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*** LEGAL ENFORCEMENT OF WOMEN'S RIGHTS IN NIGERIA: WHAT PROSPECTS?**

GRACE OGONDA AKOLOKWU*

&

BARAKAT ADEBISI RAJI **

Abstract

This paper examines issues surrounding the enforcement of women's rights in Nigeria and especially considered enforcements based on extant legal provisions as well as the exercise of judicial powers of the courts in that regard. The paper posited that women rights in Nigeria are acknowledged by both domestic and international legal regimes such as the Constitution of the Federal Republic of Nigeria, 1999 and the Convention for the Elimination of Forms of Discriminations against Women (CEDAW) 1979. Furthermore, this paper posits that the legal provisions protecting the rights of women notwithstanding, the subordinate role imposed on the female gender through improper socialization processes borne out of a patriarchal system continues affect women in Nigeria. This paper however while acknowledging the efforts of some courts in Nigeria in cases bothering on infringements of the rights of women to restate the position of the law and insist on the rule of law emphasized that the Nigerian government needs to take more steps to guarantee the protection of rights of its citizens especially the protection of more vulnerable persons like women. The paper calls for the legislature to domesticate the CEDAW and make other specific women oriented legislations to stem the current trend of assault cases, rape and all forms of violence against women. The paper advocates judicial activism and enjoins the judiciary to use all available opportunities offered by cases before them to pronounce on the rights of women already enshrined in our statute books to bring life to the letters of the law. Intentional gender friendly policies and mainstreaming should guide executive actions while law enforcement agencies should create special units to be re-trained to enforce abuses of women's rights in Nigeria. Proper socialization and education of children on equality of persons and the rule of law should commence in primary schools while massive enlightenment campaigns on rights of citizens as enshrined in extant laws should be the focus of the National Orientation Agency.

Keywords: Women; Human Rights; Legal Enforcement; Nigeria

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1.0 Introduction

Enforcement of legal rights of persons in society is the major task of government. How well such enforcements are carried out by the relevant government agencies continue to dominate discussions in Nigeria and beyond. The processes and strategies adopted by government to uphold the provisions of the constitution and other laws remain the kernel of good governance which ensures that nations go beyond mere legal pronouncements and documentation to action and civil obedience. The Constitutional insistence on the equality of persons in Nigeria is impeachable and gives strength to the continuous calls for the protection of human rights by different groups, agencies and non-governmental organizations. In fact the world's recent target of gender equality through the Sustainable Development Goals which has the protection of women from violence as a cardinal goal to be achieved by nations are all pointers to the hope of emancipation of woman from the shackles of cultural and male engineered slavery and dominance.

Enforcements of legal instruments therefore concern all legal procedures adopted to compel the obedience of citizens to the provisions of relevant laws. The instruments for the legal enforcement of women's rights in Nigeria include the police, the courts and government agencies created under law to put approved societal rules of behaviour into effect. It is trite that the struggle and agitation for the total emancipation of the women in Nigeria especially from customarily tolerated and sometimes induced violations of women's rights is subsisting. Women in Nigeria still struggle to protect their constitutional right to human dignity and self worth, the right to be heard and associate with others on equal basis and not as an appendage to the man, the right to shun cultural practices such as female circumcisions and early marriage which threaten her right to life and so on.

It is trite however that with increased advocacy of government and non-governmental agencies some progress has been made in the protection of women's rights in Nigeria especially with the many more women organizations speaking against such practices which appear seemingly normal and natural but are actually violations of the human rights of women. It is recognized that the continuous interference of various customary practices have made protection of women rights a mirage and especially with the greater male population of the Nigerian police already indoctrinated with the idea of male superiority and dominance. One of the identifiable drawbacks to legal enforcement of women rights in Nigeria is the lack of commitment of the government to enforce legal instruments already entered into and to domesticate other relevant instruments. Also inhibitive is the culture of silence in the face of violations and the seeming societal lethargy to legal options in cases of discriminations against women. Progress needs to continue to be made however, to sustain the tempo of highlighting incidences of violations of women rights. The Nigerian government should continue to take responsive steps to prosecute offenders in total compliance with internationally agreed protocols and legislations.

