 132

<sup>6</sup> (2003) Nigerian Weekly Law Report (NWLR) PT.798.

<sup>7</sup> *Section 42 (1) (a) (b) (2) & (3)* of the Federal Republic of Nigeria Constitution (as amended) Cap C23 laws of the Federation 2004.

<sup>8</sup> (2009) LPELR – CA/IL/2/2008

magistrate that was terminated on the basis of her single status was illegal and void and duly ordered immediate re-instatement to her former position.

The commendable decision of the court highlights protection for all citizens, irrespective of the provisions in *Section 42(3)* of the Constitution which is discriminatory and a clear violation of the rights of women such as those who are either in the Armed Forces, Police Force or corporate bodies. The oppressive provisions of *Section 42(3)* of the Constitution should not be encouraged as they have outlived their usefulness and are no longer in consonance with world best practice in terms of equality and equity which the concept of human rights emphasises. *Section 42(3)* to a great extent has legitimized discrimination on grounds of sex in certain establishments in Nigeria.

The Constitution is the grundnorm in Nigeria hence any other law that is inconsistent with it is void to the extent of its inconsistency.<sup>9</sup> It is important that a few lacuna's in the 1999 Constitution should be looked into in the area of the Constitution's silence on the provisions of *Section 29 (1) and (4)* which states that it is permissible for a girl below 18 years to be married but failed to mention the least age of young girls to be married which impliedly means that if an eleven year old girl is married, she is deemed to be an adult, meanwhile, this does not apply to the male child.

Similarly, *Section 24(2)(a)* of the Nigerian Constitution permits any foreign woman upon marriage to a Nigerian male citizen to be registered as a citizen of Nigeria, but the Constitution is silent on the possibility of a foreign male who marries a Nigerian female citizen to acquire Nigerian citizenship. By virtue of this provision, it is glaringly clear that there exists a lacuna in that regard. That section of the law needs to be reviewed to include male spouses of Nigerian female citizens. It is pertinent to note that citizenship confers rights, privileges, and responsibilities on a person and all persons should have equal status and rights under the law. For the purpose of this article, several violations will be discussed individually alongside the various provisions of the Constitution.

**Gender Based Violence (GBV):** Gender based violence can be explained as any violence meted out on an individual by reason of the peculiarities of her sex. *Section 33(1)*<sup>10</sup> provides for the right to life. By implication, this provision of the law states that no one shall be deprived intentionally of his life except for legitimate purpose of the sentence of a court were found guilty. On the contrary, the violent practices against the Nigerian woman infringes on these rights.

**Female Genital Mutilation (FGM):** This is a traditional practice of partial or complete excision of the external female genitalia for non-medical reasons.<sup>11</sup> This dehumanizing practice has persisted within the Nigerian society based on customs and insubstantial reasons like enhancement of fertility of females and reduction of sexual promiscuity. The Constitution in *Section 34(a)*<sup>12</sup> provides that every individual is entitled to respect for the dignity of his person and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment.

<sup>9</sup> Section 14(3) Evidence Act, 2011.

<sup>10</sup> (n 1)

<sup>11</sup> A. Siddhanta. and Sinha, 'Attitude and Perception Towards Female Circumcision: A Study of Vulnerability Among Women in Kenya and Nigeria' (2016) (62) (2) *The Journal of Family Welfare*, 35

<sup>12</sup> (n 1) Section 34(a)

**Widowhood practices:** This notorious practice occurs in various forms which include but is not limited to degrading and cruel mortuary practices, compulsory marriage to a family member of the late husband's family, shaving of the widow's hair, forcing the widow to wear mourning clothes against her wish, wearing of sackcloth, sleeping on a mat or bare floor, prohibition of bathing for a period of time, seclusion, shaving of pubic with either broken bottles or with razor. The most dehumanizing is the act of being coerced to swear with her husband's corpse to prove her innocence.<sup>13</sup> Among these pernicious practices, however, little attention has been directed at the frequent denial of a widow's right of sepulchre, including, in particular, her right to control the time, place and manner of her husband's burial.<sup>14</sup>

This article argues that in order to better cope with the loss of a husband, a widow should have control over the burial of her deceased husband especially where there was no prior divorce or problems before the husband became deceased. At this point, it can be argued that the dead husband's body is her property. The significance of this dimension can be seen in a recent case in Africa (Kenya) where a widow fought for the control of the disposition of the remains of her husband's remains.<sup>15</sup> In the suit, the courts extended customary sepulchral rights to statutory marriages in Kenya. In contrast to the usual practice of denial of sepulchral rights in Africa, a widow in United States enjoys sepulchral rights unless the husband makes a clear and different order prior to his death on the way and manner his body should be disposed.<sup>16</sup> Enugu State in Nigeria has gone ahead to enact a law to protect the rights of widows and widowers,<sup>17</sup> which is believed can be replicated at the national level in order to achieve the same aim of protecting widows.

