STATUS OF WOMEN IN WESTERN NIGERIA

A DISSERTATION

SUBMITTED TO THE FACULTY OF CLARK ATLANTA UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

BY

ROLAKE OMONUBI

DEPARTMENT OF POLITICAL SCIENCE

ATLANTA, GEORGIA
MAY 2000
ABSTRACT


STATUS OF WOMEN IN WESTERN NIGERIA

Advisor: Professor Gretchen Maclachlan

Dissertation dated December, 1999

This study examined the status of women in South-western Nigeria from a legal perspective. It scrutinized the three legal infrastructures in the Nigerian legal system.

The study is based on the premise that the huge disparity in the socio-economic development of the women in South-western Nigeria is a consequence of inadequate legal protection. Four independent variables were considered, and three intervening variables were identified.

Workshops, interviews and surveys were conducted. A document analysis approach was used to examine the three legal infrastructures in the Nigerian legal system--the Common Law also known as the English Law, the Statutory Laws which are a culmination of ordinances, bills, and decrees and the Customary laws which evolved through tradition.

The study found that constitutional and statutory laws do indeed provide substantial protection for women; however,
some Statutory laws exclude women married under the customary laws.

The conclusions drawn from this finding is that factors including but not limited to the inadequacy of legal protection, are key elements to which the socio-economic and political backwardness of women may be attributed. The factors include a lack of gender specific legislation to emancipate women from the shackles of patriarchy; ignorance and lack of awareness of existing protection; biased customary laws which are pro-male and which inhibit the socio-economic and political advancement of women and customs which reinforce gender inequality.
ACKNOWLEDGMENTS

I would like to thank the following people who assisted me in the preparation of my dissertation. Professor Gretchan Maclachlan, Professor of Political Science at Clark Atlanta University, was my advisor and the chairperson of my dissertation committee. My thanks also go to Dr. Henry Elonge, Associate Professor in Public Administration at Clark Atlanta University, and to Dr. Hashim Gibrill, Department Chair of Political Science at Clark Atlanta University.
CONTENTS

ACKNOWLEDGMENTS ..................................................... ii
LIST OF TABLES ....................................................... vi
MAP ................................................................. viii
Chapter

I. STATUS OF WOMEN IN WESTERN NIGERIA ............... 1
   Objectives of the Research .............................. 4
   Origin of Research ....................................... 5
   Significance of Research ................................. 7
   Research Setting ......................................... 7
   Research Methodology .................................... 9
   Literature Review ........................................ 19
   Organization of the Research ........................... 20

II. LITERATURE REVIEW .......................................... 23
   Assumptions of the Status of the
     African Woman ......................................... 24
   The Pre-colonial African Woman ....................... 31
   Paradigms for Exploring the African
     Woman's Struggle .................................... 42
   Limitations of Law ....................................... 68

III. CIVIL AND POLITICAL RIGHTS .......................... 73
   Civil Rights ............................................... 73
   Domicile .................................................... 76
   Violence Against Women ................................ 79
   Contracts and Property .................................. 98
   Political and Economic Rights ......................... 121

   iii
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Constitutional Status</td>
<td>136</td>
</tr>
<tr>
<td></td>
<td>Citizenship</td>
<td>142</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>145</td>
</tr>
<tr>
<td>IV.</td>
<td>FAMILY LAW AND THE MARRIAGE INSTITUTION</td>
<td>151</td>
</tr>
<tr>
<td></td>
<td>Types of Marriages</td>
<td>152</td>
</tr>
<tr>
<td></td>
<td>Capacity to Marry under Statutory Provisions</td>
<td>159</td>
</tr>
<tr>
<td></td>
<td>Marriage Procedures</td>
<td>163</td>
</tr>
<tr>
<td></td>
<td>Proof of Marriage</td>
<td>166</td>
</tr>
<tr>
<td></td>
<td>Deficiencies of the Marriage Act</td>
<td>168</td>
</tr>
<tr>
<td></td>
<td>Suggested Revisions of the Marriage Act</td>
<td>170</td>
</tr>
<tr>
<td></td>
<td>Customary Law Marriage</td>
<td>171</td>
</tr>
<tr>
<td></td>
<td>Dowry or Bride Price</td>
<td>177</td>
</tr>
<tr>
<td></td>
<td>Widow Inheritance or Levirate Marriage</td>
<td>190</td>
</tr>
<tr>
<td></td>
<td>Right to Family Name</td>
<td>191</td>
</tr>
<tr>
<td></td>
<td>Dissolution of Marriage</td>
<td>207</td>
</tr>
<tr>
<td></td>
<td>Summary and Conclusions</td>
<td>221</td>
</tr>
<tr>
<td>V.</td>
<td>SPOUSES AND THE LAW OF WILLS</td>
<td>229</td>
</tr>
<tr>
<td></td>
<td>Testamentary Capacity of Women</td>
<td>233</td>
</tr>
<tr>
<td></td>
<td>Impact of Marriage on Wills</td>
<td>234</td>
</tr>
<tr>
<td></td>
<td>Validity of a Gift Made to One's Spouse</td>
<td>235</td>
</tr>
<tr>
<td></td>
<td>Succession Rights of a Wife to her Husband's Estate</td>
<td>235</td>
</tr>
<tr>
<td></td>
<td>Testament Succession or Inheritance by Will</td>
<td>239</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>259</td>
</tr>
<tr>
<td>VI.</td>
<td>SURVEYS AND ANALYSIS</td>
<td>263</td>
</tr>
</tbody>
</table>
VII. SUMMARY AND CONCLUSIONS ......................... 303

Women and the Family ................................. 329

BIBLIOGRAPHY ........................................... 339
TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Question</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Question 1: &quot;Is There a Huge Gap in the Level of Development of Men and Women in Nigeria?&quot;</td>
<td>265</td>
</tr>
<tr>
<td>3.</td>
<td>Question 3: &quot;Do Women Suffer Discrimination and Sexual Prejudice in Nigeria?&quot;</td>
<td>268</td>
</tr>
<tr>
<td>4.</td>
<td>Question 4: &quot;If Your Answer to the Previous Question is Yes, Would You Blame the Legislative Process for the Subordination of Women?&quot;</td>
<td>270</td>
</tr>
<tr>
<td>5.</td>
<td>Question 5: &quot;It is Easier for a Man to Secure an Apartment for Rent. Single Women Acting Without a Male Representative are Bombarded with Endless Questions by Male Landlords, and Often-times Turned Down.&quot;</td>
<td>271</td>
</tr>
<tr>
<td>6.</td>
<td>Question 6: &quot;Have You or Your Friend Attempted to Buy a Landed Property? Did You Experience any Bias?&quot;</td>
<td>273</td>
</tr>
<tr>
<td>7.</td>
<td>Question 7: &quot;Would You Say that Your Male Colleagues with the Same Qualifications are Favored More in the Workplace in Terms of Promotions and Wages?&quot;</td>
<td>274</td>
</tr>
<tr>
<td>8.</td>
<td>Question 8: &quot;Have You or Any of Your Female Friends Experienced Sexual Harassment in the Workplace?&quot;</td>
<td>275</td>
</tr>
<tr>
<td>10.</td>
<td>Question 10: &quot;The Probability of a Woman Being Elected President of Nigeria is Very Low. A Woman Running for Such Office is Just Wasting Her Time. Agree or Disagree?&quot;</td>
<td>283</td>
</tr>
</tbody>
</table>
11. Question 11: "Would You Say that the Majority of
Nigerian Women Have Negative Self Image Which
Limits Their Aspiration in Terms of Career
Choices, Advancement and Rigorous Economic
Pursuit?" ................................. 285

Requires the Payment of Dowry is a Form of
Trade by Barter, in which case a Woman is Sold
to a Man. Do You Agree or Disagree?" ......... 287

13. Question 13: "Dowry Refund Inhibits Women From
Leaving Abusive Marriages Especially if They
Cannot Afford the Refund of the Bridal Price
to the Husband. Do You Agree? or Disagree?" 289

14. Question 14: "Polygamy is Dehumanizing, Unhealthy
for Women and the Offspring's. Polygamy Should
be Outlawed. Do You Agree or Disagree?" ...... 290

15. Question 15: "Bigamy Laws are Hardly Enforced.
There is a Need for Strong Enforcement of
Existing Laws." .......................... 292

16. Question 16: "Customary Law Marriages Are Biased
Against Women Especially in Terms of Inheritance
and Property Division After Divorce." ....... 293

17. Question 17: "Childless Women Suffer Mostly From
the Discriminatory Arrangement of Inheritance
in Marital Relationships." .................... 294

18. Question 18: "Women in Christian Marriages Have
a Lot of Rights as Prescribed by Law, However
Most of Them are Still Ignorant of These
Provisions, Thus They Suffer Inequality." ... 296

19. Question 19: "Do You Support Child Marriages,
(Giving Children Under Sixteen Out for
Marriages)?" ............................... 297

20. Question 20: "Have You Ever Been Abused by a
Spouse?" ................................. 299
CHAPTER I
STATUS OF WOMEN IN WESTERN NIGERIA

"Status of Women" is a very compelling issue, essentially because women are yet to attain their full potential. Although scholars and researchers have examined this topic on a broader level, little attention has been paid to African women and Nigerian women in particular. The concept is employed by social scientists to illustrate the classification of persons in terms of characteristics such as socio-economic development, political involvement, level of responsibility in policy decisions, degree of literacy, profession, remuneration, discernment of one's position in the family and in the neighborhood, opportunity for self-determination, limitations placed on one's preferences, liberty, autonomy and so on.

Examining 'Status' will reveal that the standing of women differs from one nation state to another. The greatest disparity could be found between women in industrialized nations and developing nation states. Such differences are also evident in urban and rural areas of various countries. This study uses Nigeria, the most populous nation in Africa as a prototypical illustration of one developing state in
sub-Saharan Africa. The situation of women in Nigeria is relevant to the issue of gender bias. There is a huge disparity in the socio-economic development of the genders in Nigeria. The literacy rate for women is only six percent, while that for males is almost quadruple at 25 percent.\textsuperscript{1} Only 48.2 percent of the woman population are in the labor force, whereas 88.2 percent of the male population are economically active. If we distribute agricultural workers by sex, females constitute 37.1 percent of this group, while males constitute 62.9 percent.\textsuperscript{2}

Politically, Nigerian women are a negligible and unorganized force, with little political involvement. Economically, they constitute the majority of the peasant labor force in the agricultural sector, while most of the others occupy the bottom of the occupational ladder and continue to be channeled into service and domestic occupations.

Women's economic struggle must be understood in terms of their inability to make demands upon the government and actual participation in policy making. Equality thus is a


\textsuperscript{2}Ibid., 512.
political process. To become equal requires participation in the authoritative allocation of values and resources.

The consequence of the unequal status between men and women is a higher level of economic and political powerlessness among women. Powerlessness in turn retards development on any level, politically, economically, and socially within the Nigerian political system.³

Thus, the Nigerian women confront two distinct yet related systems of power: the economic mode of capitalism and the ideological mode of patriarchy. Due to their subjugation by the Nigerian socio-cultural and political system, women have been relegated to the bottom rung of the political and economic ladder.

Nigerian women, as an oppressed "minority" group need a system of protection such as laws or regulations which will protect their freedom to pursue a wide range of economic, social and political opportunities. The political significance of a system of protection is that:

³Patriarchy is a social formation which espouses male superiority. Hence the father is supreme in the home and the husband is portrayed as the head of the family, and the descent is reckoned in the male line, the children belonging to the father’s clan. Patriarchy subordinates women. Regardless of women’s numerical advantage in the society they are treated as minorities and their interests are adjudged secondary.
1. It would remove the civil rights of Nigerian women from the mercy of the patriarchal order and place them on a principle of law;

2. It would also assure women the liberty to mingle in a human capital environment (acquiring skills, on-the-job training, education, and knowledge about how the political and economic systems work); and give them access to the income redistribution systems. (A system of income distribution is described here as those structural factors that secure for individuals or groups a share of society's income and wealth: that is, (a) income from labor, (b) income from property and investment (c) tax credit).

**Objectives of the Research**

Given the importance of legislation and judicial interpretation as means of social reform, this study examines the status of women in South-western Nigeria, from a legal perspective. The objectives are:

1. To chronicle the legal protection available to women,

---

4Diversity of cultures impact on the customary laws of a particular locality. In cases where a marriage is contracted under native law and customs, customary law is applicable. However, English law is universally binding in Nigeria.
2. To highlight the laws that are inhibiting their socio-economic and political development and consequently reinforcing gender inequality and
3. To recommend policy efforts towards removing the legal constraints that impede the progress of women.

Origin of Research

The origin of this research is informed by two concerns. First, the Constitution of the Federal Republic of Nigeria (Promulgation Decree 1989) adopted in October 1992, which is expected to be reviewed when the new civilian administration takes power in 1999 expressed a willingness to narrow the gender gap, indicating that the Nigerian leadership is aware of the problem and is committed to ensuring gender equality. Section 18, article 2(a) of the constitution states that, in order to advance the social order "every citizen shall have equality of rights, obligations and opportunities before the law." (Section 41 Article 1 (a) and (b); Section 41 Article (3) of the same document emphasizes equality of persons before the law. Section 18 Article 3(e) goes a step further assuring women of "equal pay for equal work without discrimination on account of sex, or on any ground whatsoever." Constitutional equality of women in Nigeria is not new. The previous constitutions that were abrogated during military seizures
of political control contained similar assertions. But the reality is that the condition of women in Nigeria does not reflect the equal status conferred on them by the constitution. This suggests that the constitutional provisions for the Nigerian women might have suffered from unfavorable judicial interpretation. This study seeks to confirm or deny the above assertion.

Women are central to the development of Nigeria, they constitute a potent productive force and hold a numerical majority. Despite the constitutional rhetoric, the Nigerian political system has erected barriers to their political and economic development. These barriers have manifested themselves in the form of gender and class oppression which are interactive and have created a lack of self-identification among women. Congruent to these oppressions is the lack of substantive research addressing the instruments of social engineering in Nigeria, and also the lack of public policies addressing the special needs and concerns of the female population.

Secondly, this study is influenced by the common agreement among the various groups of organizations involved with the development of Third World countries that there is a greater need for the effective utilization of the abilities and skills of all members of the society, women included. Those that are dedicated to the welfare and
equality of women also recognize that sexual discrimination inhibits the advancement of any society.

Significance of Research

In light of the above, the benefits of this project will result in a more coherent understanding of the forces within the Nigerian legal structure which contribute to the subjugation of women. At the same time it contributes to related studies in equality for women and the search for alternative means of empowering women in developing nations. The findings of the study can be used by women's movements and governments in formulating policies that will change the status quo.

Also, the study will be an important addition to the body of work done on the general subject of women in developing nations and to the studies on Nigerian women. Finally, the research will contribute a body of theoretical and practical knowledge to public and private sector development programs involving women.

Research Setting

Nigeria is the most populous country in Africa with a population of over 100 million. Nigeria contains a diverse mixture of over 250 ethnic groups, the largest being the Yorubas, Hausas, Ibos and also immigrants from neighboring
countries such as Ghana, Sierra Leone, Republic of Benin, Cameroon, Niger and settlers from Europe, and other nations.

The three main cultures inhabit different parts of the country, and are highly defined by language, religion and ethnicity. The Hausas, the majority group in Nigeria are mainly Muslims and they reside in the Northern part of the country. The Fulanis are the dominant political group in the Hausa-Fulani area, located in the Northern part of Nigeria. The Fulanis speak Fulfudzi (the Fulani language) and Hausa as most of the many different ethnic groups in Northern Nigeria. The Ibos are primarily Christians, they speak the Igbo language and inhabit the eastern region of Nigeria while the Yorubas who are a mixture of Christians and Muslims occupy the western part of the country.

Although each ethnic group has a unique heritage and custom, the men share the same ideology of patriarchy. The cataclysm is that there are also a great number of women who are victims of patriarchy, who have internalized it, accepted their travail as their "custom," "culture," and even "religion." Women and men live and work together. There are no men without a devoted relationship with a female. It could be with a mother, daughter, wife, girlfriend or sister. Similarly, one can hardly find a woman without some warm relationship with one of the male gender; it could be with a boss, a father, son, brother, or boyfriend. It is in
these intrinsic relationships that the exceedingly complex nature of gender problems are located.

Because of the diversity of cultures in Nigeria, the research will narrow its focus to laws affecting gender, among those who live in the old western Nigeria now called the South South. These are mainly the Yorubas. They occupy Lagos, Oyo, Ogun, Oshun, and Oyo states of Nigeria. Restricting the focus to these states will simplify data collection and facilitate data analysis. The research subjects share a common language and are culturally homogeneous with very slight differences. Nevertheless, the research procedures and findings can be generalized as representative of South Western Nigeria. This external validity claim is premised on the fact that the culture of South-western Nigerian females are somehow similar, and also because the dominant discourse on gender inequalities is usually found within the parameters of social, economic, and political paradigms.

Since the research primarily concerns Nigerian women, overseas travel was necessary for the collection of primary data.

Research Methodology

Political scientists use three major methods of collecting the data they need to test their hypotheses:
interviewing, document analysis, and observation. For this research, interview and document analysis are utilized. The usage of documents and records, or what political researchers call the written record, provided several benefits for this study. The researcher's access to legal reports, government documents, reference materials, judicial decisions, research institute data, and mass media materials relating to gender issues provided data that could have been difficult or impossible to research through direct, personal contact. Some of the data collected from archival sources such as the university libraries of Ibadan, Lagos, and Ife; newspaper libraries in Lagos, the legal chambers of prominent Nigerian legal scholars including that of Gani Fawehinmi are usually nonreactive. Their nonreactivity have the virtue of encouraging more accurate and less self-serving measures of political phenomenon.

Another advantage of the methodology used for this study—the written record, is that the record has existed long enough to permit analyses of political phenomena over time. Some of the legislation under review in this study have been in existence for decades. Because of the importance of time, and of changes in phenomena over time, for the acquisition of causal knowledge, a data source that

---

supports longitudinal analyses is a valuable one. The written record more readily permits longitudinal analyses than either interview data or direct observation.

A fourth advantage of using the written record is that it enables the research to increase its sample size of women above what would have been possible through just interviews or direct observation. For example it would have been terribly expensive and time-consuming for this study to observe the level of participation of Nigerian women in electoral politics. Interviewing candidates would require either a lot of travel, direct observation would also require gaining access to many campaigns and traveling across Nigeria. Without the written record, it would have been very difficult. The political phenomena that have been observed by others through written records are many and varied— for example, judicial decisions concerning the free exercise of religion, voter turnout rates in gubernatorial elections, the change over time in Soviet military expenditures and the incidence of political corruption in the People’s Republic of China.⁶ Nevertheless, the document analysis method did have its disadvantages. One disadvantage experienced during the research was the unavailability of some data. Gaining access to the appropriate material is

often the most resource consuming aspect of data collection especially in a country like Nigeria where record keeping is immature. It was difficult to find data on domestic violence or rape or genital mutilation. The study made up for these lapses by using surveys and focus group workshops.

Although the economic position of women could be assessed statistically, the legal status of women challenges comparable classification. Numerous legal professionals and academics have examined the problem of the status of women in ordinances and before the courts.

Those that have attempted to catalog legal discrimination, even in developed countries, have found that leading areas of unequal treatment include property settlement, petition of criminal law and labor laws. Discrimination is very widespread, both in statutes and in judicial rulings to the extent that it frustrates categorization. Typically, prejudice against women which has caused their inferior legal status, is found in the following areas:

1. Those laws and judicial decisions which deny women equal economic opportunity. (Such laws primarily dictate "protective" working conditions for women, but they may also involve granting of credit, signing of contracts, etc.);

2. In criminal law, a pervading socio-sexual double standard has provided, among other inequities, longer sentences for women found guilty of violating the same criminal statutes as men, made prostitution a criminal act for women but not for men, and
required evidence to convict for rape, which is not required for any other type of assault;

3. Laws which regulate family relationships, for the most part after the dissolution of a marriage, have made women less equal in the way in which property has been divided, in their responsibility for children of a broken marriage, and in other ways.  

All these are discussed in greater detail in subsequent chapters. The research procedure entails a methodical review of the various existing legal provisions relevant to the Nigerian female population.

For the purpose of clarification, the Nigerian legal infrastructures are multi-dimensional. They consist of the Common Laws also known as the English law, the statutory laws—a culmination of ordinances, bills, and decrees and the customary laws which evolved through tradition. The research places a lot of emphasis on the customary legal systems in the nation (including the Sharia law) which are more than two hundred. Complexities of such a review were not an issue in view of the fact that the research target is limited and the customary laws share striking similarities.

The assumption of this research is that most of these laws militate against the advancement of women and perpetuate the gap of inequality between the sexes. The common law provisions that concern women predominantly in

---

the fields of marriage, divorce, property settlement, adoption, guardianship, maintenance, inheritance, and violence against women are examined. A review of the statutory laws is done to provide an insight into the legislative provisions governing other issues such as contracts, debts, credits; and labor laws, criminal laws, welfare provisions, personal liberty laws--such as laws which recognize a woman's right to her body and also political and civil rights provisions.

Due to the differences among the three legal infrastructures in Nigeria, this study makes a comparative analysis of these systems in the target states, Lagos and Oyo states. The objective is to explain how the various laws impact on women's legal status in these states.

Since the Nigerian constitution professes gender neutrality, an examination of the judicial interpretation of the Constitution became imperative. This is done by examining some judicial decisions that are gender related.