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3.0 Legal Enforcements of Women's Rights in Nigeria

The judiciary which is constitutionally empowered to interpret laws and uphold the rule of law has a critical role to play in the enforcement of the rights of the women in Nigeria. The various courts established under the constitution adjudicate on matters bordering on the infringement of these rights or even where such infringements have not occurred but are perceived to be likely since the Constitution provides the right of persons who fear such infringements to approach the courts for relief.⁷

In discussing enforcement of women's rights through the courts of law, it is important to state that the Nigerian courts have not always insisted on the constitutional rights of women but have in some cases been swayed by other considerations to uphold various customary practices which negate constitutional provisions. For instance, in *Oke v Oke*,⁸ the Urhobo custom which permitted only the eldest son of a man to inherit the house where his father lived and died together with the wife or wives as part of the estate of the deceased was upheld by the Supreme Court. Some of these decisions actually worsen the fate of the females in their struggle for full emancipation. Also in *Akinubi v Akinubi*,⁹ the Supreme Court confirmed that the custom in most Nigerian communities is that a widow is regarded as a mere chattel, a part of her deceased husband's property and is inheritable by her deceased husband's male relatives.

These courts have variously upheld certain customary practices especially treating the woman herself as a property to be inherited by the deceased husband's male relatives and thus incongruent with her rights as enshrined in the Constitution and other legal instruments. For instance, in *Essien v Essien & ors*¹⁰ the Court of Appeal in considering the rights of a married woman who questioned the power of her husband to sell property jointly acquired by them without her consent took a position that could only be interpreted as treating a woman as subordinate to a man. The trial court insisted that the woman proved her rights as co-owner of property by showing evidence of payments and contributions made to the purchase of the property. It is interesting that no such demands were made of her husband concerning his rights to the property. From the facts of the case she sought a declaration in the High Court of Cross River State that the 1st respondent could not sell the property without her consent nor could he transfer the property without her consent. The trial court however dismissed the appellant's case in its entirety and upheld the counter-claims of the 2nd & 3rd respondents who had sold property to the 4th respondents. The appellant appealed to the Court of Appeal which dismissing the appeal held that a direct financial contribution to the

⁷ I M Attahir, 'Judiciary As The Last Hope Of Itself' available at <http://www.gamji.com/article500/NEWS5474.htm> accessed 23/6/16; M Edina, 'Judiciary: Last Hope of Common Man On Earth or Where?' Available at <http://thecustiononline.net/judiciary-last-hope-of-common-man-on-earth-or-where/> accessed 23/6/19.

⁸ (1974) 11 SC. 1.

⁹ [1997] 4 NWLR (pt 486) 44.

¹⁰ (2010) ALL FWLR (pt 509) 539.

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purchase price of the matrimonial home or to the repayment of the mortgage instalments in respect thereof is sacrosanct before joint interest could be inferred, and that in the instant case, the trial court was right not to have inferred joint ownership of the property in issue in favour of the appellant as she failed to explain the quality and quantity of her contribution or give details and particulars of the contribution which would have enabled the court to decide whether or not she owned the property with her husband.

The position of the court in the above case is instructive. It underscores the discrimination against womanhood even by our courts because in *Essien's* case as in *Nwanya's*, it is only the woman that was required to give particulars of her contributions to the matrimonial property for her claim to ownership to be recognized by the court unlike the man. This is very discriminatory and not in tandem with our laws.¹¹ In fact, the same position was adopted by the Supreme Court in *Omwuchekwa v Omwuchekwa*¹² which denied a wife her claim of co-ownership of matrimonial property on the grounds that she could not furnish evidence of contribution to the purchase of the property in form of receipts, and in addition, the court reiterated that the wife by custom is owned with her property by her husband as chattel. The decision of the Supreme Court in *Adaku Anadi v Edward Nwasu*¹³ on the demand for proof of joint ownership of property by the woman with due respect is discriminatory where Kutigi, JSC (as he then was) in the lead judgment stated that the woman "when she came to testify in court ought to have explained the quality and quantity of contributions which would have enabled the court to decide whether or not she owned the property with PW1 (her husband).