**Deprivation of succession and property inheritance rights:** Subject to the provisions of *Section 44*,<sup>18</sup> every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. However, the customary laws in existence reflect Nigeria's plural legal system where indigenous customary laws have developed rules of inheritance for intestacy through the traditional pathways of descent over the years due to changes in the society. The Land Use Act<sup>19</sup> was promulgated to majorly ensure efficient and productive use of land by all citizenry. It can be rightly argued that the preamble to the LUA 1978 established the rights of every individual to land as inalienable and as such complies with the constitutional provisions of right to property earlier stated in *Section 43*. In a bid to promote gender equality amongst citizens, the Nigerian Supreme Court in *Ukeje v Ukeje*<sup>20</sup> held that the Igbo custom which denied female children of their right of inheritance on the basis of sex was

<sup>13</sup> J.O. Akinbi, 'Widowhood Practices in some Nigerian Societies: A Retrospective Examination' [2015] (5) (4) *International Journal of Humanities and Social Science*, 67-7

<sup>14</sup> R.N Nwabueze, 'Securing Widow's Sepulchral Rights Through the Nigerian Constitution' (2010) (23) *Harvard Human Rights Journal* 141 <<https://journals.law.harvard.edu/hrj/wpcontent/uploads/sites/83/2010/10/141-15.pdf>> accessed 7 July 2024.

<sup>15</sup> *Otieno v. Ougo* (1982-1987) 1 K.A.R 1049, 1059 (C.A) (Kenya)

<sup>16</sup> R.N Nwabueze, 'The Concept of Sepulchral Rights in Canada and US in the Age of Genomics: Hints from Iceland (2005) (217) *Reuters Computer Tech L.J* 72

<sup>17</sup> The Prohibition of infringement of a Widow's and Widower's Fundamental Rights Law (Enugu State Law) E.S.N. Law No 3, 2001 (Enugu State Nigeria)

<sup>18</sup> (n 1)

<sup>19</sup> Land Use Act Cap L5 1978 LFN 2004

<sup>20</sup> (2014) 11 NWLR (Part 1418) 384

discriminatory and accordingly void. A similar decision was also arrived at in the Supreme Court case of *Chief Onuoha Ordu and Ors v Chief Amadi Elewa and Ors*<sup>21</sup> where it is now possible for women to inherit land in the Ikwerre areas of Rivers State, Nigeria. Giving more credence to the Supreme Court decision, the Rivers State House of Assembly enacted a law<sup>22</sup> which enables women inherit family property in line with International best practices and a victory for the enthusiasts to the realisation of equal property rights for women.

Islamic law in line with the Holy Quran lays down a general principle on the succession rights of both male and female children of the deceased property covering his wife, mother and sisters stating that men shall have a portion of what the parents and the near relatives leave, and woman shall have a portion of what the parents and near relatives leave, whether there is little or much of it.<sup>23</sup> Despite the recognition and accordance of inheritance rights on women in the Holy Quran, the disparity in the sharing formula is obvious. Women are only given half of what the male children receive.

**Purdah practice:** This is a religious norm or custom, predominant amongst the Muslim. It is a tradition whereby women are isolated from public places and confined in a fenced portion of the husband's premises with the claim of protecting the woman from susceptibility of attraction and seduction by other men.<sup>24</sup> This form of seclusion violates the rights of women within that region in various ways,<sup>25</sup> particularly, the right to personal liberty.<sup>26</sup> The purdah practice could best be described as a device of control, suppression and subjugation of women since it is not in accordance with the permissible procedure for deprivation as specified in the constitution.<sup>27</sup>