While the primary research is document analysis, secondarily surveys, interviews and focus group sessions were employed to support the primary method. For reasons of convenience and necessity researchers frequently rely on samples. A sample is simply a subset of a larger population. If the sample is selected properly, the information collected about the sample may be used to make statements
about the whole population. In this case our unit of analysis are men and women in the old western region. The sampling frame is the population from which the sample is drawn. The sampling frame consists of women who live in the rural and urban areas. Hence, the field research was conducted in Lagos, the capital of Lagos state, and the city of Ibadan, the capital of Oyo State, plus the villages of Eruwa and Igbo-Ora, both in Oyo State of Nigeria. The reason for choosing these population strata was to have divergent views from both urban areas as well as the rural areas. Thus, Lagos and Ibadan provide a good representation of the urban perspective while the other two villages stand for rural viewpoints.

The assumption of the researcher is that most women and men in the cities have a higher level of awareness and better education and would therefore have a different insight into the constraints faced by the Nigerian women; whereas women and men in rural areas "uncontaminated with civilization" may not see anything wrong with the status quo. Thus for the survey research, the mailing lists of several professional associations such as Nigerian Institute

8Johnson, 139.

9Rural women are oftentimes content with their situation, partly because subservience is what they have been used to, it is the accepted norm, and also because of their lack of exposure to urban life, it is difficult for them to have any basis for comparison.
of Bankers (NIB), Nigerian Medical Association (NMA), Nigerian Institute of Journalists (NIJ), Federal Institute of Defense Attorneys (FIDA), Nigerian Teachers Association (NTA), to mention just a few were used, including the mailing list of residents in the targeted areas obtained from the Nigerian Post Offices. Out of this pool, every fourth name on the lists was selected; in all 300 urban women and 75 urban men were selected through this process for the polling. The questionnaires were mailed to the respondents with self-addressed stamped return envelopes. 125 surveys were returned completed, out of this figure, 100 were women, 25 were men.\(^{10}\) The goal of the survey is to measure accurately people’s attitudes, beliefs, and behavior towards the status of women and gender relations by asking them questions. The response rate was 33 1/3 percent. The sampling frame was purposely increased to 375 in anticipation of un-returned questionnaires. The good thing about systematic sampling employed for the sample selection of the respondents in the urban area is that almost all of them are educated professionals.

\(^{10}\)Please note that 375 questionnaires were mailed out to the survey targets. 125 were returned completed (100 urban women and 25 urban men. In fact, we received more than these figures, but we could not use them, because some of them were damaged in transit, or not readable). Mailing 375 was deliberate because the researcher knew that some people may not receive the questionnaire due to loss in the mail, and some people may not respond at all.
For the rural areas, the sampling frame was taken from the villages - Igbo-Ora and Eruwa in Oyo State. The survey population was drawn from membership of the local farmers union, the churches, mosque, and the markets. The officials of these groups played a key role in getting the surveys completed; the survey questionnaires were handed over to them, to be distributed to their members and picked up a week later. Fifty women and 25 men responded.\textsuperscript{11} The sample frame consisted mostly of petty traders and farmers who were generally uneducated, some had minimal education.

In addition to the use of interviews and surveys, several focus group workshops were held to elicit local views concerning the legal structure and the inter-relationship with the development of women. Such workshops have proven to be a low-cost, time efficient and effective means of eliciting indigenous views. The guidelines for the interviews and workshops were developed by the researcher. The workshops were held in English. The survey and interviews were conducted in the regional lingua franca and/or English, the survey target was a representation of a cross section of women from all economic and social strata.

The focus group workshops were held at Ibadan and Igbo-Ora. Some of the participants who attended the two-day

\textsuperscript{11}In all, 200 people were polled. 100 urban women, 25 urban men, 50 rural women, 25 rural men.
Ibadan workshop were drawn from some of the mailing lists; selection was based on proximity and availability. Some of the participants had answered the questionnaires; most of them simply stopped by because of the fliers announcing the forum. However the Igbo-Ora workshop was not as successful because the attendance was poor, no mailing list was used, the workshop relied on the market women overseer, the local Moslem Rabbinate, the local clergy for the assembly of participants, and some of the attendants were merely spectators. Nevertheless, the research was able to obtain some pertinent views of the issues in question.

Survey analysis elicited responses from Nigerian women and men as to the image they have of themselves and one another and their place in society. The survey and analysis are discussed in chapter six of the study.

The female self-concept is a relevant consideration in a model for the explanation of status position; especially in Nigeria, a nation where cultural and religious codes place limitation on women's positions and choices for political participation and other activities. Motivation to make demands and to advance economically and politically is related to the image one has of one's self in terms of:

1. The cultural or religious perception of the appropriateness of a particular type of action
2. And the belief in a positive outcome of that action for the person. For example, the perception "a woman's place is in the home" would be less likely to motivate women to political activity than the opposite perception. Or again, the belief that the probability of a woman being elected president of Nigeria is very low, goes a considerable way in explaining why a particular woman or even women in general do not run for elective office.

_Literature Review_

An extensive review of the literature focusing on women in developing countries and gender relations, existing literature on the status of women in Nigeria, law and gender in Nigeria plus other literature concerning the development and empowerment of women is reviewed.

The researcher searched the libraries of many universities in the Atlanta area (i.e., Clark Atlanta University [CAU], Emory University, Georgia State University) and University libraries in Nigeria including the Universities of Ife, Lagos and Ibadan and also legal chambers of Gani Fawehinmi, Afe Babalola and a few other legal scholars in Nigeria for journals, periodicals, books, monographs, government documents, conference reports etc.,
for information on women and inequality. Literature review and data collection were a continuous part of the project.

Organization of the Research

The final report of the research is presented in three parts. The first part consists of two Chapters—Chapters one and two. Chapter one presents the introduction. Chapter two analyzes the reasons for the subjugation of Nigerian women, while focusing on their efforts to minimize their secondary status. Thus chapter two explains Nigerian women's struggle against gender subordination, and reviews of a selected literature, and on the limitations of legal reform in South western Nigeria.

Part two consists of Chapters three, four and five. Chapter three is a two part analysis of the political and civil rights. The first section analyzes Nigerian constitutional and political rights. It examines how Nigerian women have fared politically, the rights conferred on them as citizens, and the impediments to exercising these rights. The section also explores the impact of customary law on the constitutional rights of women. The second section of chapter three examines civil rights. It

\[12\] Since the study concerns gender subjugation of the Nigerian woman and how law could be a corrective tool, it is imperative for the purpose of analogy to present an overview of their struggle.
scrutinizes the existing labor laws including contracts, debts, and access to credits. It also examines issues concerning women such as property laws, personal liberty laws such as abortion, and other concerns such as adoption and criminal law.

Chapter four of the research essentially covers family law. It provides a brief overview of Nigerian marriage institutions, types of acceptable marriages, statutory provisions of the marriage institution, and deficiencies of the Marriage Act. Chapter four also explores the customary law marriage and its guidelines for the age of marriage, issue of bride price, betrothal and the consequences on women; and other likely contradictions with statutory marriage are emphasized. The chapter also covers rights of spouses during marriage. These include but are not limited to issues such as consortium, rape in marriage, domestic violence, desertion and adultery. Chapter four also covers the dissolution of marriages. It examines issues such as the acceptable parameters for divorce in both the statutory marriages as well as customary marriages. It also looks at the judicial consequences of divorce--property rights of spouses, maintenance and custody of children.

Chapter five deals with spouses and the law of wills. Right to make wills, impact of marriage on existing wills,
succession rights of a wife to her husband's estate under the statutory provisions and under customary laws.

Part three of the study is presented in two chapters. Chapter six presents the survey results, data analysis; while Chapter seven discusses the interpretations, explanations, summary and recommendations.
CHAPTER II
LITERATURE REVIEW

The previous chapter states that the Nigerian woman is oppressed, and subjugated. She lags behind in many sectors—educationally, technologically, in political participation levels, in occupational composition; she is hampered by unfair family planning systems, and domestic inequity.

In view of the fact that the study concerns gender subordination of the Nigerian women, it is imperative to present an overview of their past and current situation, causes of their relegation and their efforts to minimize their secondary status in their own society. Thus chapter two focuses on the African woman's battle against sexism²

¹Women are chief providers of subsistence produce but are not technologically equipped to handle the high demand for food brought about by the population surge.

²Sexism is a belief system premised on the theory that the physical differences between men and women are so profound that they should define all socio-economic functions of men and women. It presumes that reproductive roles are decided by gender, and that gender is the catalyst that governs their whole lives—from socio-economic pursuits to their connection with the state and public parastatals and mainly to each other. Sexism is apparent in all constructs of conduct from vague actions and communications to exploitation and subjugation, and in all human institutions.
and the attending complexities of the struggle. Chapter two also presents a review of selected literature on and the limitations of legal reform. The literature review presents the reader with related literature on women in general and African women in particular. The research does not claim to cover all related literature that could be included in the topic under scrutiny. The primary objective of the review, therefore, is to provide the reader with work done on the status of women by other scholars.

The African woman continues to be a subject of analysis by many scholars. Oftentimes, the scholars' writings portray an erroneous evaluation of the African woman. In fact, theories about the status of the African woman can be classified into three basic groupings.³

Assumptions of the Status of the African Woman

Theory one: Degradation postulate. This premise firmly believes that women in Africa are subjugated, behind and peripheral. Scholars with a Europeanized perspective of development largely consider African culture and customs as primal and undesirable and consequently blame them for the peripheral condition of women. Shelby Lewis calls these

groups of scholars the anti-traditionalists. The anti-traditionalists hold customary habits and practices as the root of women's subjugation. To them some legal acts legitimate this oppression and constitutional rights do very little to salvage the situation of women. The panacea is not only legislation, but serious corrections in the conventions, habits, customs and biases planted in the hearts and reasoning of men and women. Indeed, custom must be corrected if women are to attain equality in Nigeria. Customs that permit early marriages, customs that permit older men in their fifties and seventies to marry 14 year olds; customs that allow young girls to be kept out of schools and used as cultivation and domestic assistants, customs that condone child abuse and child molestation.


5Molara Ogundipe-Leslie calls tradition one of the six mountains on the back of African women. The other mountains are foreign intrusions, her backwardness, man which is deeply engrossed in century old attitude of patriarchy and male domination, race, herself as she is shackled by negative self image and self-defeating attitudes which stem from internalization of the ideologies of gender hierarchy and patriarchy. Molara Ogundipe-Leslie, "Another Development" in Comparative Perspective of Third World Women: The Impact of Race, Sex and Class, ed. Beverly Lindsay (New York: Praeger, 1983), 45.


7In several communities, it is not uncommon for old men to have casual intimate relations with under sixteen year old girls or even take them as brides.
customs that control women's body and its products—assigning the children to the man, and encouraging genital mutilation,⁸ purdah, customs that reduce the worth of educated wives, overburden and relegate women as a group are perceived as inimical to equality by the anti-traditionalist.⁹

The panacea must include modernization, education, and the general correction of agrarian productive systems. To do

---

⁸A synopsis on terminology. Female genital mutilation is also called clitoridectomy—removal of the clitoris; infibulation is the stitching up of the vaginal opening after clitoridectomy and the removal of the labia, leaving only a very small opening for urination. Excision—is a term borrowed from French which refers to clitoridectomy and removal of the labia, but not infibulation. The term female circumcision is unsuitable, as it presents a wrong comparison with the operation performed on infant boys. Clitoridectomy, and infibulation are medically hazardous, and they exemplify serious physical and psychological mutilation. Clitoridectomy is a direct assault on a woman's sexuality.

⁹The origin of gender discrimination continues to be a matter of debate among scholars, while some blame colonialism, religion and capitalism, some argue that male supremacy has always been in existence, that colonialism merely accentuated it. To those who hold this viewpoint, gender hierarchy stemmed from indigenous history and women have always been subordinated to men, even in matrilineal African societies, they were considered as second in place to men; the only difference being that inheritance and authority passed through women to the male of the line. Men dominate private and public life. Gender hierarchy was taken for granted in earlier times, and today the ideology of male supremacy permeates all societal structures. Stephanie Urdang, "Fighting Two Colonialism: The Women's Struggle in Guinea Bissau," in Political Economy of Africa: Selected Reading, ed. Rohrlich-Leavitt (London and New York: Longman, 1981), 45-57.
this essentially requires a focus on the correlation between production and authority, the dispersion of rights over the control of labor, the application of technology to production, gender access to technology, to mention a few for the purpose of rectification.

Another school of thought is the anti-Western premise. The anti-Westerners applaud the status of the communal, pre-colonial African woman. They opine that the pre-colonial economic role of women offered them considerable power over the sharing of resources.\textsuperscript{10} Westernization and colonialism robbed them of the right, as western capitalism relegated women's traditional roles to social and domestic categories\textsuperscript{11} and increased their dependency on husbands, fathers, and sons. The panacea, according to the anti-Westernists is communalism.

Another theory is the Socialist paradigm. Proponents of this viewpoint agree with the anti-traditionalists and anti-westerners on the marginalized status of women in Africa, they also agree with the others on some of the causes—capitalism and customary practices—but disagree on the


panacea. They believe that elimination of private property and embracement of socialism is the only remedy.\textsuperscript{12}

Despite the agreement of the anti-traditionalists, anti-Westerners and Socialist viewpoints, some scholars simply do not believe that the condition of women in Africa is any less than other women around the globe. This is the Relativism paradigm.\textsuperscript{13} Tinker and Bromsen,\textsuperscript{14} Boserup\textsuperscript{15} and some other scholars assert that gender discrimination is universal and that the degree of a nation's technological development decides the way that gender inequality would be exhibited in the labor conditions and social status of its women. The real problem, according to the relativists is lack of recognition of African women's roles in their various economies. Indeed biased statistics fail to indicate the ratio of women to men workers in Africa, which is one half to two-thirds of the African workforce. Most women are

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{13} Relativism asserts that pre-colonial African woman had economic equality and some political leverage; and that the contemporary African woman has constitutional capacity as other women; but she suffers gender inequality because of colonialism, capitalist mode of production, and urbanization.
\end{flushleft}

\begin{flushleft}
\textsuperscript{14} Tinker and Bromsen, 55-75.
\end{flushleft}

\begin{flushleft}
\end{flushleft}
land cultivators, usually with primitive implements. Family food production is commonly undertaken by women. With urbanization and migration women have to till the land. But as the economic contribution of African women continues to be overlooked, it impacts heavily on the direction of development efforts, which marginalize women. For instance, modern machinery for farming has been directed to the needs of men, resulting in more rather than less work for women. The introduction of technology into sectors where women's efforts can be advanced, may solve the problem.

The status of women is relative. African women play critical roles in the economic and social sectors of their nations, but the analyses of these functions by Western writers have been deficient in truth and comprehension. Indeed relativists feel that it is erroneous to stereotype African women as disadvantaged and deprived masses. They stress that each ethnicity, and community of African women have unique attitudes, values and characteristics. One thing that women in Africa have in common, is the undisputed fact that they are the pillars of production and the bedrock of the family.\(^{16}\) Generalizing them as a lump of subordinates is a misplacement of fact.

\(^{16}\) Severe economic recessions in developing nations and their reverberations with the social milieu deeply affect the lives of women in developing nations. Many of these women are engrossed with the basics of human existence-sufficient food, education accommodation, and primary health care. These difficult conditions of severe poverty are their
Indeed some scholars not only portray the African female as a victim of the African male and of traditional customs and practices, they also overlook or minimize the role of colonization in the situation. While the notion of being victims of male domination may be true to an extent, it is necessary to say that the African woman has not always been like that. The status of women in pre-colonial African societies, and especially in Nigeria, was strikingly different from what it is now.

In understanding the condition of any of the peoples in the continent of Africa, many African authors\textsuperscript{17} strongly suggest that an examination of the impact of colonization and enslavement of black people is crucial. Acknowledging that slavery is not unique to Africa,\textsuperscript{18} some scholars however point to the contrast between the dignity and status of women in early African societies and their degradation when slavery took on a racist character.

Colonialism, was a disengaging experience that obliterated and stifled the voice of Nigerian women. The dominant problem, other concerns are peripheral. While different variations are found in the situations of these women, the denial of women's rights and opportunities are a common concern.


\textsuperscript{18}Studies indicate that it has been practiced at one time or the other in most societies of the world.
colonial strategy of circuitous control created a gender-oriented executive establishment that endures in spite of de-colonization. The British government's socio-economic approaches that handicap women and the political arrangement that empowered men to rule women are continually blamed for the current disadvantaged status of women in Nigeria. Both strategies robbed women of their traditional authority.\textsuperscript{19}

\textit{The Pre-colonial African Woman}

Although, each of the regions in Nigeria has a distinct history and culture with respect to women's role in the society, they all share a "separate spheres" approach to male and female relations. The sexual division of labor\textsuperscript{20} in pre-colonial Nigeria was primarily correlative,\textsuperscript{21} rather than hierarchical, thus assigning even worth to gender labor.\textsuperscript{22} Women's economic activities were complementary to those of


\textsuperscript{20}Some scholars claim that pre-colonial gender division of labor was contemptuous of women's work and was poorly regarded when not unpaid. Urdang, 49.

\textsuperscript{21}Critics such as Stephanie Urdang had argued that pre-colonial gender division of labor was accompanied by contempt for women's work which was further condemned by men if purely unpaid.

men. The division of labor along gender lines facilitated reciprocity of ventures. In situations where the different gender were involved in the same economic activity such as farming or weaving or trading they produced different items. Equal value was assigned to labor regardless of the gender, so differential compensation was never an issue. Production was an all inclusive teamwork by the gender and youngsters. Subsistent husbandry plus an accent on group survival and communal ownership discouraged private ownership.

Traditional mores reproved individualism and accretion and accentuated cooperation, collectivism and sharing. Women's autonomy was advanced by pre-colonial customary mores that recognized female forcefulness and cooperation as positive, and not atypical. Indeed, a woman's status changes several times in her lifetime thriving steadily during her childbearing years and climaxing at old age, when she is deemed qualified for certain political positions, and spiritual responsibilities. With age a woman's status escalates as she acquires control over her offspring, her daughters-in-law and her grandchildren. Elder women oversee the domestic household chores, they teach young children and act as midwives, healers and seers. Elderly and menopausal

---

women were revered for their wisdom and lengthy experience over the ages, hence they bubble with self-esteem and they are quite influential in their various neighborhoods. Thus age and seniority confer certain authorities on the Nigerian female.

In pre-colonial\textsuperscript{24} times, parallel chieftaincies\textsuperscript{25} were common. Women held formal leadership roles in matrilineage and were influential in policy-making patrilineages. The public domain\textsuperscript{26} was not considered as the sphere of men, rather it was one in which both sexes were recognized as having important roles to play. Women had their own administrative cabinets which dealt with issues of concerns

\textsuperscript{24}Here the term pre-colonial refers to the period before the mid- and late-nineteenth century from which European colonization is historically dated. Some information concerning African social life in pre-colonial times is gathered from contemporary written sources, but most information comes from anthropological constructions of "traditional life," using oral history and ethnographic methodology. Due allowance must be made for possible distortions in these ethnography, given the fact that these are the available data for the portrait of Africa's socio-cultural history.

\textsuperscript{25}One line made of men, the other of women.

\textsuperscript{26}The issue of "public" versus "private" continues to create controversy. Some anthropologists argue that women in pre-colonial Nigeria, and in African societies occupied the "domestic sphere" and men the "public sphere" and that created a subordinate status for women because power and control lie in the public realm, but the truth is that there was a blurred line between the two spheres in pre-industrial Nigeria. Thus the hypothesis of a segregated, non-hierarchical but parallel-sphere for women and men in pre-colonial African societies continues to gain more support among contemporary African scholars.
to women. The cabinets defended women's social and economic pursuits, through their trade and craft guilds they spoke on matters of taxation and maintenance of public facilities such as markets, roads, wells, and streams. Women were the pillars of retail commerce. The pre-colonial political climate embraced the involvement of women in part of the recognition of women's intuition, spiritual prowess, and their economic and parenting experiences. In fact, some male secret societies such as the "Gelede" among the Yorubas esteemed the reproductive power of women and consulted them for healing some male specific diseases. So women's reproductive capabilities and roles as healers made them awe-inspiring personalities that were highly revered.

The participatory role of women in the pre-colonial administrative structure conferred stupendous political characterization to some women both in the Yoruba and Igbo societies. In Igboland, women such as the Ezeala (a strong spiritualist, well respected by the Nd'inyom); in Yorubaland, women such as the Iyalode of Ibadan, Madame Efunsetan Aniwura and Madame Jojolola who died in 1932 were very powerful women in the societies. Jojolola was the

---

27 On the political participation of women in pre-colonial Africa, see Anne Lebeuf's article in Denise Paulme's Women of Tropical Africa (Berkeley: University of California Press, 1963), 66-76.

second Iyalode (first lady) of Abeokuta.²⁹ She used her position and influence to promote the interests of the traders and cloth dyers (adire) of Egbaland. These women served as judges over disputes, instituted and implemented polices and directives and functioned in partnership with male chiefs to govern their societies. These women and their peers in neighboring societies have immense networking competence and organizational skills that empowered them to enlist the support of various women regardless of their economic, cultural or religious orientation to work together in achieving their diverse goals.

In Igboland, during the precolonial times, the Obi (male monarch) of Onitsha ruled in parley with the Omu (female monarch), and later with "Ikporo-Onitsha" after the fall of the Omu establishment.³⁰ In short, the historical accounts of pre-colonial Nigerian peoples portrayed a non-competitive, consensus seeking cooperative gender relationships.