The courts are becoming more proactive in the decisions concerning the rights of women to inherit property despite various contrary positions held by native law and custom. In *Ukeje v Ukeje* the court considered the right of the respondent whose paternity was in issue because she was born out of wedlock to inherit from the late father's estate. The plaintiff/respondent alleged that her paternity was acknowledged by the deceased in his life time and so she was entitled to his estate. The trial judge found for the respondent where upon the appellant appealed. The Court of Appeal however dismissed the appeal, and the appellant appealed to the Supreme Court which dismissing the appeal held amongst others that:

The paternity of the respondent as the daughter of the deceased is settled and that the Igbo Native Law and custom which disentitles a female from inheriting in her late father's estate is

¹¹ See S. 42(1) a & b which provides the right of citizens to freedom from discriminations; S 72(1) Matrimonial Causes Act 1970 which enjoins the courts in the exercise of its power in proceedings with respect to settlement of property in matrimonial matters to adopt schemes the court "considers just and equitable in the circumstances of the case"; S. 16(h) CEDAW 1979 provides that State parties should ensure on the basis of equality of men and women the same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property...

¹² (1997) 10 NWLR (pt 526) 5.

¹³ (1992) 6 SCNJ 59.

void as it conflicts with S.42 (1)(a) and 2 of the 1999 constitution.

These cases establish that prior to the landmark decision of the Supreme Court in *Onyiah Anekwe & anor v Maria Nweke* in which the rights of a widow to inherit and hold property of the late husband was upheld by the court, several other decisions had been taken in the opposite by similar courts in Nigeria.

There are also other earlier cases such as in *Ukeje v Ukeje*,¹⁴ *Mojekwu v Mojekwu*,¹⁵ and *Nzekwu v Nzekwu*¹⁶ where the Nigerian courts upheld the rights of women to inherit property in accordance with constitutional provisions. By and large, one can safely conclude that the courts in Nigeria before the *Ukeje*'s case have been inconsistent in upholding the rights of women as enshrined in the constitution.

The legislature is key to the protection of women rights through the enactment of appropriate laws or through the amendment of existing laws to expunge provisions that are clearly discriminatory of women rights. The legislature can also make better impact on the proper enforcement of women's rights by ensuring that international legal instruments entered into by Nigeria are made applicable as law through the domestication of same as required by Section 12(1) of the 1999 Constitution. There can be no talk of enforcement of rights when the instruments providing the rights are not accorded the status of laws in Nigeria but remain mere directives for action by member States.

4.0 Prospects of Enforcement of Women's Rights

There is much hope for improved protection of women's rights in Nigeria especially through deliberate government policies to implement the major sustainable development goals which affect women specifically. The target of the Sustainable Development Goals Programme is for nations to develop plans and strategies for sustained development of all persons. It also embraces the creation of opportunities for the maximization of individual and collective potentials to ensure eradication of poverty and to improve the standard of living of all persons. The Millennium Development Goals Programme a precursor of the Sustainable Development Goals programme had 8 clear goals, namely; to eradicate extreme hunger and poverty; to achieve universal primary education; to promote gender equality and empower women; to reduce child mortality; to improve maternal health; to combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability and to develop global partnership for development.

¹⁴ (2014) ALL FWLR (pt 730) 1323.

¹⁵ (1997) 7 NWLR (pt 512) 281.

¹⁶ [1989] 2 NWLR (pt 104) 317.