### 3.0 Violence Against Persons Prohibition Act 2015

Commencing on the 25<sup>th</sup> of May 2015, the Violence Against Persons Prohibition Act<sup>28</sup> (VAPP) was enacted to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders, and for related matters. With innovative provisions as the first criminal legislation in Nigeria to among others, prohibit and punish for the acts of Female Genital Mutilation (FGM), verbal, emotional, economic and psychological abuses, harmful widowhood practices, expanded concept/crime of rape and similar crimes. The innovative ways the Act specifies some crimes is what makes it special. An overview of the innovative sections displays a generous effort on the part of government to capture some overlooked sections in other related laws. *Section 1* of the Act redefined the nature and scope of rape to include using any part of body or anything to penetrate into the vagina, anus or month without a consent or where such consent is obtained by means of fraud, force, threat, false, intimidation or impersonation by a married couple. Thereby radically departing from the restrictive traditional concept

<sup>21</sup> (2018) 17 NWLR (Pt.1649)

<sup>22</sup> Rivers State Prohibition of the Curtailment of the Rights of Women to Share in Family Property Law 2022

<sup>23</sup> Holy Qur'an 4:11

<sup>24</sup> F.D. Nzarga, 'Approval of Cultural Vices Affecting Women and Children Human Right in Nigeria' [2016] (4) (2) *Global Journal of Political Science and Administration*, 68-78

<sup>25</sup> F. Anyogu. and B.N Okpalobi, 'Human Right Issues and Women's Experiences on Demanding their Rights in their Communities: The Way Forward for Nigeria' [2016] (4) (1) *Global Journal of Politics and Law Research*, 9-17

<sup>26</sup> (n 1) Section 35(1)

<sup>27</sup> (n 1) Section 35 (1) (a)- (f)

<sup>28</sup> Violence Against Persons (Prohibition) Act 2015

and jurisprudence of rape in Nigeria in order to protect both females and males (as potential victims of rape). The traditional concept of rape had erstwhile been restricted to non-consensual penetration of the virginal canal by the penis.<sup>29</sup> The Act<sup>30</sup> is the first criminal legislation to prohibit and punish whoever performs or procures another to perform female circumcision with a maximum of 4 years imprisonment or a fine not exceeding 200,000 naira or both. An attempt of it attracts not more than 2 years imprisonment or 100,000 naira fine or both.

#### 4.0 Nigerian Police Act 2020

This Act repeals the Nigerian Police Act Cap. P19, Laws of the Federation, 2004 and enacted a new Police Act<sup>31</sup> to provide for a more effective and well-organized organization. Presently the new Act, specifically in *Section 135*<sup>32</sup> provides that the Police Force or other persons shall not, in the performance of his or its functions under this Act, make regulations or standing orders under this Act, discriminating against any person on the basis of gender as provided under *Section 42* of the 1999 Federal Republic of Nigeria Constitution. The Act also makes special provision in *Section 120 to Section 128* for women in the force to be assigned lighter duties henceforth.

In *Miss Omolola Olajide v. The Nigeria Police Force and 2 Ors*<sup>33</sup> the National Industrial Court struck out provision *Regulation 127* made pursuant to the Police Enforcement Act 2020 which provides that a police officer is not permitted to get pregnant out of wedlock. In the ground breaking judgement delivered at the Akure Judicial Division by Justice D.K Damulak on the 11<sup>th</sup> day of January 2023, held that the regulation was discriminatory, illegal, null and void as it violates *Section 42(1)*<sup>34</sup> of the Constitution and *Article 2* of the African Charter<sup>35</sup> which abolished discrimination on basis of gender.

The question arising out of this discourse is what happens to a police man who gets a lady out of wedlock within the same stipulated time? Giving his opinion on the matter, Justice Adah J (as he then was) of the Federal High Court sitting in the case of *Women Empowerment and Legal Aid v. Attorney General of the Federation*<sup>36</sup> said that ‘the most fundamental issue is if this is the policy laid down for the police, does it apply to the men folk? If not, then it is very unconstitutional and a violation as it applies only to women because of their gender.

#### 5.0 Nigerian Correctional Service Act 2019

This law<sup>37</sup> was signed by President Mohamad Buhari and came into force in August 2019 to repeal the old Prisons Act<sup>38</sup> The prime aim of the act was to refocus the mandate of that sector of our judicial system from its retributive and punitive nature to one with an objective to correct reform and refocus

<sup>29</sup> S. 35(7) Criminal Code Act Cap (38) Laws of the Federation of Nigeria (LFN) 2010 and S.282 Penal Code Act Cap P3 (LFN) 2010. Under these Acts non-consensual rape of a women or girl is punishable with life imprisonment.