This non-encroaching, complementary arrangement fostered reciprocal gender deference, as each group had


equal access to the checks and balances that could impair their rights. Men who violate women's rights may be castigated through mystical intercession, rites, coercive gangs, they could be ridiculed by a group of women, they could be "sat on", or taunted, assaulted, or have their personal belongings destroyed.

With the advent of colonialism and the embrace of the western credo, being aggressive and frank became unwomanly and primal while being cosmopolitan and sophisticated meant being acquiescent and docile. Colonization upset the legal arrangement of African communities interjecting them into


33 Colonialism was the coerced and vicious synthesis of the African continent into the world capitalist system. The synthesis was procured through armed intervention, monetization of African economies, infiltration and domination of imperial colonial commerce. The economic system was typified by an accumulation of discordant systems of production, dependence on external trade and technology, convolution of resources, development of export commodities, and limited local funding for investment and development. Colonial social affiliations were built on diverse mixture of African and European patriarchies under the backdrop of a racially patterned domination and subservience. Claude Ake, A Political Economy of Africa (New York: Longman, 1981), 4-19.
nineteenth century European notions of patriarchy. For African women, European patriarchy was a major setback. Their rights were disoriented and they became more subaltern. Although the Muslim religion had allegedly created a secondary role for some women, when colonization introduced Christianity to the African arena, it completed the cycle of subjugation. These religions are very pro-male\textsuperscript{34} and they legally and politically agitated the conventional structures of the communities, producing ancillary ranking for women. Today, as a result of these disruptions, women are confronted with legal struggles to claim their rights and redress the biases especially in family law—marriage, divorce, the sharing of property within marriage, inheritance, the possession of their own bodies and children, among other concerns. Contemporary political apathy of educated women is not an absolute consequence of custom but of a disengagement from women's political heritage caused by colonialism.

Colonial capitalism,\textsuperscript{35} according to Claude Ake,\textsuperscript{36} convoluted the social relations of the African extended

\textsuperscript{34}Ibid. Christianity assigns a subordinate role for women. Today women are challenging inferior status. Leadership rank for women in the Muslim religion is outlandish. This is being challenged in some Muslim communities.

\textsuperscript{35}Ibid. Capitalism is an economic system controlled chiefly by individuals and private companies instead of by the government. In this system, individuals and companies own and direct most of the resources used to produce goods and services. Such resources include land and other natural
family, and the pre-eminence of kinship and lineage within the precolonial African communities was warped by: the privatization of land ownership; the development of large-scale capital farms; the estrangement of land from the proletarian to the large-scale farmers, and the rise in agricultural wage labor. The worth of traditional African women's labor was altered because of colonial capitalism's resources, labor and capital. Capital includes factories, equipment, and money used in business activities. Capitalism is sometimes called free enterprise or modified free enterprise because it permits people to engage in economic activities largely free from government control. Other names for capitalism include free market system, entrepreneurial system, and laissez faire. Capitalism's emphasis on private economic decisions makes it different from the two other major economic systems—Communism and mixed economies. In a Communist economy, the government owns or controls most of the resources used in production and develops national plans for their use. In a mixed economy, the government does some economic planning and controls some industries, but it also allows some individual choice.

\[36\text{Ibid.} \] Capitalism allows much personal freedom and provides a high standard of living for many people. But capitalist economies often face several problems. These problems include: (1) economic instability, (2) inequality in the distribution of wealth, and (3) neglect of the public interest. Ake went further to explain the impact of capitalism in Europe itself. He opined that capitalism realigned class and gender configurations as the European political system highlights a centralization of bourgeois power, with accent on freedom, equality, and popular rule premised on universal suffrage. Economically, production was transformed by industrial and technological revolution and the formation of a wage-based working class. Socially, interactions were patterned.

\[37\text{In fact, both men and women were forced into dependent economies which culminated in the impoverishment of the continent of Africa. The continent was coerced to the task of bolstering alien metropolitan economies, by vowing their own surplus to their colonial masters. Walter Rodney, How} \]
separation of the workplace from the family. Women were further marginalized in the labor market, creating fresh monetary configurations between the genders. The transformation of the process of production and monetary patterns altered the political philosophy of the populace and affected the social relations of the gender. It is therefore not a surprise that some scholars blame the marginalizing effects of colonial political and economic structures for the low participation of non-educated rural women and poor women living in the cities.

Nigerian men gained enormously from the intrinsic gender discrimination of the colonial system of government. They did not have to co-rule with women as in the pre-colonial period. With the new system, they are empowered to make decisions for women. Women on the other hand were encouraged to defer to their husbands while the domestication of women was encouraged as a sign of affluence and self-sufficiency. As men succeeded economically,


38 The colonial government and commercial establishments limited most salaried jobs to men only.

39 Nkiru Nzegwu, 444-66.

40 H. Safa, "Women and the International Division of Labor," in _Women and Work in the Third World_, ed. Nagat M. El-Sanabary and Margaret Wilkerson (Berkeley: Center for the
educationally, and politically they conceitedly held on to power and inadequately dispensed resources.41

In fact, the acceptance of Western gender stereotypes did immeasurable harm to Nigerian women. Liberated from the checks and balances that co-governance provided, gender discrimination was heavily constructed into policies, programs, and structures of the system to preserve it for men.42 The outcome was the development of a politically inactive women population and prejudicial self-serving men.

Study, Education and Advancement of Women, University of California, 1983), 131.

41Nigeria's independence in 1960, and the end of colonialism in Africa did not correct the discrepancies in the system because the structures of colonialism remain unbroken. Neo-colonialism prevails as Africa continues to depend strongly on its colonial masters. The original exploitative, universal division of labor continues unabated, countries less dependent on raw materials continue to thrive, the world economic system flourishes, some countries continue to experience abundant growth at the expense of the developing nation states. Imperialism, neo-colonialism and the inequalities of the global economic system prevail. Today, Africa is economically behind, politically unstable and have general disagreement between its traditional convictions of women's function and European sexism. The low political participation of Nigerian women as against their pre-colonial complementary role is a manifestation of cultural domination of the West. Samir Amin, Neocolonialism in West Africa (New York: Pathfinder Press, 1976), 11-19.

42Through colonialism, Africa was syndicated into the world economic structure principally for exploitation. Colonists main focus was Africa's vast natural endowments. Their syndication involved compelling men to quit subsistent agricultural activities, this generated cheap male labor that was migratory and periodic. In the interim, women had to support the migrating salary seeking husbands through unpaid labor. Women were systematically cast to the sustenance and reproductive domain. Thus colonialism's
Ironically, while the women in Nigeria were being indoctrinated into a non-confrontational, subservient feminine way of "elegant" western behavior sanctioned by the various religions, \(^{43}\) the western women were struggling hard to break the chains of subordination. \(^{44}\) In fairness to women in Nigeria, it is imperative to emphasize that they strongly resisted colonial policies that directly affected their trade interest. Through petitioning and affiliation with elite and the use of the press they were able to challenge some of the obvious policies that clearly affected them adversely. \(^{45}\)


\(^{43}\)Christianity and the Bible expect women to be deferential and submissive to men.

\(^{44}\)During the industrialization period, American women struggled for rights of education, earnings, property, and access to birth control. By the 1970s, they actually succeeded in securing reforms for laws that discriminated against them in the family, employment, and in cases of rape.

\(^{45}\)Le Roy Denzer, in "Colonial Nigeria" (Paper delivered at the Congress to Assess the Impact of Colonial Rule in Nigeria, 1989), 5-15, gives a detailed account of the struggle of Yoruba women during the colonial period to protect their trade.
particular continues to be interesting because of the common nature of their struggles, and the correlation in the methods they apply in solving their difficulties.

Paradigms for Exploring the African Woman’s Struggle

Several approaches have been used to explore the oppression of women of African descent. Most of the studies done on African women reveal the complications of comprehending "patriarchy," "reproduction," and "ideology" within the historical materialist background of the culturally contradictory situation of the continent of Africa. Some of these approaches include the nationalist method which focuses on the abuse advanced by racism,\textsuperscript{46} gender and class oppression and seeks to center on black\textsuperscript{47}.

\textsuperscript{46}In understanding the oppression of the African woman, race is a strong variable. Race is crucial because the international economic order is divided along race and class lines, with the industrialized countries, comprising of white people and approved whites like the Japanese occupying the northern hemisphere of the North-South division. Race influences the economies of North-South admixture. Universally, race is a prominent variable of imperialism and neo-colonialism. The underdeveloped status of the African woman is a consequence of colonization and neo-colonialism, encircling poverty, ignorance and the absence of a scientific attitude to experience and nature. Ogundipe-Leslie, 45-69; Quinta, 23.; Nzegwu, 444-66.

\textsuperscript{47}The term "black" is controversial. Not all women of African origin fit this nomenclature. Women of African heritage have diverse colors that dictate legal status and cultural affiliation in the society they live. In the United States, the infinitesimal affiliation with African parentage by law is perceived as black, in other societies, this is not so. So in the study of African women, color and cultural perception should be considered.
women's efforts to deal with the situation. The integrationist method has its flavor from the American civil rights movement which advocated integration; hence this paradigm emphasizes the struggles of African women to crack the block of racism through infiltrating into the center. It stresses their contributions to Western culture and how they have been exploited and hurt by the larger society. The integrationist paradigm is also called the traditional approach or the historical approach.

In studying the African woman, a Marxist feminist strategy has also been utilized in recent times. The Marxist paradigm employs the variables of race, class and gender to review the African woman's subjugation. Feminist scholars such as Sharon Stitchter, Elizabeth Schmidt, Christine Obbo, Claire Robertson, Jean Koopman Henn, Jane Parpart, Mamphela Ramphele, Penelope Robert, Nancy Folbre are among the few scholars who have aided our comprehension of African women's subjugation from a system of production inquiry.

---


50 Cindy Courville, "Re-Examining Patriarchy as a Mode of Production: The Case of Zimbabwe," in The Anatomy of Black
various studies of the African woman range from the pre-colonial and colonial system of production, to unequal gender associations and class alliances. In the 1980s Marxist feminist writings of Karen Sacks, Heidi Hartman and Mitchell Barrette have explored women's subjugation in terms of gender relations and its linkages with the processes of production and reproduction within the framework of historical materialism.\textsuperscript{51}

Before these scholarly expositions, class was considered as gender-neutral, with little emphasis on the linkages of gender to the capitalist mode of production. In contrast to this assumption radical feminists argued persuasively that women's repression is a consequence of gender control and not class domination, thus the exploitation of women is the most integral form of domination.\textsuperscript{52} Nevertheless, the patriarchal system of the production paradigm spotlights the material cornerstone of gender exploitation. This viewpoint forges a class conscious, gender oriented society in which a class of male bourgeois possesses the systems of production and a


powerless proletarian workforce. Therefore, the pattern of association in Africa is premised on gender specific labor groupings; production based on women's agrarian efforts; and land ownership established on the recognition of sexual functions and patrilineal and matrilineal inheritance configurations. Class oppression seems to be the dominant variable in this paradigm. Critics of the Marxist approach claim that its strong emphasis on class puts too little accent on women as a group and too much generalization on workers' inertia and fight against the exploits of capitalism. The Marxist paradigm is also criticized for utilizing western ideals to evaluate values and that it lacks a cross-cultural viewpoint.

Other scholars have clearly emphasized that the African woman has:

Six mountains on her back: one is oppression from outside (colonialism and neo-colonialism?); the second is from traditional structures, feudal, slave-based, communal, etc.: the third is her backwardness (neo-colonialism?) the fourth is man: the fifth is her color, her race: and the sixth is herself.

---


55 Ogundipe-Leslie, 45-69.
Like Ogundipe,\textsuperscript{56} some other scholars employed radical feminism to explain the plight of the African woman.\textsuperscript{57} This paradigm confronts gender oppression as well as race and class oppression. Radical feminists spurn women's study that excludes the dialectic of female victims of patriarchy. Thus, a radical feminist paradigm to black women's history would essentially place gender exploitation at the core of the thesis, with patriarchy as the main variable and as the tool for the oppression.

However, for many scholars,\textsuperscript{58} African feminism is the solution to emancipate the masses from assorted forms of repression. African feminism links racial, gender, caste, and societal forms of repression to construct a more all-encompassing classification of feminism through which women are considered supremely as individuals, rather than sexual objects.\textsuperscript{59} Proponents of this approach emphasize that African

\textsuperscript{56}Ibid., 56.


feminism is a dogma which calls for emancipation from subjugation and injustices that emanate from the economic, socio-political and habitual manifestations of racial, cultural, sexual and class biases.

African feminism is more comprehensive than mainstream feminist dogma because it emanates largely from the painful consequences of the cleavages and differences of human relations. Proponents of African feminism, say it is humanistic feminism, the panacea for the eradication of all oppression.

Correlative independence, and teamwork between the gender for group preservation are the paradigms for exploring African feminism, unlike the configuration of cleavages, contention, antagonism and personalization which Western feminism nurtures. The genders in traditional African community had domains of sovereignty- in fiscal, metaphysical, and socio-political realms protected by diverse systems of regulations. Women's efficacy in employing these structures to curb male domination provides a key facet of African feminism. Their involvement in production and reproduction did not produce any discrimination, because production for subsistence and reproductive capability was highly valued as a huge role in
the fortification of mankind.\textsuperscript{60} The paradigms of African feminism evolved from the assumptions of men and women as a unit, neither of which can survive without the other. Sexual distinctions and similitude, as well as gender division of labor, reinforce gender autonomy and harmony. African feminism recognizes the uniqueness of the genders but emphasizes correlation and complementarity.

African feminism seems practical for the study of African women because of three essential components. First, it acknowledges the general nature of the conventional African woman which provides a universal paradigm for historical account. Second, the theory utilizes African ethics for deciphering manners, family values, campaign, ventures and formations, thus lending credence and authenticity to the theory. Third, African feminism has broad variables including gender, race, religion, class, tradition, sexuality, cosmology, religion--all these provide rich parameters that can be universally employed to explore gender exploitation.

Regardless of which methodology is employed, the truth is that the pursuit of equality in Nigerian society stratified by gender, class, earnings, level of scholarship, age, physical and intellectual competence is an uphill

struggle. In spite of the complexities of the struggle, scholars continue their quest for understanding with the goal of finding solutions. Boserup\(^6\) produced the first statistics which indicated the job performance of women around the world, their enormous workload, how misleading economic data which excluded women were, and the need for correct data for effective policy changes in this arena. The other set of studies were conducted by women intellectuals who were encouraged by the rising consciousness of women in the Diaspora. They did extensive field work in the third world, from the perspective of women as social actors.\(^6\) Some of the doctoral candidates who could not do field work, explored the existing multicultural writings on women for data.\(^6\)

The importance of these studies became apparent when the United Nations declared 1975-1985 as the International Decade for Women. However, policy designers and support staff who were preparing for the debut seminar in Mexico City in 1975, found that they lacked substantive data on women; they had to solicit for further research in order to have data to use for evaluating women's position and for

\(^6\)Ibid., 171.


making policy propositions. As the debut day approached, women intellectuals all over the world embarked on various research about others, writing about women's plight, their linkages to the social systems, and making suggestions about appropriate policy changes. During the five years between the debut at Mexico City and the follow up forum in Copenhagen in 1980, a stream of material on women appeared in the educational and popular press. Newland recapitulates most of the concerns raised by these reports.

The most common point addressed, revolves around women's negligible accomplishments in all realms of socio-political fields. Women's subordinate position was noted in fields of education, job opportunities, and even politics. However, definitions of literacy, accomplishment, and job opportunities all had a male preconception. The presumption was that when women caught up with men on the socio-economic measuring scale used by social scientists, they will develop

---

64 Tinker and Bromsen, 11-21.
political power.68 A second thesis viewed women in the third world as occupying a distinct social domain from that of men; analysts of this viewpoint examined how women lived in and managed their section of the social system. Those authors centered on the segregated spheres of men and women in non-Western societies but they failed to examine and recommend how, in view of the surge of contemporary new states, women would be able to relocate their power from one domain to another.69

A third theme dealt with the exigency of developing awareness of women's labor and incorporating that information into future consideration and strategy. Boulding70 and Giele71 among others insisted that national governments and international policy designers comprehend the role of women in their economic, social, and political systems and design programs for change which would constructively assimilate them. Despite the extensive rise of general data about women in the last twenty years, adequate research on African women


71Ibid., 16.
in particular remains a problem. Most of the literature about them concerns marriage and family, often from a male viewpoint. Writers considered the difficulties of women's illiteracy and endorsed changes aimed to invalidate bride wealth and polygyny and to enhance inheritance capacity.72

Ethnocentric definition of female emancipation fluctuates with the times. It took a different meaning when Western women flooded the labor market in the 1940s because of the war in Europe and America. The tune changed, after the war, when women were advised to seek fulfillment at home and domesticity. This perception of satisfaction in domesticity is reflected in the works of some scholars' notion of African women. They have said African women were virtuous because they conceded to subordinate status in terms of their relationship with men. Evans-Pritchard, for example, commented that:

From the outside and from our point of view, we may say that she [non-western woman] has an inferior position, and she herself may feel this to be the case, but she is not resentful on account of it. She sees herself as different from men and as having a social status different from him; but it is for her less a matter of level, than of difference, of status. Primitive women do not see themselves as an underprivileged class as against a class of men with whom they seek to gain social equality. They have never heard of social equality.73


73The title essay of Evans-Pritchard 1965 comes from the Fawcett Lecture he delivered on 25 October 1955, at the University of London.
However, the publication of *Women of Tropical Africa*\(^7^4\) in 1963, an assortment of articles by women anthropologists, provided a new perspective in the examination of African women.

Western and African researchers, especially women began to conduct an expanding number of studies of women's undertakings in Africa. Steadily, more and more intellectuals embarked on the venture. The enlargement of African studies programs in the 1960's, plus the development of an intensified feminist consciousness on the part of western scholars, unquestionably encouraged this concern.

Sadly, during this period some of the literature that evolved was either sentimental or consistently erroneous. In the pursuit of recognition to counterbalance a past that had overlooked and misrepresented the legacy of women in Africa, writers described great queens, amazons and matriarchy. Nzinga, a sixteenth-century monarch in Angola, was described as an Amazon Queen who led an army of fierce women warriors. West Africa was described as the nucleus of matriarchy, and the continent in its entirety was depicted as stormed by Amazon armies.\(^7^5\)

---

\(^7^4\) *Women of Tropical Africa* was first published in 1960 as *Femmes d'Afrique noire*. Three years later, it was translated to English.

\(^7^5\) The issue of matriarchy in Africa and other countries has been discussed by Joan Bamberger in "The Myth of Matriarchy: Why Men Rule in Primitive Society," in M. Z.
Other writers gloried in the astonishing independence of West African women and romanticized polygyny because it freed women from having to cook for their husbands every night. However with the encouragement of field research and the accumulation of additional data, more balanced interpretations of women's activities appeared. In addition to changing the picture of African women in the social, economic, and political setting of their own societies, recent scholarship has suggested that the colonial impact far from liberating African women, actually diminished the prerogatives and rights which they enjoyed. 

Several authors place the blame on the ripples of westernization. On the other hand, other scholars argued that colonialism merely brought to the fore ingrained conventional ideologies of patriarchy or male supremacy which were not accented in pre-colonial African communities.

Either way, the consequence of this is that women are economically marginalized, politically ostracized, they are naturally excluded from public affairs except for a few

---


76Some scholars continue to question the idea that African women had significant independence in the pre-colonial era.

77As discussed previously.
tokens, but in most cases, their fervor and campaign labor are exploited by their various political parties. All these developments have negatively impacted on the cultural outlook of the people.

Some scholars\textsuperscript{78} suggest that the combination of capitalist exploitation and European ideas about appropriate economic roles for women destroyed the economic independence and traditional form of social authority exercised by African women in the pre-colonial era.

Certainly, development models imported from developed countries sometimes threaten women's traditional jobs because Western notions of appropriate roles and occupations for women tend to be exported with developmental aid. Truly, experiences of colonialism and the systematic infiltration of contemporary ideas pertaining to legislation, professions, fiscal development, or scholarship fundamentally influence conventional systems both in the urban and rural areas of developing nations:

Most developmental aid comes from the "West." Such aid carries with it occupational stereotypes current in the West which reinforce attitudes of modernization held by Western educated indigenous planners. This vision of society places women in the home and so encourages planners to ignore women's present contributions to the

economy. For this reason, women around the world are too often adversely affected by development because their economic independence is eroded.\textsuperscript{79}

Nevertheless, the impact of western development reflects clearly in the notable disparity in the situation of the rural women (that are least affected by western influence) and the urbanized women in Africa. According to Chapman, the position of women in subsistence agricultural economies is relatively equal, especially in economic matters. A point acknowledged by Dennis Paulme,\textsuperscript{80} who observed that whatever equality women had, had been lost over the years with westernization. In her classic, \textit{Women of Tropical Africa}, Paulme\textsuperscript{81} wrote:

\begin{quote}
Since the arrival of the Europeans, the new modes of life introduced by them have altered the distribution of tasks in a way that has too often been disadvantageous for women...and while the introduction of cash crops may have provided the men with a substitute for their former warlike activities, women have found that this has only imposed new burdens on them.\textsuperscript{82}
\end{quote}

Indeed, women's workload increased in many areas because of male out-migration for wage labor. Women's legal rights to the land were circumscribed in the change-over to Western systems of individual land tenure, and men controlled the


\textsuperscript{80}Ibid., 50.