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These goals which centred on improving the lives of human beings globally are all critical to the protection of the rights of women in Nigeria. Goal 3 which is especially aimed at achieving gender equality and women's empowerment is directly concerned with ensuring the application of the rights of women in society. The UN target to encourage government policies targeted at eliminating gender disparity in primary education by 2015. The Millennium Development Goals (MDGs) were therefore internationally agreed sets of targeted goals for ensuring gender equality and achieving sustainable development.¹⁷ "They represent the first collective and integrated attempt to improve the lives and chances of the world's poor."¹⁸

It is debatable however whether these goals were achieved in Nigeria. According to Ejemudo:¹⁹

The gap between the millennium development goal of gender equality and its actualization in Nigeria however is the action dilemma by the Nigerian government that is typified by mis-governance, lack of political will, the prevailing patriarchal culture, false public investment and the absence of adequate productive capacity that will create the opportunities for women empowerment and development.

Ejemudo however conceded that "some laudable efforts have been made to put in place the necessary mechanisms required for the elimination of gender discrimination to ensure gender parity and human dignity," while acknowledging that "gender education has not permeated all levels of the populace and the impression that gender issues negatively pose a challenge to accepted norms and values of marriage, family and religion is also rife and evident."²⁰

The fact that Nigeria is a signatory to the Millennium Development Goals which aimed to significantly reduce poverty, inequality and disease by 2015 has shown its commitment to achieving these goals by emphasizing partnership with all levels of government, civil society organizations, women groups, United Nations Agencies. "There exist very many indicators of progress from such partnerships and collaboration on promoting women's political participation, collective support to the passing of critical laws in States Houses of

¹⁷ United Nations Development Programme (UNDP) Reports (2012) available at https://www.undp.org/inclusivegrowth/Gender-Briefing-K... accessed 25/3/19.

¹⁸ J Rigg, 'The Millennium Development Goals' in V Desai & R B Potter (ed) *The Compassion To Development Studies* (2nd edition, London, United Kingdom, Hodder Education, 2008) p. 36.

¹⁹ K B Ejemudo, 'Gender Equality and Women Empowerment in Nigeria: The Desirability and Inevitability of a Pragmatic Approach' (2013) 3 (4) *Developing Country Studies*, 59 available at www.iiste.org, accessed on 8 April 2019.

²⁰ K B Ejemudo, 'Gender Equality and Women Empowerment in Nigeria: The Desirability and Inevitability of a Pragmatic Approach' (2013) 3 (4) *Developing Country Studies*, 59 available at www.iiste.org, accessed on 8 April 2019.

Assemblies, girls' education initiatives, advocacy on harmful traditional practices and emerging partnerships to deal with gender and sexual based violence...²¹

According to Vintagesam,²² "the performance appraisal of Nigeria's thirteenth year journey to achieving the set Millennium Development Goals is mixed. Progress towards five MDGs has been below average but progress has been less satisfactory towards the three other MDGs." According to the writer, no progress had been made in goal 1 on poverty reduction as "69% of the populace still live in abject poverty as growth in the economy has not generated adequate employment..." Some progress has been made in achieving universal primary education although Nigeria still records large number of out of school children. For goal 3, gender parity and equality is not achieved in Nigeria although government has made efforts to encourage female economic empowerment.

The world has since 2015 moved away from the Millennium Development Goals to Sustainable Development Goals as a result of the failures of most countries especially the third world countries to achieve the MDGs which were mainly government driven. Goal 5 which is on Gender equality is critical to the protection of women's rights in Nigeria.

The Sustainable Development Goals programme targets development that meets the need of the present generation without compromising the needs of future generations. The sustenance of the natural resources in a particular environment helps protect the rights of women and the girl-child to survival and life. The Nigerian government's adoption of the 17 Sustainable Development Goals indicates its willingness to enforce the rights of women as articulated in the United Nations' programme of development. Writing on sustainable peace and development Ajiye²³ opined that "sustainable peace and development involve the transformation of the social and political environment that is responsible for inequality and historical grievances.