<sup>30</sup> (n 29) Section 6

<sup>31</sup> Police Act 2020

<sup>32</sup> *Ibid*

<sup>33</sup> NICN/AK/14/2021

<sup>34</sup> (n 1)

<sup>35</sup> African Charter on Human and Peoples Rights Ratification and Enforcement Act 1981

<sup>36</sup> Suit No: FHC/IKJ/CS/M128/2010

<sup>37</sup> Nigerian Correctional Services Act 2019.

<sup>38</sup> Prisons Act 1972

the attention of those who were released from prison. The ratio of male to female prisoners is always very wide, yet these small number of female prisoners are expected to cope at the same pace with the male inmates. A visit to most prisoners in Nigeria will leave anyone in shock and amongst officers and prisoners, there are complaints of challenges of overcrowding, abusive living conditions, inadequate funding and lack of adequate facilities to sustain the number of inmates.

Given the patriarchal nature of the society, women face various forms of discrimination that is also exemplified in the criminal justice system. In Benin Republic, Sierra Leone, Nigeria, the Democratic Republic of Congo (DRC) and Egypt, women are detained in place of their brothers, husbands, sons or boyfriends who are crime suspects<sup>39</sup> while in conservative religious countries like South Sudan, women are commonly detained for crimes such as adultery.<sup>40</sup> The practice of arresting women in place of the male suspects was halted by the provisions of the *Section 7* of the Administration of Criminal Justice Act<sup>41</sup> which provides that no one else can be arrested in place of a suspect.

### **6.0 Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015**

Currently, the law from which human trafficking emanates from in Nigeria are the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act<sup>42</sup> (TIPLEAA). The TIPLEAA established the National Agency for the Prohibition of Trafficking in Persons (NAPTIP)<sup>43</sup> which was vested with the powers to enforce laws, coordinate, rehabilitate counsel trafficked victims and to prosecute the perpetrators likewise. The Act<sup>44</sup> defines trafficking or traffic in persons as;

...the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding he person whether for or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour exploitative purposes.

Irrespective of the provisions of the TIPLEA and the rigorous work carried out at NAPTIP, the rate of prosecution still remains low due to low reportage, poverty and cultural relativism.

### **7.0 Criminal Code**

The Criminal Code is applicable in the Southern part of Nigeria while the Penal Code is applicable mostly in the Northern part of Nigeria. It is not necessary to prove that there was a rupture of the hymen or an injury to constitute the offence of rape. Although the punishment<sup>45</sup> for rape under the Criminal

<sup>39</sup> L. Vetten, *The Imprisonment of Women in Africa* (ed) J. Sarkin, *Human Rights in African Prisons* (2008 South Africa HSRC Press)

<sup>40</sup> Womankind World Wide, *Pending When the Suspect is Arrested. Taking Stock Update: Afghan Women and Girls Seven Years On* (2008) London

<sup>41</sup> Administration of Criminal Justice Act 2015

<sup>42</sup> Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015

<sup>43</sup> Section 2

<sup>44</sup> Section 82

<sup>45</sup> Criminal Code Section 358.

Code Act is life imprisonment, the courts have not interpreted it to mean a mandatory sentence. *Section 359*<sup>46</sup> went further to provide for a penalty for the crime of rape which is not definite as some offenders end up with very short sentences as opposed to the punitive punishment they ought to get. In the unreported suit of *State v Bolivia Osigbemhe*,<sup>47</sup> the accused raped two young girls repeatedly at gun point but ended up with only a sentence of two years imprisonment because it was decided that he is a bread winner and a first-time offender.

In Nigeria, a husband cannot be guilty of the offence of ‘rape’ of his wife simply because the Criminal Code defines ‘unlawful carnal knowledge’ as carnal connection which takes place otherwise husband and wife. This lacuna is a constitutional breach because it is a violation of the rights of the married woman.