\textsuperscript{81}Ibid., 8.

\textsuperscript{82}Ibid.
proceeds from the new and lucrative cash crops such as coffee, cocoa and cotton. Impact of westernization on women is similar in other parts of the Third World. In some countries, for instance, the imposition of westernization characterized by capitalism created some major changes in the sexual division of labor and power. The question that needs to be answered is how do capitalism and patriarchy interact and support each other as systems of power?

Jean Grossholtz attempts to answer this question in her study of the interlinkages of colonialism, capitalism, and patriarchy. Using Sri Lanka as a case study, she explains how feudal Sri Lanka with a communal social and economic life and some experience of matriarchy and polyandry was transformed into a capitalist appurtenance of Europe, strongly patriarchal in its distribution of power. Capitalism, she observes rests on depicting women as extensions of men and not as separate individuals, to enhance male power and comfort. The system assigns women an unpaid and undervalued form of labor, yet on the flip side, women's role as mothers and wives is the bedrock of the society:

They are not even creators of surplus value, for the value they create is nowhere assigned a market value.

... the economic system itself benefits from this arrangement, creating a private, non-paid sector--a form of labor that is not included in the cost of production but is necessary for the creation of social peace in an exploitative system.\textsuperscript{84}

According to Grossholtz, capitalism also utilizes women as a paid labor force--as a ready supply of cheap, temporary labor; and also as sexual objects even when utilized as a work force. Colonialism and Western capitalism created a power structure that embedded capitalist exploitation, foreign ideology, and patriarchal power into patterns of land ownership, labor and family life.\textsuperscript{85}

In Latin America and Africa, women's equality seems largely to be outside "acceptable" marriage patterns, with the official wife losing independence unless she is a highly trained professional. Hoofer notes that some women of traditional societies played an important political role. For example, among some groups in West Africa, women were frequently elected to be chiefs. British colonials refused to recognize such chiefdoms and tried to circumvent this aberration.\textsuperscript{86}

Igbo women in Nigeria for instance, had their own political institutions and participated in village meetings

\textsuperscript{84}Ibid., 128.

\textsuperscript{85}Ibid., 129.

along with men. Particularly effective was the use of nonviolent hazing of men who had interfered in the market or mistreated their wives. The technique known as "sitting on a man,"\(^{87}\) achieved justice by shaming the guilty person. Use of this technique was used against the British: clashes led first to burning, then to shooting. History records such an eruption in 1929 as the "Women's War."\(^{88}\)

The tradition of politically active women in Nigeria continued after independence; women played leadership roles and had a separate party during the several election campaigns. In Ghana, their strong support for Nkrumah helped his electoral victory, while elsewhere in Guinea, women wielded power in favor of Sekou Toure's election. Indeed, it was the strong role of women of West Africa which prompted General Charles De Gaulle in 1944 to offer equal suffrage to many African colonies. Only then did he realize that it would then be necessary to extend the right to vote to French women as well.\(^{89}\)

Christine Quinta,\(^{90}\) in her book *Women in Southern Africa*, provides a unique first hand account in essays,

\(^{87}\)Van Allen, 2.

\(^{88}\)Ibid., 3.


interviews and life stories of the achievements and struggles of women in Southern Africa, and an informed examination of women's role in African society before, during and after colonialism. Quinta said that western authors have failed to provide a realistic assessment of African women. As a result, African women emerged as victims of African males and of traditional customs and practices, with colonization playing a minor role, if any:

The African woman of the rural areas is portrayed as little more than a slave, who goes about her tasks with silent acceptance. She has no past and no future, given the inherent backwardness of her society. Her consciousness about her oppression is awakened only when she comes into contact with Western women, and she is surprised by their comparative freedom. She never speaks for herself but is always spoken about.\textsuperscript{91}

This image is projected with such consistency that it has almost been transformed into "fact" by mere repetition. In part, this notion extends to Africans as a race, so that African women come to be perceived in this way not because they are women, but because they constitute an oppressed race. Quinta argues strongly that:

The need to examine the colonization and enslavement of black people is crucial to the study of any aspect of Africa and its people. The contrast between the dignity and status of women in early African society and their degradation when slavery took on a racist character, after the enslavement, brings to the fore issues which must be closely analyzed if we are to understand more.

\textsuperscript{91}Ibid., 11.
clearly some of the perceptions of us perpetuated in literature of the west.\textsuperscript{92}

Quinta stresses that her book seeks to put the record straight by reflecting the contributions of African women to the world, as well as what the world has done to black women, especially those of Southern Africa:

The enemies of African women, particularly in Southern Africa, are colonialism, imperialism, white racism, class oppression and sexual oppression.\textsuperscript{93}

In fact, women's subordination takes place at numerous levels--lineage structures, development projects, ideological parameters, national and international policies. Quinta said that the first step towards a true emancipation is a total eradication of colonialism, neo-colonialism and imperialism, and subsequently, the erasure of all the effects of exploitation based on race, nationality, class and sex. Quinta says that:

True emancipation goes beyond legislating for equality. If one examines the situation in some Western European societies, particularly Sweden and other Scandinavian countries with Social Democratic welfare state arrangements, where women have gone a substantial way toward gaining legal equality, one immediately notices that women continue to be degraded through the portrayal of their bodies as vulgar toys in the pornography that abounds in those same societies.\textsuperscript{94}

\textsuperscript{92}Ibid., 12.

\textsuperscript{93}Ibid., 15.

\textsuperscript{94}Ibid., 14.

Pozsvantad Mitres: The Women’s History of the World (New

This raises numerous questions. Is the household the

humanity of control, came mental voice...

physical force, and successfully suppressing it as a

suspiciously of adultery, as some still do today. Backing up

history, men of all cultures had the right to kill a wife

years. Until very recently within the great time-span of

the power of males in this undoubted form for thousands of

they were legally, financially and physically suppressed to

children by one man (their father) to another (as husband)

make dominant, the explanations interlock. Handed over as

have it? According to Mitres, as with the "intertwined"

given that men have sought control, why did women let them

Justice’s women’s intertortorty to men. 99

successing so another in the endless work of

"scientific," "psychological," and economic reasons

every epoch with a battery of retortions, pushed,

every aspect of life, indeed some sortonousy re-invented in

In these, male domination has been elaborated into

"advanced" cultures:

have a better chance of equality than those of more

historical record shows, that women in "primitive" societies

other authors, including Rosati Mitres, claim that

are dominating by white males.

she observes that prestigious and highly rewarding careers
processes? Do different cultures share the same ideology about women and the home? And how does ideology impact on women's role? Does it hinder their options? According to Bina Agarwal:

In order to understand the position of women, it is necessary to examine inter-household relationships, their dynamics and their historical, socio-economic and political contexts.\(^{96}\)

Sexism, is not just a phenomenon in the hearts of men and women, it is evident in the structures that preserve relationships of dominance and subordination. It is institutionalized. Sexism also has an ideology, implanted and perpetrated by institutions principally situated in the socialization process.

How did men succeed in enforcing the subordination of women? Miles says women's economic independence is related to their political role.\(^{97}\)

The process of development in subsistence economies has tended to restrict the economic independence of women as their traditional jobs are challenged by new methods and technologies. Because western stereotypes of appropriate roles and occupations for women tend to be exported with aid, modernization continually increases the gap between African women's and men's ability to cope with the modern


\(^{97}\)Miles, 56.
world. Elites in these countries are imbued with Western values and tend to accept eighteenth century's Western notion of women's subordinate place. Thus, women in developing societies are compelled to trade economic independence for dependency, while not yet benefiting from the legal equalities gained by western women through the civil rights struggle.

In the old urban societies where social stratification had already taken place, modernization and development have tended only to increase the inequities of the system and the gaps between men and women of the lower and middle classes. On the other hand, elite women in these societies have benefited from western education and ideals of greater freedom. Only in the Islamic countries have there been restricted response because of the tight control which male relatives hold over women. This control is also reflected in the extraordinarily high fertility rate everywhere among Moslem women.98

The dislocation which development causes in the traditional economic roles of women in subsistence farming calls for the search for alternate models for development. What is needed is not an imported model, but rather an

adaptation of development goals to each society. Only then can women now active in the economy be assured that their position will improve, and that development is not a boon for men only.

To the extent that women cannot own their economic fates or influence the major policy decisions which affect them, they are incapable of changing their status and the conditions of economic dependence under which most of them live. It is impossible for women, or any other group, to achieve economic independence and a significant level of economic influence. Political and economic clout are intertwined.\(^9\)

Economic independence could be defined as the earning of one's living. But Chapman argues that no one can be considered economically independent as long as law, custom, and public policy place limits on the freedom of self-determination.

Perhaps, this is where the problem of the Nigerian woman lies? Perhaps the disparity in the level of development of the gender in Nigeria could be attributed to legislative handicaps. Subsequent chapters of this project would examine the legal status of Nigerian women to

determine if legislation could be blamed for their backwardness which is revealed in all social economic indexes.

In Northern parts of Nigeria, some Hausa women share a history of a sad tale of complete economic and financial dependence upon men. Some of them are treated as caged birds in the household and confined to domestic roles. Some of the men in the Hausa, Fulani, Kanuri, Bora, Chinkeri areas of Northern Nigeria; some of whom are "alhajis" maintain harems consisting of numerous women of various castes, creeds, and colors and compelled them to satisfy their sexual desires. They justify their actions through their own interpretation of their religion. Yet, Muslim law manages private relationships. The intertwining of religion with legislation has severe consequences for women. An examination of legislation in many parts of the Muslim countries indicate that Muslim jurisprudence or shariah is limited in range to specific domains. Whereas, in general, the bulk of legislation executed in the business world such as laws governing revenue, taxation, commerce; laws governing the public sectors such as banking, standing armies, or political structures, to name a few originate from a former colonial government or adapted from other sources. In sharp contrast, the laws governing personal and family matters are regulated almost universally through Muslim jurisprudence, and
justified by reference to Islamic injunctions. Throughout most of the Muslim world, therefore, the Muslim identity of a community appears to be hinged almost exclusively on the regulation of family and personal matters.100

Unlike legislation that openly concerns the accretion of revenue (tax ordinances), labor laws and criminal laws, personal matters were often left to be administered through local legal systems and the Sharia Courts. For instance, the Muslim law accord men absolute rights to divorce their wives (usually through oral repudiation) while making divorce rights contingent for women, this implies that only men have the final authority to decide what is permissible and inappropriate in marriages and within kinship. In synchrony it means that "conscientious" women surrender their own aspirations, notions, and opinions in deference to their spouses, restricting the spectrum of a woman's individuality to that of an appendage to her spouse. Polygyny,101 purdah and harem have contributed immensely to the deterioration of the social status of some Nigerian women.102


101 Polygyny is the process of having multiple wives at the same time. It is very common in Nigeria. It is a practice that cuts along ethnic, religious, class, and educational lines. The Muslims use their religion to justify polygyny.

102 Youssef.
Indeed, the marriage system, illiteracy, religion, purdah, feelings of dependency, fatalistic attitude, poverty, social constraints and superstitions are the key factors that contribute to the deterioration of most women in developing countries. Women's economic subjugation leads to exploitation and is a denial of social justice and human rights. The development of a society requires full participation of all sections of the population and the creation of opportunities for full development of the potentialities of women. Actually the United Nations in its Declaration on the Elimination of Discrimination Against Women in 1980, made expansion of opportunities for women a key demand. The declaration contends that modern demographic trends and social changes such as rising age of marriage, smaller families, urbanization, migration, rising costs of standards of living calls for greater participation in decision making, as these developments are introducing major changes in women's roles and responsibilities. A social crisis would result if women are unable to meet these challenges because of social handicaps.

Limitations of Law

It is imperative for this study to provide an overview of the relationship between law and women's advancement
socially and politically, recapitulating some of the ways in which law restricts as well as facilitates political and social reform. As an establishment, law has both aided and limited the realization of women's advancement. The law's endorsement of equality and fairness empowered feminists to expound discrepancies in the law's management of men and women and provided a framework through which feminists could seek legal reform. In exploring the theoretical groundwork of law, however, women activists have found that the processes of legal reform are self-restricting, permitting reform only to a point and even reinforcing the basis of gender hierarchy that feminists seek to question. Comprehending these limitations may reveal why legal change has accomplished less for women than women activists had anticipated and can instruct prospective feminist approaches. One such limitation is the law's consideration of precedent. Law may be modified, but because law professes to sustain institutional confidence and constancy, change must be constructed on former judicial precedents and principles.

For women's rights advocates, this criterion poses two problems. First, existing precedents support a status quo that appeals more to male concerns than to female ones. As a result, discussions among women activists over matters such as compulsory job security for pregnant women, maternal
child custody preferences, and male only combat rules often turn to questions of short versus long term goals. In the short run, women seem to need changes in law if they are to compete in the workplace or in the courtroom. When these reforms are perceived as unjust privileges or affirmative action, however, they end up reinforcing stereotypes about women, which in the long run constrain women's chances. Similarly, a legal principle that looks hopeful and competent as an instrument for instant reform may turn out to be a constraint at a later time.

For instance, abortion rights for women in the United States were won in 1973 under a legal principle that seemed very favorable; the constitutional right to privacy. Basing this right in privacy rather than in anti-discrimination principle however allowed the Supreme Court to restrict poor women from having abortion, and further perpetuated the notion that control and abuse within the "private" family are outside legal intervention. This example and comparable instances have educated feminists that an approach of shallow reform often perpetuates rather than infirm the institutional groundwork of gender hierarchy, and that victory now usually means assuming a loss somewhere down the line.

On one hand, the traditional strength of the law is strong propelling women activists to work within and even
support the very systems they must challenge. On the other hand, as an instrument of change, law is often fragile: reforms generally fail to refurbish the social structures, ideologies and divisions of labor upon which any meaningful change ultimately rely on. Gender-neutral child custody laws in the United States for instance have not balanced the hardship of rearing children between men and women or even the percentage of mothers and fathers obtaining custody of their children at divorce. As Sylvia Law writes:

Achieving sex-based equality requires social movement for transformation of the family, childbearing arrangements, the economy, the wage labor market, and human consciousness. No constitutional principle mandates or allows courts to effectuate the ranges of changes needed to allow actual equality between men and women.\(^{103}\)

In a nutshell, the intensity and breadth of change needed to stop women's domination cannot be achieved through law alone.

Despite the complications and consequences of seeking change through the law, law represents opportunities for feminism. Law is power. Whether women opt for abortions, whether they are safe on the streets, or in their homes, and whether they may secure employment depend in large part on the protections law makes available. Legal reform may create problems for women activists and may not instantaneously

---

improve women's lives, but it's a necessary precondition for meaningful social change.

How important is legal theory to meaningful social change? The failure of legal reform to permanently secure an integral change in hierarchical gender relationships illustrates the inseparability of legal theory and practice. Although no single cause can explain this failure, the absence of theoretical understandings about the structure of law and its relationship to social change seem to be one important part of the problem. If feminists, for example, use employment discrimination doctrine to increase workplace opportunities for women without questioning the conventional categories of analysis or its andocentric approach to sexual difference, they will gain access to employment only on the terms that continue to reproduce men's social profiles more than women's.
CHAPTER III
CIVIL AND POLITICAL RIGHTS

The preceding chapters laid the groundwork for a general discussion on sexism, gender subordination, use of legal reform and its limitations. Chapter Three and subsequent chapters get to the core of the study—the Nigerian woman. Thus, Chapter Three examines the civil and political rights of the Nigerian woman. The first part examines civil rights in terms of personal liberty laws, adoption, labor laws, property laws, and criminal laws, while the second part of Chapter Three discusses issues such as constitutional privileges, citizenship rights, and political participation.

Civil Rights

Any discussion of civil rights normally calls for the definition of the concept of right. In Nigerian law, everyone has a legal right, even unborn children who are accorded legal consideration in cases of succession pending their safe delivery. The age of adulthood in Nigeria is 21. When a person is 21 years old, he is accorded legal capacity, but under the customary law women are ranked as persons of
inferior abilities. Legal right is the defense against tyranny and abuse. For a woman legal right means more. It means she could function independently on her own, make her own decisions, sign contracts by herself without spousal consent, secure and own property, engage in judicial arrangement, litigate or be sued. The Nigerian woman married or unmarried, however, does not have these rights, in an absolute sense. For a married woman, most of her actions require spousal consent—in securing loans, obtaining a passport, and in purchasing land. A male proxy is always used to secure the transactions. For a single woman to lease an apartment in the urban areas, a male’s approval is often required. This practice is prevalent. Although there are no legal requirements for these actions, but oftentimes a man’s involvement is often required to legitimize the action.

Nevertheless, it is necessary to stress that the Nigerian woman has come a long way since the age of the English common law when women were ranked plainly as inferior. According to the dictates of English common law, when a woman married, her legal identity merged into that of her husband; she was civilly dead.¹ She could not sue, be

sued,\textsuperscript{2} enter into contracts, make wills, keep her own earnings, control her own property. She could not even control her physical integrity--her husband had the right to chastise her (although only with a switch no bigger than his thumb), restrain her freedom, and impose sexual intercourse upon her against her will. The law considered women as chattels with no proprietary capacity.

Today, there have been some changes in terms of legal reforms since the colonial era, but the notion that a woman is an appendage of a man still persists, and this permeates gender relations especially in marital relationships where the man is considered the "boss."

The present civil law however, does not in general differentiate between a man and an unmarried woman. An unmarried woman can file suit and be sued in both contract and tort provisions. She is responsible for her liabilities and she can secure privileges in estate and investments. She has a right to self-determination. She could pursue the career of her choice, live wherever she desires and make her own judgment.

A married woman, however, does not have such autonomy in law. Her legal independence is curtailed by a host of

\textsuperscript{2}Ibid., 442-43. The common law handicap was not honored in the equity courts, where women could sue and be sued. J. Story, \textit{Commentaries on Equity Jurisprudence} (Washington, D.C.: Government Printing Office, 1836), 597-98. (herein-after cited as Story, Equity).
restrictions which would be addressed in detail later. For instance, the issue of domicile is a handicap for women.

**Domicile**

In family law, the validity of marriage, the question of the courts' jurisdiction in divorce and other matrimonial causes, are inextricably interwoven with a man's place of residence. According to Bromley:

On marriage, a woman automatically acquires her husband's domicile and retains it throughout her coverture (married life). She is incapable of acquiring a separate domicile of choice even if the spouses separate by agreement or under a decree of judicial separation. Similarly, if the husband deserts his wife and acquires a fresh domicile abroad, her domicile still automatically follows his. The law of Nigeria on domicile is the same as the law of England by virtue of Section 4 of the Regional Courts (Federal Jurisdiction) Act,

---

3 Domicile is a place of permanent residence. One may have several residences, but only one legal domicile at a time.


5 Ibid., 13.

6 Dolphin v. Robins, Cas.390. 7 H.L. (U.K. 1859).


1958. What this means is that a woman's legally recognized permanent place of residence is that of her husband's, even if they are separated, or living in different countries. This law assumes that a woman is a child or a property.⁹ One of the problems posed by this law is the right to file for divorce. Since domicile impels the prerogative of the courts to have jurisdiction in divorce affairs, women are at the mercy of their husbands to get out of the relationship as many of them find it hard to get divorce from unwilling husbands.

However, the Matrimonial Causes Act 1970¹⁰ was enacted to ease this hardship; whether or not, it has, is a matter of research. Nevertheless, women having problems with recalcitrant husbands who change their place of domicile within Nigeria seem to benefit from the law. Section 2 (2) states that petition for a decision of termination of marriage, or legal separation, or restoration of nuptial privileges, may be initiated only by a person domiciled in Nigeria. For this objective, a person residing in any state of the Federation is domiciled in Nigeria, and may file suit in the High Court of any state, whether or not he is

⁹A child assumes his or her father's domicile at birth; an illegitimate child (conceived out of wedlock or with disputed paternity) assumes his mother's domicile until she (if a woman) marries and acquires her spouse's domicile.

¹⁰It is also called The Marriage Act of 1970.
residing in that particular state.\textsuperscript{11} In essence, this Act establishes one Nigerian domicile for matrimonial purposes only. However, in situations where the husband resides outside Nigeria, a woman is allowed to claim desertion in a divorce petition, and the Act empowers the High courts to hear the case. But proof of desertion is not so easy, according to the Marriage Act Provision which mandates some criteria for abandonment. First, she has to satisfy the court that she has been residing in Nigeria for three years, before her petition, and either before her marriage or before the desertion. Second she must prove her status of abandonment at the time of petition.

It is necessary to emphasize that the Matrimonial Causes Act of 1970 only concerned Statutory Marriage. Under the 1979 Constitution of the Federal Republic of Nigeria, the Federal Government extended the Act absolute legislative authority to marriages; this concerns the formation, annulment and dissolution of Marriages other than marriages under the Islamic law and Customary law.\textsuperscript{12} In view of this mandate, the Federal Government legally accorded the State High Courts jurisdiction in divorce and matrimonial cases. This means that issues of statutory marriages are outside

\footnote{\textsuperscript{11}Nigerian Laws, Statutes, etc., Matrimonial Causes Act, 1970, Section 2 (3).}

\footnote{\textsuperscript{12}Nigerian Laws, Statutes, etc., Executive Legislative List, 1979, Second Schedule (Part 1), Section 4 (58).}
the jurisdiction of the lower courts including magistrate courts. Conversely, it means that non-statutory married women are not protected by the Matrimonial Causes Act of 1970. These include those who are married under Customary laws and Muslim laws, and who constitute the majority of Nigerian married women. Thus, women in customary law and Muslim law marriage are still handicapped by the requirements of domicile, which makes divorce difficult for them.