Democratic governance in Nigeria enhances and promotes human rights. The few women in our various legislative houses continually draw public attention to women issues thereby creating room for direct women participation in decision making. It is trite that the enactment of the National Centre for Women Development Act²⁴ has greatly improved the prospects of the application of the rights of women in Nigeria. This Act seeks to establish the National

²¹ National Gender Policy; The National Coalition on Affirmative Action (NCAA) 'National Gender Policy: Promoting Equal Opportunity' 8; available at <http://www.nacpalliance.org/national-policy-women.html> accessed on 30/6/2019.

²² Vintagesam, 'Millennium Development Goals: A Performance Review for Nigeria'; August 26, 2013 available at <http://www.opinionnigeria.com/millennium-development-goals-a> accessed on 5 March 2019.

²³ S O Ajiye, 'Insecurity and The Niger Delta Environment, Sustainable Peace and Development: An Overview' (2015) 5(2) *Journal of Environment and Earth Science* available at www.jiste.org accessed on 3 April 2016.

²⁴ Cap N15 Vol. 10, Laws of the Federation of Nigeria (LFN) 2004.

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*Centre for women development for the general purpose of designing developmental programmes and activities for the advancement of women in Nigeria. The possible impact of this centre on gender issues is evident from the established functions which state that:

- i. the Centre shall be responsible to stimulate consciousness towards the attainment of higher levels of development for Nigerian women;
- ii. to promote international co-operation in stimulating consciousness towards the attainment of development and activity for women.

To achieve the above objectives, the Centre is expected to promote research into the activities and achievements of women; serve as a data bank on women and development in Nigeria; facilitate the formulation of policies affecting women in areas of education, employment, health and finance; provide training in skill development, income generation; provide forum for guidance, counselling and mobilization of women in both the rural and urban centres; and liaise with national, regional and international agencies involved in women development programmes.²⁵

There is a renewed vigour in the fight to protect the human rights of women in Nigeria with the increased courage of our courts in insisting and pronouncing on the non discriminatory provisions of our Constitution against the application of some obnoxious and unjust traditional practices which have no legal backing. In this light, the effort of the Supreme Court of Nigeria in the landmark case of *Onyibor Anekwe & anor v Maria Nweke*²⁶ which sought to establish and restate the right of a widow without a male child to inherit from her husband contrary to the obnoxious discriminatory customary practice of Amikwo community in Awka which did not recognize her right of inheritance is commendable.

In the instant case the respondent a widow instituted the action in the customary court although the matter was later transferred to the High Court of Anambra State, Awka by a court order. The respondent claimed a declaration of statutory right of occupancy over a piece of land which was the property of her late husband and an order of injunction against the appellants from further trespass on the said property. In establishing her claim in court, the respondent contended that she had the right to her husband's property whether she had a male child or not according to the custom of the Awka people. The appellants however denied the respondents claim and counter claimed that the property in dispute was not partitioned land but remained family property which was inheritable by only first sons in succession. The trial court granting the claim of the respondent dismissed the counterclaim of the appellants whereupon they proceeded on appeal to the Court of Appeal which affirmed the decision of the trial court and dismissed the appeal. The appellants dissatisfied with the decision of the Court of Appeal proceeded to the Supreme Court which toed the line of the

²⁵ National Centre for Women Development Act, Cap N15, Vol. 10, LFN 2004; S. 5(1)(2).

²⁶ [2014]9NWLR, (pt 1412) 393.

lower courts and held that the custom of the Awka people of Anambra State which stated that a married woman who had only daughters and no male child for the husband cannot inherit landed property from the late husband as pleaded by the appellants who relying on the supposed custom disinherited the woman and her children, is barbaric and repugnant to natural justice, equity and good conscience and ought to be abolished.

Judicial activism and courage displayed in this case has indeed set the proper tone for the protection of the human rights of women and the girl-child by insisting on the clear and express words of our Constitution which insists on the equality of all persons despite customary laws to the contrary. From the dicta of the learned justices, the prospects of proper enforcement of the girl-child rights through the judiciary are high. It is a wake-up call to persons whose rights have been and are being infringed to shake off the toga of forced silence and take legal steps to redress violations. The Court per Ogunbiyi J.S.C. stated that:

The custom and practices of Awka people upon which the appellants relied for their counter claim is hereby outrightly condemned in very strong terms. In other words a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home where she had lived all her life with her late husband and children by her late husband's brothers on the ground that she had no male children is indeed barbaric, worrying and flesh skinning.