However, a husband will be guilty of rape where the marriage has been divorced<sup>48</sup> as was held in *R v. Clarke*<sup>49</sup> that where there is a separation order which contains a clause that a woman is no longer bound to cohabit with the husband and so long as the order is in force. It is of essence to note that under the Criminal Code, neither a husband nor a male person below the age of 12 years could not be guilty of rape<sup>50</sup>. *Section 30* provides an irrebuttable presumption of law that such a male person is incapable of having carnal knowledge. Again, the requirement for corroboration in cases of rape is a major obstacle to obtaining justice for victims of rape. The Criminal Code is also discriminatory of women in their punishment for indecent assault for both male and female. *Section 353*<sup>51</sup> of the code states that a person who unlawfully and indecently assaults a man is guilty of a felony and liable to imprisonment for three years. The same act in *Section 360*<sup>52</sup> states that a person who unlawfully and indecently assaults a woman is guilty of a misdemeanour and is liable to imprisonment for two years. These two sections of the law point to the same offence but different punishments for both gender, this is discriminatory; it shows preference of men over women in Nigeria despite constitutional provision for non-discrimination. The different punishments meted out to both sexes call for a review as it tends to trivialize women over men and tends to reduce the worth of the female in the eyes of the law.

## 8.0 Penal Code

The northern parts of Nigeria subscribe to the Penal Code although there is the implementation of the Sharia Penal code in some of the states who choose to implement Sharia. Under the Sharia Penal Code, a husband cannot be guilty of marital rape.

Furthermore, under the Islamic Law, a husband may be liable for injury caused or occasioned by forced sex with his wife, but he can never be liable for rape so long as there is a valid subsisting marriage

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<sup>46</sup> *Ibid*

<sup>47</sup> Unreported Suit No: H.U.A/10Q79

<sup>48</sup> Okonkwo and Nash, *Criminal Law in Nigeria*; (2nd edn. London: Sweet and Maxwell 1980) 272

<sup>49</sup> (1949) 33 CR. APP.R. 216.

<sup>50</sup> (n 29) Section 6 and Section 30

<sup>51</sup> (n 29)

<sup>52</sup> (n 29)



between them.<sup>53</sup> Despite the provisions of the Nigerian constitution<sup>54</sup> bestowing rights of respect to human dignity, a barrage of laws encourages wife battery.

Hence, the Penal Code<sup>55</sup> permits husbands to chastise their wives in order to correct her. Under the *Section 55(10)*, it is not an offence where a husband inflicts grievous harm for the purpose of correcting his wife. This provision of the Penal Code accentuates wife battery which is in clear violation of the *Section 34(1)*<sup>56</sup> of the Nigerian Constitution against torture and inhumane treatment on any citizen.

### 9.0 African Charter on Human and Peoples' Right Act 1981

On June 27 1981, the African Charter on Human and Peoples' Rights was adopted.<sup>57</sup> Its aim was to secure an instrument that sets human rights standards for all times while also recognizing African values and traditions. The Charter became a very essential foundation against the violations of human rights in Africa, even when penalties against defaulting states are not enforceable against such states, the mere existence of a complaint channel against erring states to the general body, cautioned against violations of human rights especially in Nigeria.<sup>58</sup> In 1983 Nigeria adopted the African Charter on Human and Peoples' Right<sup>59</sup> and it became part of Nigeria's *corpus juris*.

The African Charter on Human and Peoples' Rights, which is one of the constituents of the African human rights system, was intended to reflect the history, values, traditions, and development of Africa by putting together collective rights and individual duties.<sup>60</sup>

Providentially, the African Charter has been relied upon to challenge some inequitable laws. *Article 3* of the African Charter encourages state parties to curb discrimination against women by legislative promulgation and other means. This other means could be judicial activism, where there seems to be a lacuna or where the subsisting law is considered as discriminatory against women.

### 10.0 Institutional Framework

There is obviously a need to strengthen states institutions as strong institutions are considered to be the essential foundation for human rights development. The belief is that institutional reforms will create better institutions that are able to provide for the rule of law, ensure separation of powers, support economic growth and reduce human rights violations through specified and streamlined institutional frameworks.

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<sup>53</sup> E.O Ekhaton, 'Women and the Law in Nigeria: A Reappraisal' (2015) (16) (2) *Journal of International Women's Studies*

<sup>54</sup> (n 1) Section 34(1)

<sup>55</sup> Penal Code of Northern Nigeria 1960 Section 55 (1)

<sup>56</sup> (n 1)

<sup>57</sup> African Charter on Human and Peoples' Right 1981

<sup>58</sup> U.O Umzurike, 'The African Charter on Human and Peoples' Rights' (Lagos, Martinus Nijhoff Publishers, 1997) 14.