Violence Against Women

Domestic Violence

Feminists define spousal abuse as maltreatment, mistreatment, or illtreatment of a spouse. Feminists believe that spousal abuse is discernible only through a scrutiny of the social situation. The Nigerian society is patterned along gender lines leading to a situation where men control women. As the dominant group, men have access to significant material resources, while women are cheapened as secondary and inferior. Men of different social classes and races can possibly use violence as a strong mode of subjecting women. Although there are several ways that men as a team reinforce female subjugation in social circumstances, violence stands as the most conspicuous and functional means of control. Even if individual men abstain from applying violence on
their partners, men as a group gain from how women’s lives are inhibited and contained because of their concern of violence by spouses, and even strangers.

Battering reinforces women’s acquiescence and dependence as men wield their rights to domination. The reality of control at the social domain is the most critical factor strengthening domestic abuse at the personal level.\textsuperscript{13} Feminist theorists have persuasively maintained that spousal abuse is very connected to the historical formation of the family in a capitalist society, to separation of the public and private/domestic domains, to specialization of permissible male and female family functions.\textsuperscript{14} Wife abuse has existed for centuries and continues to exist in societies of varying social and familial settings as well as different political persuasions and structures. However, as feminists evoke theoretical and empirical links between the private and the political, they bring to the fore fresh perceptions of battering: spousal abuse is not a personal issue but a social one.


In Nigeria, there is little or no information on domestic violence. There is no documentation to support its existence. The courts do not mention it, except in cases when women filing for divorce state that they have been beaten by their husbands sometimes during marriage. The truth is: many Nigerian women are victims of domestic violence. People do not talk about it because it seems to be an acceptable part of marriage. Since the norm assumes that women are subordinate to their husbands, the men could discipline their wives if they so desire.

As part of the field research for this study, interviews and focus workshops were conducted in Lagos, the capital of Lagos State and Ibadan the capital of Oyo State, in the villages of Eruwa and Igbo-Ora both in Oyo State. Forty percent of urban women said they have been victims of domestic violence. The focus group workshops conducted at Ibadan provided more insight to the issue of domestic violence in Nigeria. Some of the participants who attended the two day workshop in Ibadan were drawn from the mailing lists utilized for the surveys but selection was based on the proximity of participants to the workshop venue and their availability to attend. Some of the participants had answered the questionnaires and most of them stopped by because of the fliers announcing the forum. The Igbo-Ora two day workshop held in 1996 relied on the local clergy and
Imam for the assembly of the participants. Some of the attendants were curious spectators. Nevertheless the workshop offered more understanding to the concerns of this research. Female respondents were asked for their opinion on domestic violence. Their response indicated a lack of knowledge of the broadness of domestic violence. Domestic violence is more than battery or physical force on a spouse. It encompasses spousal abuse—harsh and cruel treatment of a spouse, intimidation by threatening to use force, hurt a spouse or threat of deprivation, creating undue fear and hostile environment—all of these culminate in emotional abuse.

The respondents at the focus group workshop generally equate domestic violence with "beating" (beating meaning any form of hitting, with belts, shoes, throwing plates at them, slapping with hands etc.). Most of them admitted that their husbands have beaten them at one point or another. Some of them have had to endure battery for several years. Some of them acknowledged emotional abuse when the concept was explained to them.

The reasons for the physical abuse were varied: some said because they challenged their husband's alcohol abuse, or adultery,¹⁵ or taking a second wife, or vindictive in-

¹⁵Adultery seems to be the bane of most Nigerian men; and a perpetual nightmare for wives. The act is so prevalent, it is the norm. "Straight" men are considered wimps. Even in an era of sexually transmitted diseases and
laws, allegations of witchcraft, or simply because of argument over conjugal demands or money. All but one of the respondents who admitted being victims of domestic violence stayed in their abusive relationship for a number of reasons. "I do not want to loose my children."; "Who will support me if I left him?"; "Marriage is not easy, if I leave him, the next man may be worse."; "I guess I just have to endure it until the children grow up."; "Men will always be men, women have to be patient."; "I can't divorce him, I'll bring disgrace to my family. My mother told me that marriage is another school, it's never going to be easy. One just has to roll with the punches."; "I don't have money to take him to court."

As stated earlier on, the issue of domestic violence is invisible and neither has the concept of Battered Women Syndrome\textsuperscript{16} been advanced as an acceptable defense against the

\textsuperscript{16}\textbf{The Battered Woman's Syndrome influences abused women who are so scared that they could be killed by their perpetually abusive husbands that they go berserk and kill their husbands first before they are killed. Phyllis Crocker, "The Meaning of Equality for Battered Women Who Kill Men in Self Defense," Harvard Women's Law Journal 8 (1985): 121-53.}
tyranny of an abusive husband. There is no clear gender specific legislation on domestic violence. The Evidence Act which offers some form of legal recourse exempts women in traditional marriages. This leaves Nigerian women married in non-Christian arrangement (Customary law marriages and Muslim marriages) unprotected from domestic violence. Custom dictates that family strife should be resolved within the family, and not in the courts. So in tune with the adage which says, 'do not wash your dirty linens in public'; spouses generally report marital strife or spousal attack to family members or elders in the church, mosques or the neighborhood for mediation. Aside this, there is simply no legal recourse to spousal abuse. The statutory law specifically exempts them from its provisions.\(^{17}\) Indeed, Customary law permits a husband to chastise his wife for impudence or violation of his dictate as husband and head of the household.\(^{18}\) He has a right to whip her for adultery, for choosing friends he disapproves of, and for insubordi-

\(^{17}\)Nigerian Laws, Statutes, etc., Evidence Act, Section 161.

For Muslim wives, the Koran supports a certain level of force to discipline an erring wife. The following quote from the Koran, for example, codifies real male dominance and female subordination:

Men stand superior to women in that God hath preferred the one over the other...Those perverseness ye fear, admonish them and remove them into bed-chambers and beat them; but if they submit to you then do not seek a way against them.\(^2^0\)

Nevertheless women in Statutory marriages could take solace in the fact that the Evidence Act can serve as a legal recourse against physical abuse. Section 160 of the Evidence Act subsection (1) (c) states that when a person is:

Charged with inflicting violence on his or her wife or husband, the other spouse concerned shall be competent as a witness for the prosecution (or defense) without the consent of the spouse so charged.\(^2^1\)

Clearly, a man could be criminally accountable for using violence on his wife; and hitting her presumably falls within the connotation of "inflicting violence." Even though, this act offers battered women some protection against spousal abuse, most women are abashed to report domestic family dissension to public authorities. According


\(^{2^1}\)Nigerian Laws, Statutes, etc., Evidence Act, 1958, Section 160.
to some of the participants at the workshops conducted for this research, in-laws and spouses often ostracize wives who report battery to the police. "How can you reconcile with a spouse who called the police on you or who took you to court?" said one of the workshop participants. Such sentiments probably account for the low report rate of domestic violence. Even when the police are called to intervene, according to the findings of the focus workshops they would usually persuade the couple to reconcile and the wife would be asked to return home with no protection. Most women will not file suit against their husbands except they are prepared to end the marriage. Those who are willing to seek legal protection fear discrimination as a result of patriarchal relations within the police and the courts. "The thing is that it is very difficult to get a conviction for battery except the bodily injury is so severe. Battery is just not taken seriously," claimed a participant who said her case was thrown out of court, for a lack of evidence. In most cases, battery is grossly under-reported and battered women are confused about where to turn for shelter. Consequent to the interminable cultural acceptance of domestic violence, there is a lack of social services, economic security, support groups and legal protection for battered wives which leaves women helpless and powerless in situations of domestic violence. The situation is more
severe because most women have very few options, women often report battery to their parents or family members who would likely urge them to reconcile and work it out; if they leave their husbands, they risk losing all they have worked for in their lives, because the norm allows the man to keep the house and the children while the woman picks only her personal belongings, and in situations where the woman is not well off or lacks familial support, it could indeed be a tough choice. The absence of strong gender specific anti-violence legislation and the lack of public awareness of the evil of spousal abuse and domestic violence continue to make women pawns in the hands of abusive husbands.

Sexual Harassment

Although female employees in the government sector receive same pay with their male peers, women workers in both the private and public sector face a common problem of sexual harassment, yet most of them do not recognize the term "sexual harassment." According to the World Book Dictionary:

Sexual harassment is the harassment of a person because of her or his sex, as by making unwelcome sexual

22Some women who are aware of their statutory rights are beginning to fight for their rights in the courts, but it is an arduous task, the procedure takes too long. Women married under the statute do have the right to sue their husband for their share of the family property and the custody of their children.
advances or otherwise engaging in sexist practices that cause the victim loss of income, mental anguish and the like.\textsuperscript{23}

The findings of the surveys and focus group workshop conducted for this research indicated that many Nigerian women in the workplace confront problems of sexual harassment by employers and job applicants have to grapple with sexual harassment by potential employers: yet there are no laws protecting women especially young women from such horrendous assault. Of 100 polled urban women who worked in various settings with men, 45 percent of them said they or their female friends have been sexually harassed in the workplace. Forty five percent of them said they have not had such an experience. The survey findings indicate a prevalence of sexual harassment. Many female students in colleges and other institutions of learning are also believed to face similar pressures. More research needs to be done in that regard. As the focus workshops conducted for this research threw more light into the issue of 'sexual harassment,' some of the female participants recalled distressful experiences of unwarranted, unsolicited, but persistent sexual advances by male bosses at work and by their college educators. "Looking back, that is sexual harassment. He gave me poor grades for refusing his sexual........

advances, now that I’m working, I face the same problem, no promotion because I refuse to go out with my boss. It is a no win situation," said one of the workshop participants. "It is tough being a pretty lady in this part of the world. If you need good grades, it is not enough to work hard, some professors want more. If you need a job, your qualifications are not enough, some male employers want you to offer yourself to them, if you need promotion or contract they want the same thing. It is just terribly rampant," said another participant.

Sexual harassment seems to be the norm. But for some of the victims, who are desperate to keep their jobs or who have familial responsibilities in a bleak economic era plagued with joblessness, retrenchment, inflation, they are forced to cooperate with the perpetrators carrying emotional scars that never go away. Yet the government does not recognize sexual harassment.

**Rape**

An issue such as rape is one of the topics many Nigerian women do not like to talk about. Rape is not a crime of lust. It is a crime of violence. No person provokes rape by acting or dressing in a particular manner. A rapist’s motive is not sexual gratification. It is to
degrade, control and/or humiliate. At the focus group workshop held in the urban areas of Lagos and Ibadan for this study, half of the women present claimed that they know at least one victim of rape. When the same question was posed to workshop participants in the rural areas, about a quarter of the participants acknowledged knowing at least one victim of rape. According to them, the victims are either friends, relatives or acquaintances. Most rapes are committed by a friend, relative or acquaintance. Sex is consent between partners. But the women at the focus group workshops said that some men do not always take 'no' for an answer. But the truth is: if a woman doesn't consent, it is rape. No one has the right to verbally pressure a woman or physically force her to have sex, even if: he has spent a lot of money on her or if she is dressed sensually; if she has flirted or led him on, or if she is high on alcohol or if she has had sex with him before, or have agreed to have sex with him and then changed her mind.

Incidents of rape of all kinds--individual, custodial, date rape, gang rape and rape by armed robbers are real in the lives of some women in Nigeria. In the case of rape by armed robbers--armed robbers sometimes in groups of ten or more could hold a house siege, attack the man of the house,

\footnote{Ann Landers, Wake Up and Smell the Coffee (New York: Villard, 1996), 308.}
incapacitate him, pack all their belongings at gun point and descend on the woman of the house and rape her in the presence of her husband, children, guests and househelps, sometimes they lock the other members of the house up in a room while they take turn raping the woman. Most people do not own guns and only armed robbers have illegal weapons. The communication system is inefficient; even when the police station is reached, the policemen are oftentimes unable to help because they fear for their lives in the absence of modern equipment to counter armed robbery attack. Such armed robbery/rape attack is increasingly becoming common, more so because of the severe economic situation of the country and the lack of a firm grip by the government on law and order. Armed robbery rape attack is more severe on women because of the humiliation of the attack. Oftentimes the victims feel violated and embarrassed to face their family or to talk about it: their husbands often do not know how to deal with the occurrence, and sometimes opt to reject their wives feeling that she is 'soiled'. In essence, the lives of the victims may gradually turn to shreds.

In most rape cases women are often blamed for being victims, the onus of proof is often put on them in issues of rape and assault. Although, many women are victims of rape, rape still remains under reported. Part of the reason for this includes the non-recognition of "date rape" which
leaves an assumption that you can only be raped by a stranger, if raped by an acquaintance, there is a presumption that the woman asked for it. Even in cases where rape is recognized, corroboration is required, and the disclosure of the victim's history is required. All these make conviction of rape hard for the petitioner, and she is psychologically victimized by the legal procedures.

Marital Rape

According to the law, as long as a husband is married to a woman, he is immune from a charge of rape on her. This immunity is available to husbands in both statutory marriages and customary marriages.²⁵ In essence, a husband cannot be convicted of raping his wife.²⁶ It is presumed that a wife has concurred to having sexual relations with her partner through marriage, and such acquiescence can only be removed or aborted by a separation agreement or divorce, a man retains his right of consortium (union of marriage and its privileges) even if they had a dispute and are living apart. So, a man who has sexual relations with his wife

²⁵The type of marriage that the act covers was not expressly specified. Hence, it is assumed that the type of marriage is irrelevant.

²⁶Nigerian Laws, Statutes, etc., Criminal Code, 1959, Section 6; Offenses such as defilement of girls under 13, Section 218; defilement of girls under 16 and above 13 (Section 221), and rape (Section 357) are all protected by this Act.
against her will in these circumstances will not be guilty of rape. 27 He is also excused from rape conviction, even if he exercised his conjugal right by reasonable force. 28 The fact that existing rape law allows spousal exclusion makes one wonders who is actually protected? Although a husband may not be criminally liable for rape, the court recognizes assault in marriages. According to the court's ruling in Alawusa v. Odusote, 29 a man can commit common assault on his wife. The court disagrees that marital sexual assault could be indecent:

Because an assault upon a wife is not rendered indecent by circumstances which would render it indecent in the case of another woman. 30

Although previous court rulings have been silent on the issue of forceful restraint, however in Reese v. Jackson, 31 the court ruled that it was illegal for a man to physically restrain his wife in order to have sexual relations with her. Consequent to this decision, forceful sexual relations with a wife while living apart, without her consent, constitutes an offense of assault on her. 32

28 Ibid.
29 West African Court of Appeal, 1941, 140.
30 Ibid.
31 United Kingdom, Queens' Bench Law Reports, 1891, 671.
Abortion

Do women have reproductive control? With the help of the Planned Parenthood in Nigeria and other concerned organizations, women are increasingly gaining access to contraceptive devices. However, abortion is illegal, thus women are forced to go to quack doctors and backside abortion clinics to terminate unwanted pregnancies. Since, the industry is unrecognized, unregulated, and uncertified, many women have gotten their wombs destroyed in the process. Many have lost their lives too.

Female Genital Mutilation (FGM)

Perhaps one of the most repulsive restrictions on women's sexuality is the issue of Female Genital Mutilation (FGM)--a process of female circumcision performed on young girls in childhood. Female circumcision is considered a

33 The terms excision and FGM are used to describe the removal of the clitoris and sometimes the adjacent parts including the labia minora and or all exterior genitalia. The term infibulation is an extended excision and clitoridectomy which includes the closure of the vagina. This is done by tying the bleeding edges of the labia majora. A small entrance is created for the elimination of urine and later menstrual blood. Infibulation is practiced in the Moslem Northern part of Nigeria.

34 Although the societies practicing this butchery call it "female circumcision," the delegations from more than twenty African countries at the 1990 conference in Addis Ababa by the Inter African Committee on "Traditional Practices affecting the Health of Women and Children" voted unanimously that "Genital Mutilation" was the term they and all others concerned with this issue would use.
significant custom in dozens of countries across Africa, Asia and the Middle East where girls may be seen as impure and unworthy of marriage if they have not undergone it.

Circumcision is practiced to a lesser extent in Indonesia, Malaysia, Pakistan and India, which have sizable Muslim populations. The practice is believed to have started 4,000 years ago before the advent of organized religion.\textsuperscript{35} This practice which is prevalent in most parts of Nigeria with the exception of the Northern states is essentially clitoral laceration. The intention of this procedure is to curtail the sexual drive of girls,\textsuperscript{36} and to keep them less promiscuous until they get married. Customary dictates justify this process as an indigenous measure improvised to prevent teenage pregnancy and to curtail sexually transmitted diseases which young girls might be subjected to.


\textsuperscript{36}The "culture and tradition" label is often used as reason for many atrocities against women. FGM, polygamy, the seclusion of women, and the bride price etc. But it is necessary to know that those who benefit from tradition are men, because it enforces rules made by men, who are in control. Most traditional practices victimize females and support patriarchal rule; they enhance the power of men and they specifically support the control of the male head of the family.
before they are wise enough to make rational decisions about sexual relations. Although the argument might sound persuasive in terms of restricting a child's sexual adventures, one cannot discount the fact that girls do grow up to be women. The long term effect of the process is awful to the victims, some of whom have called it a carefully orchestrated scheme to curtail female sexuality. According to one of the participants of the focus group workshop held in Ibadan:

Most people are unaware of the terrible repercussions of female circumcision. Apart from the pain and suffering that young girls and women go through from the primitive, and unsterilized blades of the perpetrators, they are forever afflicted with frustrated sexual lives. I simply cannot understand how anyone can conclude that a woman has no right to sexual pleasure; and to restrain her sexuality, her clitoris should be chopped off. Women in Nigeria should challenge this brutal, dastardly, male chauvinistic act.\footnote{A participant of the focus group workshop conducted in Ibadan in 1996 for this study.}

Indeed, FMG is irreversible thus women's sexual drive could be seriously eroded and it could also impair their ability for sexual satisfaction. Many Nigerian women are not very comfortable discussing issues of sexuality, hence it was difficult for most of the workshop participants to express their true feelings about this except for some of the women
who were outspoken. They said that some women could still enjoy a fulfilling sexual experience after FMG, but this may not be the case if the laceration/mutilation was deep or severe. It all depends on the extent of the cut, said a female nurse at the workshop. According to her, those who are mostly affected are those whose mutilations are severe. Although there is no scientific evidence to suggest that women who undergo FMG are less sexually fulfilled than those who do not, but based on the fact that the female sexual satisfaction and orgasm are achieved largely by clitoral stimulation, as clearly documented by the Hite Report and almost all the literature on sexuality, it is safe to conclude that FMG is a destruction of a woman's most sexually sensitive zone. According to Fran Hosken who did extensive research on the issue of FMG, by mutilating girls especially if done at an early age, women are made into sexual tools for men, without any prospect of taking part. They become sexual objects owned by men. Sexual relations ceases to be pleasurable, but become a painful ordeal they cannot avoid. To have children--which is the only way to


39Ibid., 69. A common reason of obstructed labor is the hardened scars of excision that hinder dilation and often cause tears and lesion of the mother and sometimes death of both mother and child. Sometimes, fistulae develop due to the obstruction of the opening, in essence they rupture.
gain status, they must submit. Hosken says that the objective of the sexual politics of African men is to keep women dependent on men.

FMG sometimes result in complications such as hemorrhage, development of infections or tetanus. Contrary to traditional beliefs that FMG assures and enhances fertility, FMG causes serious health problems, and difficulties in childbirth.

Although there are no evidences of forceful FMG, new mothers simply release their infant baby girls for the exercise because it is the norm. However, the Nigerian court system needs to intervene and outlaw this practice and with more education the process could be discouraged.

Contracts and Property

Contracts Between Spouses

Common law provisions regarding contractual relations between couples were very restrictive up until 1882. Women with fistulae are incontinent and become outcasts of their families and communities.

40So much premium is placed on childbearing in Nigeria, and in most African societies. The African male cannot condone any skepticism regarding his sexual prowess, or his ability to father children. He seldom admits that his wife's infertility or propensity to produce only girls may be due to him. In Nigeria, it is always the woman who is blamed for failing to produce children. This places so much pressure on women such as anxiety and severe depression. FMG thrives in Yorubaland, presumably because of the erroneous assumption that it can prevent stillbirths.
Operating under the assumption that a husband and wife are one legal individual, common law thus forbids any contract between a couple, in an existing marriage. It is assumed that such action is akin to allowing a man to be signing a legal contract with himself.

Marriage also invalidated any pre-marital legal obligations between a married couple. Similarly, common law disallowed a woman to make a contract by herself. A husband had to be coupled to his wife as a co-litigant or co-respondent in any lawsuit instituted by or against her. Thus a husband could not sue his wife, neither could a wife file a lawsuit against her husband.

However, the common law provisions were modified by the Married Women's Property Act 1882, which was also revised in 1893. The Married Women's Property Act in 1882 liberated the married woman from most of her legal incapacity. It empowered her to sign legal agreements independent of her husband, and to file a lawsuit against anyone to defend her possessions.41 She is also relieved of the regulation which mandates a husband to be affiliated in a lawsuit instituted by her or against her.42

41United Kingdom, Laws, Statutes, etc., Married Women's Property Act 1893, Section 1.