Muhammed J.S.C. in a similar vein stated that the practice of such custom:

Is a direct challenge to God the creator who bestows male children only, female children only (as in this matter), or an amalgam of males and females to whom he likes. He also has the sole power to make one a barren. There is nothing virtually one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will

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²⁷ (1997) 71
²⁸ [1989] 21

appear anachronistic, discriminatory and unprogressive. It offends the rule of natural justice, equity and good conscience. That practice must fade out and allow equity, equality, justice and fair play to reign in the society.

To Ngwuta J.S.C the custom which the appellants pleaded is a similar custom in other communities:

Wherein a widow is reduced to a chattel and part of the husband's estate constitutes the height of man's inhumanity to woman, his own mother, the mother of nations, and the hand that rocks the cradle. The respondent is not responsible for having female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world...

And to Mustaka-Coomassie JSC and Ariwoola JSC, "the said custom is away from it, it should be declared void at all time. Same should be condemned by all;" and "such a custom that discriminates against female children is a challenge on God Almighty who is the maker and producer of children... it will therefore be inhuman and injustice to discriminate against a female child on her father's property or a widow on the ground that she has only female children for her late husband" respectively. The Supreme Court stated further that "no matter the circumstances of the birth of a female child she is entitled to an inheritance from her late father's estate."

The courts have also toed the same line in the earlier cases of *Mojekwu v Mojekwu*²⁷ where the Court of Appeal held that a custom which allowed the surviving brother of the deceased who died intestate to inherit the landed property of the deceased to the total exclusion of the widow and her daughters because she had no son was repugnant to natural justice, equity and good conscience and was also unconstitutional for breaching the right to freedom from discrimination. Also in *Nzekwu v Nzekwu*,²⁸ the Supreme Court held that any custom that discriminated against the woman's right to inherit her husband's property was repugnant.

Other institutions created and charged with protection of women's rights in Nigeria include the National Human Rights Commission (NHRC); the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) which is a creation of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and charged with the task of addressing the menace of trafficking in persons, the degradation and exploitation of persons mainly women and children in the entire country. Whilst these institutions have recorded

²⁷ (1997) 7 NMLR (pt 512) 281.

²⁸ [1989] 2 NWLR (pt 104) 317.

successes in various cases, a lot of work still needs to be achieved with greater government support and commitment.

5.0 Conclusion

The Constitution of the Federal Republic of Nigeria 1999 (as amended) recognises, establishes and indeed provides certain rights described as fundamental for women in Nigeria. It is also trite that several international conventions provide various rights to protect women globally as members of the human family. Gender issues and discussions have always cropped up as claims of marginalization and even outright non-recognition of rights continue to arise. It is also trite that various human rights instruments and mechanisms exist for enforcement of the rights of women against systematic abuse in Nigeria. How effective these strategies are have been the focus of this paper which concludes that women's human rights abuses continue to trend in Nigeria despite legal provisions to the contrary. This paper attributes the persistent violations of women's rights factors such as the ever present interference of various customary laws, the culture of silence and reluctance to take legal actions against violators and the tardiness of the Nigerian government in domesticating relevant international laws as well as the inefficiency of its agencies to carryout effective enforcement of established rights of women.

This paper therefore recommends the immediate domestication of CEDAW as well as the enactment of specific legislations protecting women from assaults, rape and violence of all types. Also, the Bill on Gender and Equal Opportunities Bill 2016 should be represented to the 9th Assembly and passed into law in Nigeria as it will be better suited to capture the needs of Nigerian women against the background of current political, economic and social realities. Government should integrate women rights issues and gender education into the junior and secondary schools curriculum to ensure proper socialization. Gender Equality, Parity and mainstreaming should form the basis of government policies and activities to ensure substantial development.

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