<sup>59</sup> The African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap. A9 Vol. 1, Laws of the Federation of Nigeria 2004 as revised

<sup>60</sup> J. G. Naldi, 'Future Trends in Human rights in Africa: The Increased role of the OAU' in .M Evans and R Murray (edited) *The African Charter on Human and Peoples' Rights- The System in Practice, 1986-2000* (London, Cambridge University Press 2002) 25.

### **10.1 National Agency for the Prohibition of Trafficking in Persons (NAPTIP) 2015**

The National Agency for the Prohibition of Trafficking in Persons (NAPTIP)<sup>61</sup> is an agency created by TIPPLEA with the sole responsibility for preventing, suppressing and punishing trafficking in persons especially women and children. It was borne out of Nigeria being a signatory to the 2000 United Nations Convention on Transnational Organised Crime (UNTOC)<sup>62</sup> and its Protocol to Suppress, Prevent and Punish Trafficking in Persons.

In a bid to eradicate trafficking and defilement in women and young girls, NAPTIP in a historic feat secured for the first time in 2023 the conviction of a foreign (Lebanese) human trafficker Mr Jabr Iskandar Kfour Sleiman in *FRN v. Jabr Iskanda Kfour Suleiman*,<sup>63</sup> who was notorious for exploiting young girls in Jos. Sitting in the Federal High Court, on 11/29/2023, His Lordship Honourable D.V Agishi stated that the prosecution proved the cases beyond all reasonable doubt for defilement and handed down the stern sentence of a combined 29 months imprisonment without a fine and also ordered for the immediate deportation of the 61 year old convict for violation of *Section 13 (2) (b)* and *Section 16(1)* of the Trafficking in Persons Act.

Trafficking in persons usually occurs because traffickers see the advantage of exploiting the economic need of the victims. The economic situation in Nigeria has not helped in any way and is one of the major causes of such exploitation as some of the victims are even urged on by close relatives who believe that they will be able to improve the financial situation of the family in the long run.

### **10.2 Federal Ministry of Women Affairs and Social Development**

The Federal Ministry of Women Affairs is a ministry of the Nigerian government that promotes the development of women with equal rights and responsibilities. Its objectives range from stimulating action to promote political, civil, economic and social participation of women, coordinating and monitoring programmes for women, providing technical, financial and social support to Non-Governmental-Organisations most especially the Nigerian Council of Women's Societies.<sup>64</sup>

It is recommended that the ministry will function more efficiently if there could be a policy around gender responsive budgeting whereby specific allocation of the ministry could be targeted at solving gender related issues from the federal, state and finally to the local government areas in Nigeria. It will also be imperative for the ministry to campaign for pay equality and consideration of women to occupy more strategic roles in the work force.

### **10.3 International Federation of Women Lawyers (FIDA)**

Formed in 1944 at Mexico, the organisation is a non-profit and non-governmental organisation made up of women lawyers. FIDA is an acronym for a Spanish name 'Federacion Internacional de Abogadas'. The organisation was established in Nigeria in the year 1964 by Ambassador Aduke Alakija with the

<sup>61</sup> The National Agency for the Prohibition of Trafficking in Persons -created to help implement the TIPPLEA

<sup>62</sup> United Nations Convention on Transnational Organized Crime and its Protocol to Suppress, Prevent and Punish Trafficking in Persons 2000

<sup>63</sup> Unreported Suit No: FHC/J/CR/109/2021

<sup>64</sup> Nigerian Federal Ministry of Women Affairs and Social Development- A publication of the International Disability Alliance. <  
<https://www.internationaldisabilityalliance.org/stakeholder/nigerian-federal-ministry-women-affairs-and-social-development>> accessed 17 July 2024.

primary role of protecting and preserving the rights of women and children in Nigeria. Its main objectives include to promote the principles and aims of the United Nations in its legal responsibilities, establish friendly international relations on a basis of equality and mutual respect for all people, promote the rights of women and proffer advice to government in cases relating to men and women

#### **10.4 Judiciary**

As a whole, the judiciary is an aggregate of courts of law that administer justice and constitute the judicial arm of government. Prominent as it is, the judiciary determines the efficiency and practice of the rule of law in any country. The judicial system in a country is essential to the protection of human rights and freedoms. It is essentially the role of the courts to ensure that victims or prospective victims of human rights violations get proper remedies and that perpetrators of human rights violations are not left to go unpunished.