42United Kingdom, Laws, Statutes, etc., Married Women's Property Act 1882, Section 1 (2).
Anti-Nuptial and Post Nuptial Contracts

Section 12 of the 1882 Act accords a married woman the right to sue anyone, including her husband, for the preservation of her assets as if she were a femme sole (unmarried woman). She could be sued by third parties on her anti-nuptial contract.\(^{43}\) Regarding pre-marriage contract with her husband, the spouses cannot sue each other on this.\(^{44}\) The implication of the 1882 Act is that it enables a married woman to enter into, and take responsibility in issues regarding her personal property. She can sue and be sued by both her husband and other persons.\(^{45}\)

The Married Women's Property Act 1882 and other pre-1900 laws are generally enforceable in Nigeria.\(^{46}\) But in the former Western and Mid Western States (Ondo, Lagos, Oyo, Ogun and Bendel states), a provincial Act, the Married Women's Property Act 1958\(^ {47}\) is applicable. The Married

\(^{43}\)Ibid., Section 13.

\(^{44}\)Butler v. Butler, 14 Queens Bench Division Law Reports, 831 (1884).

\(^{45}\)United Kindgom, Laws, Statutes, etc., Married Women's Property Act 1882, Section 1.


\(^{47}\)Nigerian Laws, Statutes, etc., Laws of Western Nigeria, 1959, cap. 76; Nigerian Laws, Statutes, etc., Laws of Lagos State, 1973, Cap. 2; Nigerian Laws, Statutes, etc., Laws of Bendel State, 1976, Cap. 98. Please, note that provincial laws are akin to regional laws, because they cover several states, but state laws are only applicable in the designated state.

The 1958 Act provides that all property which belonged to a married woman before marriage shall be hers as if she were unmarried. This stipulation like its English complement, made extensive modification in the common law and 1882 Act which are still in force in other parts of the Federation.

Section 1 of the 1958 Law liberates a married woman from all the legal restraints of contracts. In post-marital contracts she is free to file suit and be sued by both her husband and other persons in connection with contractual responsibilities; she is also free to contract with anyone she wants. In pre-marital contract, she can sue and be sued and her liability in such a case is a personal one. The Act thus invalidates Butler v. Butler,\textsuperscript{48} hence a married woman is answerable to her husband for pre-marital liabilities.

\textsuperscript{48}United Kindgom, Queens Bench Division Law Reports, 1884, 14, 831. In this case, the husband sued the wife to recover various sums he lent her both before and after her marriage. The court said she was only liable for the loan made during the marriage, and dismissed the claim for the pre-marriage loan. The English court of Appeal affirmed the decision. United Kindgom, QBD, 1885, 16, 374.
Authorized Representation and Liability

A husband is not legally responsible for his wife's liabilities, torts, infraction of contract or any other civil offense committed against another person,\footnote{Debenham v. Melon (United Kingdom), 6 24, (Appeal Court, 1880).} unless she was at that particular time, acting on his directions or authority.\footnote{P. M. Bromley, Family Law, 3rd. ed. (London: Butterworth, 1966), 198-203; United Kingdom Laws, Statutes, etc., The Married Women's Property Act of 1893, Section 11, 12, 18.} In such situations, a husband may be liable for his wife's debts.

Authorized Representation. If a husband commissions his wife to act as his representative, he is absolutely responsible for the liabilities that followed the transactions. Similarly, in law, a man is deemed liable for such liabilities, if he sanctions such transactions, even though he did not originally commission his wife.\footnote{Ibid.; also West v. Wheeler, 175, English Reports, 1849, QBD, 298.}

Wife's authority to pledge her husband's credit. Although marriage does not permit a wife to burden her husband with her debts, if she lives with her husband and administers the home, the courts normally assume that she is his representative and has the mandate to pledge his credit
in all domestic matters which are usually a wife's prerogative.\textsuperscript{52}

However, the court expects the expenses to be reasonable,\textsuperscript{53} pertinent to the husband's status,\textsuperscript{54} and relevant to the needs of the household but not limited to simple essentials.\textsuperscript{55} A husband is obligated to foot the bill regardless of the wife's possession of separate income.\textsuperscript{56}

\textit{A Deserted Wife's Right to Pledge her Husband's Credit.} An abandoned wife or a woman driven out of her matrimonial home by her husband has the right to pledge his credit for necessaries, because a husband is legally obliged to support his wife.\textsuperscript{57} The court sees her as a representative of her husband not by virtue of her marriage to him, but because of her need. She is seen as an agent of necessity. If she has

\textsuperscript{52}United Kingdom, Emmett v. Norton, 173; English Reports, 1838, QBD, 594; United Kingdom, Debenham v. Melon, 6, 24 (Appeal Court, 1888).


\textsuperscript{55}Morgan v. Chetwynd, 176 English Reports 641 (U.K. 1865).


enough income to support herself, in accordance to her husband's economic status, she may not be considered as an appropriate agent of necessity.\textsuperscript{58} However, the overall principle of agency of necessity is not acknowledged by customary law.

\textit{Wife's Right to Property Acquisition}

\textit{Customary Law.} A woman married under customary law can procure and own property by law. Her personal possessions which she brought into the marriage such as jewelry, wardrobe or cooking items; property acquired by inheritance or by gift; dividends and other property from her trading transactions, financed by her own money during the marriage are legally considered her property. She is entitled to keep all these, and she has the right to sue her husband or a third party for violating these property privileges.\textsuperscript{59} A customary marriage wife can claim this right while still cohabiting with her spouse,\textsuperscript{60} whereas a statutorily married wife cannot.

\textsuperscript{58}Biberfield v. Berens, 2 Queens Bench Law Reports 770 (U.K. 1952).

\textsuperscript{59}Nigerian Laws, Statutes, etc. 1958. Criminal Procedure Code, 1958, Section 148 .

\textsuperscript{60}Nigerian Laws, Statute, etc. 1959. Laws of Western Nigeria, 1959, Cap.43.
However, in some cultures, any ante-nuptial property which the wife brings to the matrimonial home belongs to the couple, as in most Hausa areas, or to the husband entirely as in some parts of Yorubaland. Although, a husband has rights to the wife's property, a wife has no rights over her husband's property or income. A departure from the complete subordination of customary law wives is found in the Igbirra law which stipulates that:

A wife has the right to:

(a) conjugal rights with her husband;
(b) economic support by her husband for herself and kids regarding shelter, apparel, food, at a measure relevant to his resources;
(c) one-third of her husband's young livestock if she is the caregiver; and
(d) moderate help from her spouse in times of need.61

Islamic Law Marriage and Property. According to the Sharia regulations, (school of Islamic law) women are considered "mal" (incapable of managing their property). Although a married woman has the right to trade with her property, which is exclusively hers, she is legally required to seek her husband's approval to make donations which constitute a certain percentage of her property. Also, "the husband has the right to use the household property, that

is, to enjoy together with the wife what she has brought, such as bedspreads, covers, carpets, and clothes."

The "right of usage" provision of the Maliki law has been subjected to various interpretations. Some husbands misconstrue it as a right to deny a wife's right to dispose freely of all her property to avoid the deprivation of their own usage. It is uncertain, however, whether this right extends to property which she acquired exclusively by her own struggle.

Maliki law, is unique in its liberality on the right of the woman over her dower. In other customary law marriage systems, the bride price or "dowry" is usually paid to the family of the bride, but in Maliki law, the dower is given to the woman and she has to use it to provide the wedding linens and domestic needs for the whole family.

While subservience may be the custom, most educated Muslim women in the Northern part of Nigeria exercise considerable independence in their business transactions but it is not certain if they follow the legal restrictions guiding the spending abilities of their own personal revenues.

A Woman's Right to Own Landed Property. A woman's right to land could be considered either by personal right or through descent. Both single and married women are at liberty to obtain land just like their male counterparts. By
personal rights, avenues of securing landed property include lease, purchase, gift or loan. However, a married woman requires her husband's consent before she could accept a gift of land from strangers. Also, if a woman wants to purchase land, she would do so through a male proxy; although, there is no legal handicap to a woman's right to purchase land directly from the seller. Practice usually requires that she acts through a male proxy, but there is no legal handicap to a woman's right to purchase land.

Couples married under the statute share the same privileges with their customary marriage counterparts. According to the Married Women's Property Act, 1893:

A married woman shall (a) be capable of acquiring, holding and disposing of any property . . . in all respects as if she were a femme sole.62

All stock, deposits and annuities placed solely in the name of a wife are considered her exclusive property.63 A married woman may also take out a life insurance policy for herself or on her husband's life.64

---


64Ibid., Section 9.
These provisions seem to provide married women a great freedom over their assets, but truly by virtue of marriage, and legally, the husband controls the wife's property, especially property acquired by her during marriage. According to the Married Women's Property Law of the Western Region:

If any investment in any such deposit, annuity or shares shall have been made by a married woman by means of moneys of her husband without his consent the High Court may upon an application under section 17 order such investment and the dividends thereof or any part thereof to be transferred and paid respectively to the husband.65

In essence, the section enables a husband by means of brief action under Section 17, to seize a woman's investment even if in possession of a bank or insurance company,66 if he can convince the court that the funding for the investment is his. This provision does not protect a woman's property rights that Section 6 expressly confers.67 Consequently, a married woman cannot enter into contracts which would jeopardize the husband's right in such property. In actuality, she cannot sign a loan or lease arrangement

65U.K. Laws, Statute, etc. 1882. Married Women's Property Act 1882 Section 17; Married Women's Property Law, 1958, Section 17.

66Nigerian Laws, Statute, etc. 1958. Married Women's Property Act of the Western Region, Section 7; U.K. Law, Statutes, etc. Married Women's Property Act of 1882, Section 10.

without the husband's approval. Furthermore, she could not get a passport without such permission. While there are no definite legislation defending such an action, it is a common practice.

*Disputes Over Proprietorship of Assets.* Where there is a conflict between couples over the proprietorship of property, which is visible, not over a debt, either spouse may petition a high court in their neighborhood for a summary hearing.⁶⁸

However, the basic rule is that if a woman has a separate income, and keeps a separate purse in the home, her income is her personal property in law, and whatever property she acquires with this income, is legally hers.⁶⁹ If she keeps a joint account with her husband, she acquires a joint interest in the funds, and where such is invested in property, she legally has an equal claim on it, regardless of the disparity in the contributions.

But where a wife invests a balance of housekeeping allowance in property, the courts have held that the property remain her husband's.

---


Right of Disposition of Property. A spinster may discard her property in the same capacity as a man. But married women were denied such rights. The common law of England, which is part of the assimilated English law in Nigeria, does not give women the power to dispose of their property during the existence of a marriage, regardless if the property were acquired during or before marriage.

However, the provision has been revised by the Married Women's Property Act of 1958. A married woman in a legally acceptable monogamous marriage has the liberty to dispose of her real or personal property as she desires.

Right of Property Disposition for the Customary Law Wife. Many factors dictate the right of property disposition of a married woman in a customary law relationship. Usually, the type of community she belongs to is a key factor. Matrilineal and patrilineal societies have different rules; some comply with the cognate or agnatic lineage. Under many of the customary law systems a woman still cannot dispose of her property without her husband's approval, and in particular under the Maliki Code Muslim Law she could only give away a certain percentage of her property.

Spouses and the Law of Tort

The common law regulation that forbids husband and wife to sue each other in tort, (civil suits except breach of
contract) is in force throughout the federation. The Married Women's Property Act 1882 which is equally binding on Nigerian statutorily married spouses with the exception of the former Western and Mid-Western States of Nigeria, also reaffirms the common law position on tort.

The Act does not give spouses the right to sue each other in cases of torts except where such action is taken by the wife for the purpose of protecting her private property.\(^7^0\)

Issues of tort in respect of the former Western and mid-western states are administered by the Married Women's Property Law of 1958.\(^7^1\) Section 10 stipulates that "no husband or wife shall be entitled to sue each other in tort." The section, however empowers a married woman to sue anyone including her husband to defend her property as if she is an unmarried person. A married woman can sue and be sued by third parties\(^7^2\) for tortious liability before and during marriage and her liability is a personal one, because

\(^{7^0}\)U. K. Laws, Statutes, etc. Married Women's Property Act 1882, Section 12; Curtis v. Wilcox 2 Kings Bench Law Reports 474 (1948).

\(^{7^1}\)Nigerian Laws, Statutes, etc. 1959. Laws of Western Nigeria, 1959, Cap 76.

\(^{7^2}\)Ibid., Section 11.
a man is not legally responsible for any tortuous act of his wife.\textsuperscript{73}

Protecting One's Spouse's Property From the Other Spouse. Under the statute, couples are not criminally liable for any offense against the property of the other except where there is a deliberate attempt to damage a third party\textsuperscript{74} while a spouse is fleeing or about to desert the other spouse. Should this occur, the perpetrator would not even be indicted while they are living together as husband as wife.

Section 148 of the Criminal Procedure Act which states that a married woman:

\textit{Shall have in her own name against all persons whatsoever, including the husband of such marriage . . . the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property as if such property belonged to her as an unmarried woman.}\textsuperscript{75}

But this seemingly comprehensive liberty of operation is significantly curtailed by the clause in that section, viz., that any proceeding by one spouse against the other shall be governed by the provisions of section 36 of the Criminal Code. In essence, section 36 of the Criminal Code and the clause to section 148 of the Criminal Procedure Code exempt

\textsuperscript{73}Section 12, United Kingdom, Laws, Statutes, etc. 1935. \textit{English Law Reform of the Married Women and Tortfeasor's Act 1935}, Section 3.

\textsuperscript{74}Nigerian Laws, Statutes, etc. 1959. \textit{Criminal Code}, 1959, Section 36.

\textsuperscript{75}Ibid., section 36.
Academiically, the procedure of criminalization stems from the labeling paradigm which centered on the social construction of the criminal type. The treatment of female offenders has had a profound effect on both the study of female crime and the treatment of female criminals. The social and economic causes of crime have been recentered from the psychological and psychoanalytic perspectives towards social and economic factors. This consideration has been reflected in the interpretation of female criminality endurance, even after the reiteration of male criminality instigation of social and economic factors. This consideration is reflected in the psychoanalytic, with more focus on their sexuality, their psychosexual, and their intrinsically nature—reverse psychology. Women's criminality has always been decided by their intrinsic nature—reverse psychology and conventionally criminalized. Women are criminally victimized when their crime rate is lower than that of men, which is attributed to the lower crime rate of women in many different countries. The lower crime rate of women is often attributed to the image of a male spouse and the law of crime when they are living together.
assemble of crime as a method of "social control." Conversely, some criminologists coined the notion of "state control" to imply that some actions are labeled criminal simply because they are unlawful and oftentimes because they are considered as threats to the status quo. Thus, political, economic and ideological forces constitute the criminalization procedure. Through sexist dogma, the criminalization of women is different to men.

To fully comprehend why certain behaviors are criminalized, it is necessary to examine the framework in which women's behavior is socially designated and regulated. Recent feminist research shows that gender partition and women's control originate with the early socialization of the family and socialization in the peer groups, school and the media.78 Social control is varied and is apparent in both "public" and "private" domains. It is conceded that specific acts of social control concern only women. These include childbirth, a double standard of morality, an inferior legal status in the family, and the separation of "home" and "work" coupled with the credo of women's place.79 Yet, the home is where women are most restricted. Women who move


outside the home into the public sphere confront other forms of controls and policies. Control in the public sphere are two fold; in the workplace women are constrained and stressed by the types of work accessible to them and by sexual harassment.

In Nigeria, as mentioned earlier, sexual harassment is so prevalent, it is somewhat the norm. Women seeking employment confront problems of sexual harassment; for working women, sexual harassment is a nightmare that never goes away. They are seduced, harassed by employers and male bosses at the workplace. Their advancement and pay raises often times depend on subjecting themselves to the whims and caprices of their male bosses. As serious as it is, the legal system is silent on the issue. Women are not protected.

Second, women are restricted by their lack of access to social spots and leisure, such as in pubs and on the streets.80 Women's logical concern about abuse, assault and sexual aggression limits their access to some social arena. Similarly, anxieties about loss of position and status especially esteem and sexuality regulate women's reactions and chances. These range of checks on women's social and personal lives within and outside the family have many

repercussions. First, it produces isolation, and low self-esteem. As Mary Eaton indicates, \textsuperscript{81} "Women are so effectively controlled by their socialization and the conditions of their existence" that this must be conceived as a chief cause in understanding women's minimal involvement in crime. \textsuperscript{82} The supervision and control of young girls' and women's behavior and movements give them little opportunity to indulge in criminal activities. \textsuperscript{83}

How does the law respond to the non-conformist, who do not observe these processes of control—women who cohabit rather than enter into the marriage contract; women who are forced into prostitution in order to make a living; they are labeled and tagged deviant. Childless women who cohabit without a marriage contract, are not accorded any marital privileges. Prostitution is an offense largely for women, but not for male solicitors.

However, some women are protected in criminal law to a large extent. Both the Evidence Act and the Criminal Code Act accord spouses some rights and privileges as defense

\textsuperscript{81}M. Eaton, \textit{Women, Criminology and Social Control} (Milton Keynes: Open University Press, 1986), 290-301.

\textsuperscript{82}Ibid., 302.

\textsuperscript{83}Women's chances for criminal act are usually connected to their weakness. Female socialization processes encourage obedience, and this has been advanced as a reason for their minimal criminal involvement; E. Leonard, \textit{Women, Crime and Society} (London: Longman, 1982), 10-19.
against criminal charges. However, only spouses in statutory marriages are accorded these rights. Which means that millions of women married under non-statutory systems are denied legal protection, as the following illustrates.

**Offenses Against Property**

The law has distinct stipulations in criminal law concerning the responsibility of spouses in criminal cases. As stated earlier, couples married under native law and custom may be guilty of criminal wrongdoing against each other's assets (such as theft, willful damage, arson etc.).\(^{84}\)

On the other hand, couples married under the statute residing together, are exonerated from criminal charges in relation to the each other's property unless (a) a third party is involved or affected in the wrongdoing or (b) one spouse took the other party's property while deserting or intending to leave the other spouse.\(^{85}\)

*Marital Pressure.* A woman married under the statute may commit a crime and not be criminally liable. If the crime does not entail serious body injury to the victim, and if the crime does not incur a capital punishment; if it was committed within the proximity of her husband or while he

\(^{84}\)Nigerian Laws, Statutes, etc., Criminal Code, 1959, Section 36; Western Region Criminal Code, 1959, Section 33.

\(^{85}\)Ibid., section 33.
was watching, or if he coerced her either psychologically, physically or through persuasion.\textsuperscript{86} The law assumes that such an act was done under duress and as such, she would not be indicted. Wives in customary or Islamic marriages, are however responsible for their own crimes.

\textit{Spouses and the Law of Conspiracy}

Couples married under the statute cannot be indicted for conspiracy in the absence of a third party.\textsuperscript{87} The law sees them as one person.\textsuperscript{88} This privilege will be lost if a statutory marriage couple committed an offense of conspiracy with their son, or daughter, or housemaid who are considered adults under the law. Spouses in other unions such as customary and Islamic marriages do not have this privilege.

\textit{Spouses and the Law of Accomplice}

Normally a person who harbors or helps a convict to avoid retribution is guilty of being an accomplice. But a man and a woman married under the statute are protected from such charges. For instance, if a spouse helps her husband to

\textsuperscript{86} Nigerian Laws, Statute, etc., \textit{Federal Criminal Code Act, 1958}, Section 33 Cap. 42.

\textsuperscript{87} Ibid., Section 34. as reproduced in section 32 of the \textit{Western Region Criminal Code}; Keshiro v. Inspector General of Police, \textit{Law Reports of Western Nigeria} 84 (1956).

\textsuperscript{88} Nigerian Laws, Statutes, etc., \textit{Federal Criminal Code Act, 1959}, Section 1.
avoid punishment, or if she is coerced into helping either her husband or her husbands' accomplices to escape retribution, she would not be criminally indicted for being an accomplice.  

The Law of Evidence and Non-Statutory Marriages

Spouses. The exemptions granted to statutory marriage couples are not applicable to spouses under other forms of union. Also, spouses of non-Christian marriages may be forced to testify for or against each other, and are also free to volunteer evidence for either side in the case.  
However an Islamic marriage spouse cannot be compelled to testify if such testimony will involve the disclosure of a marital communication.  

Qualified Witness. Both spouses involved in any civil petition are adjudged competent witnesses each for and against the other. In criminal proceedings, the defendant, his or her spouse, and the spouses of the co-defendants can

---


90 Nigerian Laws, Statutes, etc., Evidence Act, 1958, Section 161.

91 Ibid., Section 160 (3) and Section 163.

all testify. 93 In essence, in criminal cases, with a few exceptions, a statutory marriage spouse can only be called to testify for the defense.

Unwilling Witness. If a person is charged with a sexual offense, or child molestation 94 his or her spouse even if married under the statute is legally required to give evidence for the prosecution or the defense without the approval of the suspect arraigned before the court. 95 Also, a spouse may testify for the prosecution if he or she is a victim of marital violence. 96

Marital Communications. Can a wife be compelled to disclose any marital discussion during a marriage? The answer is no. Spouses have a right to confidentiality between themselves. Thus a spouse is not allowed, and cannot be forced to provide any privileged information shared during the course of a marriage, 97 unless the other spouse

---

93 Nigerian Laws, Statute, etc., Evidence Act, 1958, Section 158.

94 This also applies to all offenses under Sections 217-219, 221-226, 231, 300, 301, 340, 341, 357-362, and 369-371 of the Criminal Code.