It is recommended that in order to ensure the independence of the judiciary, independent commissions could be established to appoint judges. There is an overwhelming need for a reform of the judicial sector in the country in line with the global concern for human rights protection. It is suggested that the starting point of such reform should be a review of the relevant court rules that inhibit access to justice.

#### **10.5 National Human Rights Commission (NHRC)**

The National Human Rights Commission was established by the National Human Rights Commission Act, 1995<sup>65</sup> in line with the resolution of the United Nations which enjoins all member states to establish Human Rights Institutions for the promotion and protection of human rights.

The United Nations Centre for Human Rights posits that; an efficient national human rights institution will be that which is self-governing, free from partisan politics and all other infringement and impediments truncating the commission.<sup>66</sup>

It is undoubtedly clear that the efficiency of the National Human Rights Commission of Nigeria will be attained when the commission is adequately funded, independent and empowered to make binding decisions. All of these have consistently challenged the realization of the commission's laid out activities in reality.

#### **10.6 Non- Governmental Organizations (NGO)**

Human rights issues, as it is presently, has infiltrated global discourse and become a dynamic element in interstate relations and has erupted the sacred bounds of national sovereignty.<sup>67</sup>

Both globally and nationally, some organizations have made consistent efforts in protecting human rights and end human rights violations. They maintain extensive websites documenting violations and

<sup>65</sup> National Human Rights Commission Act Cap N46 Law of Federation Nigeria, 2004 (hereinafter referred to as NHR Act) It came into effect on 27th September, 1995.

<sup>66</sup> K, Kindiki, 'On the Independence of the Kenya National Commission on Rights: A Preliminary Comment' [2004] 2(2) *East African Journal of Human Rights and Democracy*, 124

<sup>67</sup> O. Uche, 'The Role of the National Human Rights Commission in the Promotion of Human Rights in Nigeria' in Nweze.C.C. and Nwakwo. E.O. (edited) 'Current Themes in the Domestication of Human Rights Norms' (2003, Lagos Fourth Dimension Publishing Co. Ltd) 2

calling for remedial action, both at a governmental and grass-root level. Examples of these NGO's include Amnesty International, Human Rights Watch, Civil Liberties Organisation (CLO) to mention but a few.

### **10.7 The Nigerian Police**

Over the years, the Nigerian Police has made remarkable efforts in safeguarding peace and security within the Nigerian state, even in the face of alarming persistent insurgency, which has widened the scope of the duties of the police.

Irrespective of the desire to align with global best practices, there are still reports of police violation of the rights of women. In 2010, the Port Harcourt Judicial Division in Nigeria in the case of *Esther Sunday and Others v Victor Menenyorwika*<sup>68</sup> relied on the African Charter of Human and People's Rights (ACHPR) to hold a group of policemen liable for injuries inflicted on the applicants and were ordered to pay the defendants the sum of 40 million Naira only.

There have been several other instances of unlawful use of force by the police on women resulting in rights violations. During the Covid -19 pandemic era, there were several accounts of police using force to curb the spread of the disease. Females reported incidents of sexual harassment, unwanted sexual advances, hostility, intimidation, extortion and assault.<sup>69</sup> The police took militarized approaches to enforce the Covid-19 measures thereby stressing the need to train and educate police officers, reprimand erring officers and if need be, dismiss those found guilty of rights violations.

In order to ensure compliance during the period, police were deployed to streets and public spaces to prevent a breakdown of law and order rather some ended up violating people's rights. There was a viral video that showed a police officer flogging a woman who was said to be going to get drugs for her kids for violating the lockdown orders.<sup>70</sup> There are numerous outcries that the Nigeria police still persist in violation of human rights and disregard for the rights of the female citizenry.

It is recommended that continuous education of police personnel will go a long way to change their attitude towards brutality. It is also recommended that good officers are rewarded for showing good examples while the force is encouraged to punish erring officers and flush out the bad eggs to rid the system of their influence.

### **10.8 Nigerian Correctional Services**

Correctional Facilities Are Public Institutions Established By Government For The Rehabilitation And reformation of individual offenders who are at breach of the law. It is a physical structure within a specific geographical location which affords a unique kind of social environment that is different from

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<sup>68</sup> PHC/361M/2003/Unreported

<sup>69</sup> R.A Aborishade 'Accounts of Unlawful Use of Force and Misconduct of the Nigerian Police in the Enforcement of Covid-19 Measures (2021) (36) *Journal of Police and Criminal Psychology*.

<sup>70</sup> A. Kabir, 'Lockdown: Police officers caught on camera assaulting woman' Premium Times (Lagos, 19 April 2020) <<https://www.premiumtimesng.com/news/more-news/388697-lockdown-police-officers-caught-on-camera-assaulting-woman.html?tztc=1>> accessed 21 July 2024.

the larger society where people live according to specialized conditions.<sup>71</sup> The Nigerian correctional facilities have been branded and known for several inhuman and acts and challenges over time, these challenges have made a joke of the correctional essence of the facility.

The Nigerian Correctional Services Act in *Section 34*, made remarkable provisions for the needs of female inmates. According to *Section 34(1)*<sup>72</sup> female inmates are to have distinct institutions in all states. Though, the correctional facilities are not in all states, the Act mandates that separate facilities must be provided for female inmates. *Subsection 2*<sup>73</sup> provides for the availability of essential facilities to cater for the distinct needs of women, such as medical care, antenatal care for pregnant inmates, sanitary wears and dietary necessities within the correctional institution. This comprises the necessities for pregnant female inmates, nursing mothers and appropriate medical care for the child.<sup>74</sup> The elaborate provisions in *Subsection 2* made provision for wellbeing of the children within the institution by providing a crèche in all female correctional facility so as to guarantee the child's right to education as provided for by the Child's Right Act<sup>75</sup>, irrespective of the mother's crime.

Interestingly, the rights to be provided with sanitary wears, which this article considers as the right to dignity of the woman is fundamental and its breach could be enforced in court as a violation of the act and of human rights generally.<sup>76</sup>

Considering the persisting sexual violations of female inmates<sup>77</sup> which violates the right to dignity<sup>78</sup> and diminishes the self-esteem of the victims, *Subsection 4* provides for deterrent measures against pregnancy particularly where such pregnancies are as a result of abuses by staff of the correctional institution.

This article posits that the amended Nigerian Correctional Services Act is a novel step towards reformation in line with international best practices as it provides extensively for measures to safeguard human rights and dignity of female inmates in Nigeria.

## 11.0 Conclusion

In conclusion, the legal and institutional framework protecting women in Nigeria have strengthened the Constitution and served as a pillar upon which the decisions of court are reached. Without legal provisions, the courts will be bereft of provisions of the law upon which to base their judgements. On the other hand, the institutions providing support for the protection of women have been hoisted with

<sup>71</sup> L, McCorkle, R., Korn, 'Resocialization within Walls'(1954) (293) *The Annals of American Academy of Political Science* 88-98. <<https://journals.sagepub.com/doi/abs/10.1177/000271625429300112>> accessed 21 July 2024.

<sup>72</sup> *Ibid*

<sup>73</sup> Nigerian Correctional Services Act 2019 Section 34 (2)

<sup>74</sup> *Section 13* Nigerian Child Rights Act 2003.

<sup>75</sup> *Section 15* Nigerian Child Rights Act 2003.

<sup>76</sup> (n 87) Section 34 (1)

<sup>77</sup> Ebonwa, O.L., *Behind the Wall, a Report on Prison Conditions in Nigeria and the Nigerian Prison System*, Lagos, Civil Liberties Organization 1996, 199-205.

<sup>78</sup> Section 34(1) of the 1999 Federal Republic of Nigeria Constitution (as amended), Article 5 of the African Charter on Human and Peoples Rights, (Banjul Charter) adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM. 58 (1982), entered into force 21 October 1986.



the task of enforcing these constitutional provisions. However, there have been charges and allegations of human rights abuse from the violation of rights by the same law enforcement agent.

### **12.0 Recommendation**

Amidst the violations, this article recommends for the Nigerian government to strengthen the judicial arm of government by making it more independent and curbing corruption in that arm of government as it is a pillar on which all legal and institutional frameworks are hinged on to receive vibrancy. It further calls for the abolishment of obnoxious laws and religious practices which are repugnant, to make changes where duplicity exists in the laws and to strengthen the state institutions to ensure enforcement of the constitutional rights of women.