95 Nigerian Laws, Statutes etc., Evidence Act, 1959, Section 160 (1)(a).

96 Ibid., Section 160 (1) (c).

97 Ibid., Section 163; Theopoulas v. Theodoropoulos (Lagos High Court, 1963) 2 All English Reports 772; Matrimonial Causes Decree 1970, Section 83.
authorized the disclosure. Privileged status of a marital conversation transcends the life span of the marriage.\textsuperscript{98}

\textit{Jail Terms for Women}. The law does not have a different sentencing regulation for women convicts. Offenders share the same jail terms for designated offenses regardless of their sex. However the line is legally drawn in regard to pregnant women offenders whose offenses attract capital punishment. This group of women, are spared the death sentence.\textsuperscript{99} The law assumes that capital punishment on a pregnant women will be robbing an innocent child of his life. Women in this situation, are thus sentenced to life imprisonment. To qualify for this exemption, an offender has to be ready to prove that she is indeed pregnant.

\textit{Political and Economic Rights}

Women's political rights will be examined against the backdrop of male dominance. In situations where women are excluded from economic and political decision making, the relationship between the sexes can safely be described as unequal. In situations where men and women exercise political and economic authority and power, the relationship between the sexes will be defined as equal. Male dominance

\textsuperscript{98}Ibid.

\textsuperscript{99}That's the effect of section 163; R. v. Algar (U. K. 1954) 1 Queen Bench Law Reports.
could also be symbolized in systems where males monopolize positions of authority and prestige.

In examining the political rights of the Nigerian woman, it is also imperative to understand the political atmosphere of Nigeria. At the time of Nigerian independence in 1960, the nation was bequeathed with many local provinces, a federal government patterned like the British parliamentary system, three regional governments and social and economic heritage of colonialism. Following independence, there have been successive modifications in the construct of government, frailty in democratic establishments, and military interventions—all these developments have disallowed a consistent involvement of the female gender in conventional politics—politics that is premised on the consent of the governed.

The stupendous indulgence of the politicians of the initial post-independent administration, their economic abuse, power struggle and the attending political insecurity brought down the administration. Since then, the Nigerian political scene has been mostly turbulent, unstable, and unpredictable, largely because of military take-over of government. Democracy has been elusive to the political system, shutting the door to any legitimate political participation of both men and women. Since Nigeria's independence in 1960, there have been only three attempts at
democracy, twice during these attempts, coup d'etat by military officers interrupted the democratic governments. In essence, the country at thirty eight has had more than twenty eight years of forceful rule by a sequence of military administrators, who are unelected, uninvited and accountable to no one. Some of these regimes are noted for their disrespect for the rule of law, serious corruption, human rights abuse and massive looting of the national treasury. In spite of the oil reserves that rank Nigeria sixth in the world, and plenteous other resources, Nigeria's per capital income of $1,300 a year is one of the worst in the world. Nigeria is $30 billion in debt to foreign investors, the exchange rate for the naira--the national currency used to be one naira to one U.S. dollar, in 1999, the naira returns only a penny. Compounding the problem, oil prices are down by fifty percent, and despite its vast farmlands, Nigeria now must import food:

The estimated $280 billion in oil revenues during the last 25 years have largely been squandered as one military dictator after another has helped himself to the country's treasury. General Sanni Abacha pocketed $7.5 billion during a five year joyride that ended with his death in 1998. Abacha managed to make his predecessor General Ibrahim Babangida, who was known for taking a 25 percent cut of major deals look almost respectable.100

Aside from looting the country's wealth, the military intimidated the press, ruined the economy, politicized state institutions, executed, jailed and assassinated dissidents, and also fostered ethnic and religious divisions. But Nigerians are very resilient, and tolerant. In the past the country went through a severe civil war when the eastern region seceded to establish the Republic of Biafra in 1967. The war claimed more than a million lives and ended with the fall of Biafra in 1970.\footnote{Kamene Okonjo, "Reversing the Marginalization of the Invisible and Silent Majority: Women in Western Nigeria" in \textit{Women and Politics Worldwide}, ed., Barbara Nelson and Najma Chowdry (New Haven: Yale University Press, 1994), 513-24.}

According to political observers, the self serving greed of the various military regimes, power struggle, economic abuse, corruption, an absence of the rule of law and a lack of accountability can explain the complexities of attaining democracy in Nigeria.

As of 1998, Nigeria consists of 53 states and the Federal Capital Territory of Abuja, and it is currently ruled by an Armed Forces Ruling Council headed by the commander in chief of the armed forces, General Abubakar. Abubakar took over the government in 1998 following the sudden death of General Abacha, a military dictator who has been described by the Nigerian media as one of the most callous, ruthless and corrupt leader the country has ever
had.\textsuperscript{102} The country is in its newest political reorganization of the federal, state, and local governments, and the election of General Olusegun Obasanjo, as the state's first elected civilian leader in 15 years. Although, Obasanjo will not be inaugurated until May 29, 1999, the military administration headed by General Abubakar has promised to totally relinquish control to the newly elected civilian.\textsuperscript{103} In spite of General Abubakar's efforts, it seems that the soldiers and retired generals hijacked the military transition program.\textsuperscript{104} Former Finance minister, Olu Falae, lost his bid for the office of the presidency. He believed the election was not free and fair, and challenged the results in the courts. The court dismissed his claims. Nobel laureate, Wole Shoyinka, speaking at a conference on African democracy shortly after Obasanjo's election said "the real victors of the recent elections are cash flow, the military machine and pandemic prostitution." Critics of the transition program accused the election as being stage managed by retired military officers. They alleged that

\textsuperscript{102}General Abacha who took over power in a coup de'tat in 1991 was in the process of succeeding himself as civilian president.

\textsuperscript{103}M. K. O. Abiola won the 12 June 1993 presidential elections, but General Abacha the incumbent military dictator unilaterally nullified the election. Abiola was later incarcerated for three years, he died in prison.

\textsuperscript{104}Tell, 9 November 1998.
the president elect was hugely financed\textsuperscript{105} by the military, controlled by powerful northern politicians and lacks support among his own people. However, a return to democracy is expected to encourage political participation of the populace.

In retrospect, being governed by unelected, self-imposed military personnel has had serious implications for women's political involvement. The military profession in Nigeria is largely a man's domain, and the few women in the profession are yet to attain top ranking level, consequently, government take overs hardly present them any office. Thus, women have had very minimal role in military governments.

Nigerian women constitute the largest female population in Africa, but their participation in electoral politics is low. Nigerian women have to try harder to eliminate the stereotypical roles assigned to them in the society. As the recent elections indicate, women won only three seats out of a total of 109 senatorial positions.\textsuperscript{106} The senators-elect include Florence Ita-Giwa, Stella Omu and Khirat Rasaka from Cross River, Delta and Federal Capital Territory, respectively. Also, in the Federal House of Representatives,

\textsuperscript{105}Ibid.

women clinched only five seats out of 306. Women fared worst in the local government elections as they got only five seats out of 774.\textsuperscript{107} The 1999 election only reinforced a pattern of Nigerian women's electoral participation. Men always dominate Nigerian electoral process. The first set of women elected under British rule into legislative councils between 1955 and 1959 were 21 representatives. Nigerian women had to wait for twenty three years after independence to have the very first female senator in 1983, when Franca Afegbua was elected into the senate, along with three others females who were elected to the Federal House of Representatives. Five women got seats in the State Houses of Assembly. Women fared better in the 1991 to 1993 transition program. They clinched 206 seats in the 1,297 local government positions in the country in 1991. Nineteen ninety two, was not such a good year for the women senatorial candidates as only one female, Kofo Akerele-Bucknor an indigine of Lagos state, won a seat into the senate, 90 men did. However, 13 women were elected to the 583-member house of representatives.\textsuperscript{108} In the 1997/98 transition program, eight females have been elected to the senate out of a 109-member chamber, and 16 to the house of representatives out of 369 seats while 138 were elected to the local government

\textsuperscript{107}Ibid.

\textsuperscript{108}Ibid.
councils among 776 positions. To a degree, women's electoral efforts succeeded more in the earlier elections than in the latest one. Perhaps a quick look at their political involvement can provide some insights.

According to history, pre-colonial Nigerian women were active participants in the political process. Despite the drawbacks of colonialism to women's leadership role, Nigerian women continued to demonstrate an awareness of their political rights until independence as their activities in provincial cabinets and women's associations attest. A classical illustration of their courage and resilience was the Women's War' of 1929 in which women fought the colonial rulers over a supposition that they would be taxed at a time of declining profits from the palm products trade. However, their political role in the independence struggle was limited. The scene was dominated by men. Indeed, the early political parties, which were offshoots of cultural associations led by women could not produce any female leadership of national standing. Thus, women were relegated to secondary role.


110History records great political activities of several women including Mrs. Margaret Ekpo and Mrs. Funmilayo
Despite their invisible role in the independence struggle, Nigerian women did not have to battle for the right to vote. Although their western counterparts had to fight for several decades for the right of suffrage, Nigeria women did not have to go through that ordeal. By the time Nigeria got its independence in 1960, women in most parts of the world\textsuperscript{112} had obtained the rights of political participation and also the right to hold public office. It was therefore not a surprise that, at independence, the Nigerian Constitution acknowledged the right of franchise for some of its female citizens as well.\textsuperscript{113}

However, political representation was limited to males only. Section 44 (b) of the Federal Constitution 1960 stipulates that only a male person is qualified to seek Ransome Kuti but on the whole most of the women were not able to secure any major political positions.

\textsuperscript{111}N. H. Youssef, "Women Status and fertility in Muslim Countries of the Middle East and Africa." Prepared for the Symposium on Women's Status and Fertility Around the World, at the annual meeting of the American Psychological Association, New Orleans, 30 August-3 September 1985; 231.

\textsuperscript{112}New Zealand was the first country in the world to grant women the franchise in 1893. The United States did in 1920. Many European countries including France, Italy, Switzerland and Greece did not allow women to vote until after World War II. In Latin America, Ecuador was the first to offer women the franchise in 1929, in Mexico women could not go to the polls until 1953. In Asia, the first women voters were in Mongolia in 1923, followed by Japan and South Korea in 1945.

electoral office to the House of Representatives in the Northern parts of the country.\textsuperscript{114} That reinforces the patriarchal argument that "a woman's place is in the kitchen." To buttress this assumption, the Northern Nigerian Constitution denied women the franchise. Thus, forty years after women in various parts of the globe, including women in some African countries, had voting privileges, a huge section of Nigerian women were deprived of a fundamental human right, the right to vote.

Women activists such as Hajiya Gambo Sawaba of the NEPU, Malama Noanusa of the Action Group, etc., were some of the women who condemned the Act, but the situation persisted for seventeen years, until a new Constitution drafted by the Constituent Assembly in 1977, redressed the wrong; granting universal adult suffrage to citizens of 18 years old and above.\textsuperscript{115}

However, the vote did not usher women into politics. In spite of the franchise, women's political role continues to be minimal. The issue of political involvement gives strength to the question of whether Nigerian women are truly making any effort to increase their representation in the political arena. Nigerian women's liberation effort could be

\textsuperscript{114}Women in the Eastern and Western parts of the country, were not restricted.

\textsuperscript{115}Nigerian Laws, Statutes, etc., Decree No. 77, 1977, Section 1 (1).
classified into two categories: One group consists of the few elites who are highly involved in women's associations and politics. This group is often engrossed in battling subjugation and inequalities in the Nigerian socio-political system. They rally around political causes, organize non-partisan groups, and are mildly active as volunteers in community affairs and political parties.

The other group which consists of the majority of Nigerian women have minimal interest in addressing their rights, through the appropriate channels, as the Women's War indicates. However, the few elite women have taken some strides, but their contribution is not so impressive. A few emerged on the political scene in 1979 such as Ms. Enez Mortune of the National Democratic Action Party (NDAP), Mrs. Abiola Babatope and Mrs. Justina Eze (both members of the House of Representatives), Mrs. Janet Akinrinade, deputy governorship candidate of Oyo State, and Hajiya Gambo Sawaba, the General National Political Party (GNPP) National Deputy President.\textsuperscript{116} For instance, in 1979 none of the five political parties that existed fielded a woman for the post of a president, vice-president, or even governor. Only the National Party of Nigeria (NPN) fielded two women as candidates for the position of deputy governor. The 95-member Senate was all male. Of the 449-member House of representatives, only two women were elected.

\textsuperscript{116}The Nigerian Tribune, 12 October 1986, 11.
Representatives, all but two were occupied by men. In the federal cabinet there were three junior ministers and only one woman of full cabinet rank,\textsuperscript{117} over forty of the other members were men. In the 1983 elections, fewer than 100 of the 12,000 candidates for political office were women. Two candidates ran for deputy governorships, four for seats in the senate (with one winning a seat), 19 for seats in the House of Representatives and 71 for seats in state assemblies. One of the main parties in the North, the Peoples Redemption Party (PRP), headed by moderate socialist Aminu Kano surprised the nation when he appointed a woman as a presidential running mate,\textsuperscript{118} the only party that ever did that. In the end the idea never took off, because Aminu Kano, the presidential candidate died three weeks after the announcement.

\textsuperscript{117}Ebun Oyagbola, member of the defunct National Party of Nigeria, (NPN).

\textsuperscript{118}Bola Ogunbor. Even though her nomination was quashed by the death of the presidential candidate who announced her candidacy, her party appointed several women to public positions-three women state ministers, one head of a government department/permanent secretary, and ten women each to ten parastatal boards. The effort of the PRP not only catapulted Muslim Hausa Women into public life, it boosted their morale; the action also had an effect on other political party such as the NPN who appointed two women ministers in their cabinets. When the civilian regime was toppled, subsequent military administrations have always made it a point of duty to have at least one woman in the state cabinet.
Currently, women do not constitute anything like a visible voting bloc. Yet women outnumber men in the population census. They continue to be treated as a minority in a patriarchal social order. Apart from sexism and discrimination, women's political docility could be attributed to the socialization process and traditional upbringing which encourages female subservience where men are. Hence, their reluctance to vie for leadership positions. Aside from the lack of a consistent democratic political framework, women's major electoral barriers include the lack of incumbent status, lack of adequate financial support, lack of access to financial networks, education and constraints on eligibility as candidates for office. Political parties are hesitant to field female candidates, some women candidates are denied adequate campaign support, besides, women do not have the necessary resources to organize political campaigns on their own; men feel threatened by powerful women and are unwilling to yield positions of authority to them; and complacency on the part of women to society's sexist assumptions119 are just some of

119Culture and sexist assumptions do not always explain women's participation in politics. The United States and Britain which are ranked high in gender impartiality have less than 7 percent women in the legislatures as late as 1987. Whereas the legislatures of Syria and Indonesia, while considered undemocratic can boast of 10 to 12 percent women. The Muslim strongholds of Pakistan and Bangladesh can boast of strong female leaders--Former prime ministers Benazir Bhutto of Pakistan and Khaleda Zia of Bangladesh have
the reasons why women's roles are limited in the public sphere.

The question is, how can women break these political obstacles? Despite the fact that women constitute a growing proportion of the rank and file in political parties, unions, and civil services, they still constitute a miniature proportion of the higher hierarchy that provide a rostrum to higher political office. One pronounced difficulty has been a lack of campaign funds. Women as a group need to start addressing this problem through imaginative fund-raising strategies. They could start by establishing partisan organizations to fund women candidates; they can also organize voting blocs to support female candidates, organize workshops to improve candidates electoral skills as well as their proficiency to perform effectively in office.

Studies have shown that various kinds of voting structures can dramatically affect women's likelihood of being elected.\(^\text{120}\) When each district elects only one candidate, minority votes are lost. Significantly more women

\(^{120}\)The general explanation for the relatively low numbers of female legislators in the United States and Britain is their single member district electoral systems.
are elected in countries with electoral systems based on proportional representation (in which candidates are elected from party lists according to the percentage of total votes the party receives) or on at-large districts (multi-member constituencies). Several countries have experimented with different electoral systems, including mixed single-member and multi-member district systems, to improve the participation of unrepresented groups, particularly women. The definite process to secure a boost in the number of women in national legislatures is to employ a quota system that necessitates a certain percentage of women to be nominated or elected.\textsuperscript{121} The Fourth World Conference on Women in Beijing organized to mobilize and enlighten women to take active part in politics, recommended some form of affirmative action by reserving 30 percent of elective and decision making positions to be vied for and occupied by women, but conservative men in the Nigerian society are reluctant to implement the recommendation. Whereas, national legislatures in several countries around the world are trying gender quotas. Quotas explain the high proportion of female representation in the Nordic countries and for the recent two-fold increase to 18 percent of the House of Commons in Britain when the Labor party won the election in a landslide. A quota legislation in Argentina raised the

\textsuperscript{121}Jaquette, 24-28.
number of women in its House of Representatives from 4 percent in 1991 to over 16 percent in 1993 and 28 percent in 1995. In Brazil, when quotas were used in the 1997 congressional elections, the number of women legislators increased by nearly 40 percent since the last elections. The Indian constitution now mandates that one-third of the seats in local government bodies be "reserved for women," and Pakistan is debating the issue. It is obvious that quotas increase the number of women office-holders; they have become prevalent not only because women have lobbied and demanded for them, but because more people are increasingly realizing that quotas facilitate valuable political targets in a democratic milieu. For a national legislature to be truly representative of a pluralistic society adequate representation of all groups is a must, this assures an open and responsive democracy and ensures its continuity.

Constitutional Status

Fundamental human rights are a prerequisite of political and individual rights. The Constitution of the Federal Republic of Nigeria (1963) confers a sets of

122 Ibid., 29.

123 There are powerful arguments against quotas. Critics say quotas lead to "proxy" representation, where women legislators run as "fronts" for their husbands or other male interests.
privileges which have been tagged fundamental human rights, to all its citizens. These rights are also included in the 1989 and 1999 Constitution of the Federal Republic of Nigeria. Chapter 1IV of the 1999 Constitution professes that every citizen has:

33-(1) a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

34-(2) Every individual is entitled to respect for the dignity of his person, and accordingly -
(a) no person shall be subject to torture or to inhuman or degrading treatment;
(b) no person shall be held in slavery or servitude:

35-(1) Every person shall be entitled to his personal liberty save in the following cases and in accordance with a procedure permitted by law-

37. The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed;

38. (1) The right to freedom of thought, conscience and religion; including freedom to change his religion or belief, and freedom either alone or in community with others, and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice and observance;

39-(1) Every person shall be entitled to freedom of expression, including freedom to hold expression, including freedom to hold opinions and to receive and impart ideas and information without interference;

41-(1) the right to freedom of movement (subject to state security restrictions);

42-(I)A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or
political opinion shall not, by reason only that he is such a person:—
(a) be subjected either expressly by, or in the practical; application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions.

42-(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

42-(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the Nigeria Police Forces

43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

While the 1963 Constitution enunciated these same rights, which are laudable in their intent, it failed to protect women and minorities from discrimination. The Constitution clearly excluded women from its anti-discrimination provisions.\textsuperscript{124}

As a result of this, women were discriminated against in employment, especially in the civil service where men were mostly favored over women; in housing, in college enrollment, and other spheres of life. But the promulgation of the 1989 Constitution, brought changes in gender relations such as slight reduction in the wage gap between men and women in the public sector and slightly bridged the

\textsuperscript{124}The Constitution of the Federal Republic of Nigeria, (1963), Section 28.
gap in educational enrollment of young men and women. The legislation encouraged the institution of quotas in the civil service, it encouraged more recruitment of women and other ethnic minorities and stipulated equal pay for equal work, in the Civil service. According to Section 41 (1):

A citizen of Nigeria of a particular community, ethnic group, place of origin, circumstance of birth, sex, religion or political opinion shall not, by reason that he is such a person—

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, circumstance of birth, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, circumstance of birth, sex, religions or political opinions.\textsuperscript{125}

Clearly, the revised Constitution guarantees women's protection from discrimination. Nigerian women are entitled to these rights and can challenge any infringement in the court. Despite these constitutional guarantees, women's rights are relatively unprotected.

Chapter 14, Section 33 (1b) of the 1989 Constitution of the Federal Republic of Nigeria (Promulgation) No. 12 provides that no person shall be held in slavery or

servitude. Although, there is no slavery, many women are held in servitude. This is evident in the composition of the Nigerian Customary Marriage Law which accords a man the right to dowry refund from his spouse when the marriage is dissolved regardless of who filed the divorce petition.

The Tiv Declaration provides that:

Where a divorce is granted, the wife's guardian may be ordered to refund to the husband the bride price up to a maximum sum of twelve pounds inclusive of the value of the husbands' customary gifts.\(^{126}\)

The ceiling is hardly respected by the courts or claimants, as these following examples attest.

In Massahim Mala v. Zerver Kyurabo,\(^{127}\) the Area Court 11, Sai, ordered refund of five hundred naira to the husband, which was more than the law stipulated. In Madam Wansar Dever\(^{128}\) the Area Court Grade 11, Gungur, ordered refund of seventy-seven naira dowry expenses, which was not up to fifteen pounds. In Tyavyav Torshe\(^{129}\) and Anoliefo, J, the Grade 11 area court ordered the refund of one hundred

\(^{126}\)Nigeria Customary Marriage Law, 1963. Tiv Declaration 7:1. The naira equivalence at that time was less than twenty four naira.


\(^{129}\)Ibid., 33.
and forty naira dowry to Appellant. These are just a few examples.

The provision of the customary law is that dowry must be refunded in whole or in part, and if in part, the percentage and circumstances are at the discretion of the local dictates. The point is that women in marriages (regardless of the duration) toil for their husbands, they take care of domestic duties, most of them have additional assignments of working on their husbands' farms and other services which are not quantifiable. Yet, the law requires them to return whatever amount the husband had spent on them up to the cessation of the marriage. Although the refund varies according to the indigenous customs, some deductions are conceded for the number of children born of the claimant. For instance, in Ede Oluji the Respondent did not oppose the action for divorce by his wife but he declined the refund. "I have no objection to divorce, but I waived the bride price of N120.00 because of the three children born for me: one male and two female." Not all spouses are as generous as Oluji. Most women have to resign

---

130Anyebe (1985), 77.

131Ibid., (Case Number 30/80 tried by the Area Court Grade 1, Oju; - A copy is in the file no OHC/72A/81 Ede Oluji v. Ogaku Ikpa heard on appeal at Otukpo in October 1982).

themselves to a lifetime of servitude even in abusive marriages characterized by cruelty and emotional barrenness to avoid repaying dowry which they could not afford. The customary law stipulation also "imprisons" many childless women who would like to terminate their relationships, but are incapacitated because total dowry refunds are required; if they have children they could have got some deductions, but because they are barren total repayment of the dowry is mandatory.

In essence, millions of women are put in bondage by this customary law provision. Their servitude is however supported by the very institutions which are supposed to protect their civil rights.

Citizenship

Citizenship status is acquired in three ways. Regardless of his or her sex, citizenship is conferred by naturalization, by birth in the territory, or by birth abroad of a parent who is a Nigerian citizen.\textsuperscript{133}

In reality, because of the discriminatory traditions of the Nigerian patrilineal system, this provision is often violated in terms of a child's citizenship status stemming from a Nigerian mother, as the parent. A case in point was that of a prominent member of the defunct GNPP-controlled

\textsuperscript{133}\textit{Nigerian Federal Constitution,} (1963), Section 8.
Borno State House of Assembly, (Alhaji) Shugaba Rahman, who was the majority leader. He was served a deportation order. Rahman's father was a Chadian who resided and died in Nigeria without naturalizing. Rahman's mother, a Nigerian citizen, resides in Nigeria; yet her son was not considered a Nigerian, despite Constitutional stipulations.

However, under customary law, a woman assumes membership of her husband's kin and is liable to the dictates of the local customs, and socio-political precepts; while at the same time securing privileges under the local customary laws as if she was a primary member of that ethnic group. However, a husband never assumes his wife's ethnicity, even in the matrilineal societies, and in cases where the husband resides among her people.\textsuperscript{134}

What is the citizenship status of a non-Nigerian woman who marries a Nigerian citizen? Neither the Federal Constitution, 1963, (and the revised ones in 1979 and 1989) nor the Nigerian Citizenship Acts allow a woman to instantly assume Nigerian citizenship\textsuperscript{135} by virtue of her marriage to a Nigerian man. These legislation's do, however, permit her to file a petition for consideration. (There are no

\textsuperscript{134} For persons who became Nigerian citizens on October 1, 1960, stet ss. 7, 7 (1) and 9 of the Federal Constitution, 1963.

\textsuperscript{135} This eliminates "aliens" (as specified in s.17) such as Frenchmen who might fulfill requirement (a) and (c) pertaining to birth and descent.
requirements on the opposite case of a non-Nigerian male marrying a Nigerian female citizen.)

Section 8 (2) of the Federal Constitution, 1963, states that a woman "shall be entitled, upon making application in such a manner as may be prescribed by Parliament to be registered as a citizen of Nigeria" if on September 30, 1960, she was married to a person who became a Nigerian citizen on October 1, 1960, by virtue of Section 7, thereof, or who would have become such a citizen but for his prior death. The inference of section 7 and section 8 (2) is that a wife or widow has a right to petition for citizenship if her husband was a citizen of the United Kingdom and Colonies or a British protected person before Nigeria's independence and (b) a descendant of a person who was born in the former Colony or Protectorate of Nigeria.

The same right applies to women who are married to husbands who acquired Nigerian citizenship through naturalization. Section 3 (3) of the Nigerian Citizenship Act of 1960, deals with widows of aspirants of Nigerian citizenship status. Such women, may file for citizenship even if they are underage provided that they submit (a) a

\[136\] Requirements (a), (b), (c) are appendages of s.7, (c) being the stipulation.

\[137\] As Amended by the Nigerian Citizenship Act, 1961 (No. 9 of 1961).
written affirmation of their decision to repudiate any previous citizenship they may have and\textsuperscript{138} (b) take an oath of allegiance. Sections 3 B, 3 C (1) and 3 D (1), which were added by the Nigerian Citizenship Act, 1961, are similar in terms to sections 8 (2), (3) and (4) of the Federal Constitution procedures for these applications.

\textit{Labor Laws}

The wage structure in the government sector is gender neutral; but the same cannot be said about the private sector which is not regulated, thus they make their own rules. In the government sector, women get paid maternity leave of three months. However promotions and women's advancement in the workplace are not regulated this makes them vulnerable to gender biased evaluation procedures. Also the tax laws fail to recognize women as head of households. Thus single parents are denied essential deductions including child care expenses. Medical coverage is often times not provided for the offspring of a female single parent, because of the patriarchal ideology.

\textit{Conclusion}

The chapter has demonstrated that Nigerian women are governed by two sets of law. The single woman is governed by

\textsuperscript{138}A recent governmental legislation has repudiated this clause, dual citizenship is now permitted.
the Statutory law. She seems to have more freedom and more legal rights, similar to those enjoyed by men; this is because the law does not in general differentiate between male and female.

Similarly, the Nigerian woman married under the statutory law is governed by the English law which has been incorporated into Nigerian law. The English law known as the Statutory Law seems to be liberal to women because it covers broader concerns of women and provides them a voice, although, it has several deficiencies.

The flip-side of the legal infrastructure is the customary law systems which evolved through tradition and the Muslim laws which evolved from the Koran. These Customary laws govern the Nigerian woman married under Native Law or Customs, while the Muslim laws govern Muslim marriages. The Customary laws are pro-male and seem to have developed from a patriarchal ideology. These laws do not cover much of the problem of women, and seem to empathize with the Nigerian male.

The problem with these dual-systems is that the majority of Nigerian women are married under the Customary laws; and a huge percentage of those married under the Statute perform the traditional rites of marriage first before they go either to the Registry or the Church, or both to conduct Statutory marriages. So often times, Statutory
marriages and Customary laws co-exist, but it is not certain which of these marriages supersede the other in such situations.

In presenting an overview of the key points in Chapter Three, the Statutorily contractual rights offered through the Married Women's Property Rights Act of 1893 seem to liberate the Nigerian woman, in Statutory marriage, given the fact that she could sign a contract with anyone, pledge her husband's credit, acquire and dispose of any property as she desires, sue anyone including her husband for violation of her property rights or for other reasons; but her (women in Western Nigeria) property rights are also circumvented by the Married Women's Property Law of the Western Region, which technically puts a wife's property under the control of her husband. Using Section 17 of this Law, a husband can seize a wife's assets simply by proving that he financed the investment.

Despite the liberal property rights, women are often required to get their husband's consent in contractual commitments, even though there is no law authorizing such, for example, to get a loan at the bank, a property, life insurance, and even a passport.

The wage structure in the government sector is gender neutral; but the same cannot be said about the private sector which is not regulated, thus they make their own
rules. In the government sector, women get paid maternity leave of three months, but the tax laws fail to recognize women as head of households. Thus single parents are denied essential deductions including child-care expenses. Medical coverage is often times not provided for the offspring of a female single parent, because of the patriarchal ideology.

Do women have reproductive control? Nigerian women have made significant leaps in this realm. Unlike in the past when women had to use a trial and error traditional contraceptive mechanism including abstinence to space childbirth; today more women have more reproductive control. With the help of the Planned Parenthood in Nigeria and other concerned organizations, women are increasingly gaining access to modern contraceptive devices. Despite this development, some women do have a large number of children in the quest for a male child. The Nigerian society places a huge premium on the male child and some childbearing women do feel incomplete until they produce a male child. Abortion remains illegal. Hence, women are compelled to go to pseudo medical practitioners and unqualified abortion clinics to terminate unwanted pregnancies. Young teenagers, college students, women who are facing economic hardships and weary of the economic burden of another child in a gruesome economy are some of the likely victims of these abortion clinics. Since, the industry is unrecognized, unregulated,
and uncertified, many women have gotten their wombs destroyed in the process. Many have lost their lives too.

Perhaps one of the most repulsive restrictions on women's sexuality is the issue of clitoral mutilation otherwise called genital mutilation. A process of female circumcision performed on young girls in childhood. This practice which is prevalent in most parts of the country with the exception of the Northern states is essentially clitoral laceration. The intention of this procedure is to reduce the sexual drive of girls, and to keep them less promiscuous until they get married. Customary dictates justify this process as native method improvised to prevent teenage pregnancy and to curtail sexually transmitted diseases which young girls might be subjected to before they are wise enough to make rational decisions about sexual relations. Although the argument might sound persuasive in terms of restricting a child's sexual adventures, one cannot discount the fact that girls do grow up to be women. The long term effect of the process is awful to the victims, some of who have called it a carefully orchestrated scheme to curtail female sexuality. Since FMG is irreversible women's sexual drive is seriously eroded and it also impairs their ability for sexual satisfaction.

Although there are no evidences of forceful FMG, new mothers simply release their infant baby girls for the
exercise because it is the norm. However, the court system needs to intervene and outlaw this practice and with more education the process could be discouraged.

On the political front, the chapter has demonstrated that formal political participation has been elusive to both genders because of militarism. However, women's political participation in the few attempts at democracy have been remarkably low. The problem is attributed to the reluctance of political parties to field women candidates, lack of campaign support for women, lack of financial resources and a cultural ideology that believes that politics is a man's realm.
CHAPTER IV

FAMILY LAW AND THE MARRIAGE INSTITUTION

Chapter four takes a look at the Nigerian marriage institution by discussing the types of marriages recognized in Nigeria, who can marry who and the procedures of marriage. It evaluates the Marriage Act, points out its deficiencies, provides a few suggestions for improvement, while analyzing the Customary and Muslim marriage procedures. The chapter also explores issues relating to spousal rights over one another and the available remedies for violation either by the other spouse or by someone else. The final section of Chapter Four deals with the dissolution of marriage.

Marriage is the legal union of a man and a woman. The union also carries a spiritual and religious bond. Marriage creates status universally.1 Marriage elevates spouses to a distinctive class whose entitlements and responsibilities are designated by law, tradition and religion. Being the foundation of the society, which is also responsible for formation of the family, marriage is an eminent institution.

1Fasbender v. AG (U.K. 1922) 2 Ch. 850, 858.
Marriage is a worldwide practice, shaped by state rules, tradition and religion. Marriage laws take cognizance of the prevailing customs, values, religious beliefs, and local socio-economic dictates of the society. Violations of the principles of marriage are enforceable in courts.

Types of Marriages

Nigeria acknowledges two forms of marriage—monogamy and polygamy. In Nigeria, monogamy is regulated by the Marriage Act of 1914\textsuperscript{2} and the Matrimonial Causes Act of 1970.\textsuperscript{3} These two laws diverge primarily in principle and in practice. Polygamy is the practice of having more than one spouse at a time. Polygamy is unisex. It could be either a man or a woman having several spouses, at the same time. However, when a man marries more than one wife at a time, he is practicing polygyny. If a woman has more than one husband at the same time she is practicing polyandry. The Moslem religion permits men to practice polygyny, in which case only men are allowed to be polygynous. Only a woman could be polyandrous. Nigeria recognizes monogamy and polygyny, polyandry is unacceptable.

\textsuperscript{2}Nigerian Laws, Statutes, etc., Laws of the Federation of Nigeria, 1959, Cap. 115.

\textsuperscript{3}Nigerian Laws, Statutes, etc., Decree No. 18, 1970.
The woman, under this arrangement, the man is at liberty to
of his (his kind) but terminally definitely at the death of
presumed as the man’s property could be passed over to one
the lifetime of the man, in even of the man’s death, the woman
one or more women. It is a union that exceeds even beyond
polymamous marriages are literal unions of men with
polymamous marriage

continued union of the marriage.
and one woman to the exclusion of all others during the
where it is contracted as a voluntary union of one man
A marriage which is recognized by the law of the place

marriage is:

Marriage Interpretation Act of 1964 states that a monogamous
marriage is a crimenial offense. The
duration of a monogamous marriage is a multiple wives. To take another wife during the
having multiple wives. To take another wife during the
one man and one woman only. The practice of monogamy opposes
subject to dissolution if they so desire, and a union of
voluntary consent of both parties, the lifetime alliance
all others. The type of marriage is based on the
union for the lifetime of one man and one woman to the exclusion of
polygamous marriage in Nigeria is, "The voluntarily
polygamous marriage

153
marry as many wives as he desires, and in the case of Moslems take as many concubines. Under this system, a man is free to acquire more children than his wives can give birth to, by having extra-marital love affairs and claiming the offspring resulting from such liaisons. Some Nigerian men marry up to twenty wives, sometimes fifty wives depending on their economic strength, but generally the number ranges from two to four.

One of the historical rationales for polygyny, according to some old men and women interviewed for this research, was to have extra help on the farms. Also a convoy of wives, especially on ceremonial occasions, is a status symbol, which places them on a special economic and political plane. Such an egotistical and weak reason for keeping a harem can hardly endure the influence of the contemporary social values which are already presenting constructive challenges to the outdated system. While practitioners rationalize polygamy as "the African custom," the Moslems claim that the Koran supports it. But, some Islamic countries do not allow the practice of polygamy. Some Islamic countries have also come to realize that polygamy is obnoxious to any refined morality.

Tunisia revoked polygamy on New Years' day 1957, after practicing polygamy for several generations. The Tunisia government likened polygamy with slavery and stated that
such institutions could have been appropriate at a primal generation, but in contemporary times, it is unfair to human dignity. Although the government acknowledges that the Koran supports polygamy, it emphasized the conditions for such indulgence which is equitable treatment. If the man can treat the wives equally, love them equally, satisfy them equally, he may take up to four wives. However, the Tunisian government boldly confessed that history and experience has proved that no one is capable of treating two or more wives with fairness and equity, therefore "polygamy is prohibited." 6

In India and in China in the 19th Century, polygamy was firmly discouraged through legislation. Polygamy was eradicated in the Belgian Congo by a Belgian government decree in the middle 1950. In Morocco, a woman is permitted to specify in her marriage contract that her husband must not take an additional wife. A violation legally empowers her to divorce her husband.

Ghana has declared polygamy obsolete. In spite of this many non-Muslim communities continue to practice polygamy. But the truth is: polygamy is antiquated. In the world of Acquired Immune Disease Syndrome (AIDS), and other sexually

---

transmitted diseases, multiple sexual partners under the guise of custom is actually a health risk. In view of the complex and dynamic socio-economic condition of Nigeria, polygamy and its attending large family is no longer an asset. On the converse, it is a burden, because the numerous offspring have to be educated. It also affects the standard of living of the family.

The effect of polygamy on women is immeasurable. Most women in polygamous marriages suffer depression and are emotionally traumatized by the whole system of sharing their husbands by other women, living a life of disharmony, distrust, and an endless struggle of securing the attention and affection of their husbands who have several wives at their beck and call.7 Since the patriarch are also human, they inevitably love one wife more than the others and this brings competition and unrest among the wives and such tension oftentimes affects the children of polygamous marriages. Polygamy also have psychological and emotional effects on the spouses and the children. According to some of the women participants of the focus group workshops conducted for this study, most women fake happiness and nonchalance, to avoid being singled out as non-conformist and to avoid the distrust of the other wives.

Indeed, Nigeria's Customary marriage law is the bane of the Nigerian woman. It is chauvinistic in design, exploitative in form, and downright sexist. According to Philip and Morris, "It reflects, and at the same time intensifies the fundamental inequality between the sexes which appears to be typical of African social systems even in matrilineal societies."\(^8\)

Consent of both parties to customary law marriage used to be a non-essential factor, especially when child marriages were the norm. Then, a young girl could be married off to a total stranger without her consent. But things have changed somewhat with, consent of both parties required before a union is formalized.

Polygamy is administrated by the Nigerian customary law and the Islamic law. Although these laws allow men to take multiple wives, they disallow polyandry. Thus, women cannot marry more than one husband simultaneously. Under Section 6(2) of the Native Authority (Declaration of Idoma Native Marriage Law and Custom) Order, 1959,\(^9\) it is an offense for a woman to have more than one husband at the same time. The dualism was confirmed in Kpenanya v. Tsoka and Anor,\(^10\) when

---


\(^9\)Nigerian Native Authority Laws & Customs, 1959, 63.

\(^10\)Kpelanya v. Tsokar & Anor (Kano, Magistrate Court, 1971) NNLR 66.
the Court ruled that the Tiv Customary law disallows a woman to legally marry two men at the same time.

The Customary laws are inharmonious. They are comprised of various laws which differ from one community to the other. Although they are generally not coded, several states have delegated their local governments to take appropriate actions to record indigenous decisions, and most of them have exercised their mandate by making laws concerning the solemnization and termination of customary law marriages, dowry, custody and maintenance of children, child betrothal, and obligations of customary law spouses.11

The Islamic law,12 is applicable to Muslims who reside in the Northern part of Nigeria only, especially in the Northern Emirates. Islamic law is not the only customary law in Northern Nigeria. Each locale has its own conventional customs; some apply the native customs introduced by various warriors or the Islamic law, which is essentially the instructions of the Koran.

---

11Nigerian Native Authority Laws & Customs. The NA (Declaration of Tiv Native Marriage Law and Custom) Order 1955 (NALN 149 of 1955); The NA (Declaration of Biu Native Marriage Law and Custom) Order, 164 (NALW 9 of 1964); The NA (Declaration of Idoma Native Law and Custom) Order, 1959 (NALN 63 0F 1959); etc. all created under section 49 of the Native Authority Law of Northern Nigeria, Laws of Northern Nigeria, 1963, Cap. 77.

Capacity to Marry under Statutory Provisions

The individuals who want to contract a marriage under the monogamous system must have the legally sanctioned relationships. These marriages fall into several categories.

Age

The Matrimonial Causes Act, 1970, did not specify a minimum age of marriage. Its only reference to age was Section 3 (e) of the Act which states that a marriage is void if either of the two parties is not of "marriageable age", which in effect means age of puberty. The common law fixes this at twelve for girls and fourteen for boys.\(^{13}\) The tragedy of this is that the Matrimonial Causes Act has not been able to rescue young girls from child marriages.

These are a lot of contradictions regarding a uniformly acceptable legal age in Nigeria. For instance, while the age of adulthood is twenty-one, the voting age is eighteen\(^ {14}\) The myriad forms of Customary laws consider adulthood as the age of puberty. Hence, adolescents are oftentimes saddled with family obligations before they reach adulthood under the Statutory law.

\(^{13}\)Harrod v. Harrod (U.K. High Court, 1854) J 4 & I K, 69 ER 344.

\(^{14}\)The Constitution of the Federal Republic of Nigeria, 1979, Section 71(2).
Parental Consent

Parental approval is not a requirement for a legitimate marriage contract, if both parties meet the age specifications.\textsuperscript{15} Widowers and widows of any age are also exempted. However, if any of the parties is under twenty one years old, the consent of his or her parent or guardian must be obtained before a special license could be granted or a Registrar’s certificate issued.\textsuperscript{16}

The person who is basically obliged to give parental approval is the father; but if he is either deceased, insane or abroad, the mother may do so. And if the mother falls into any of those categories, the minor’s guardian may consent. And where the individual has no parents or guardian living in Nigeria, the approval of the State governor or a High Court judge may be obtained.\textsuperscript{17}

In any of these cases, the approval must be in writing and must be attached to the deposition accompanying the notice to the Registrar. If the person cannot read and write, he may indicate his or her consent by a thumbprint in the presence of an appropriate official.\textsuperscript{18} Violations of the

\textsuperscript{15}Ughoma v. Morah (Nigerian High Court, 1940) 15 Nigerian Law Reports 78.

\textsuperscript{16}U.K. Laws, Statutes, etc., Marriage Act, 1914, Section 18.

\textsuperscript{17}Ibid., Section 20.

\textsuperscript{18}Ibid., Section 19 (1).
parental consent requirement carries a jail term of two years, although the marriage remains valid.\textsuperscript{19}

The rules governing age requirements for marriage are quite contradictory. An under twenty-one-year-old who is a widow or widower is adjudged competent enough to make his or her own judgment without parental approval, whereas an under twenty-one-year-old bachelor or spinster getting married for the first time is not deemed so capable.

Part of the eligibility requirements to contract a monogamous marriage includes being single. Having an existing marriage nullifies one's chances of capability. However, a couple who have contracted a Customary law marriage could also remarry each other under the statute.\textsuperscript{20}

\textbf{Issues of Consanguinity and Affinity}

The Matrimonial Causes Act 1970 outlaws the following marriages if either party is a blood relative. For instance a man may not marry her descendants, a man may not marry his sister, father's sister, mother's sister, brother's daughter, sister's daughter.

\textsuperscript{19}U.K. Laws, Statutes, etc., \textit{Marriage Act, 1914}, Section 33(3).

Marriage is also prohibited between marital relatives. Hence on the basis of affinity marriage is barred between a man and his wife's mother, wife's grandmother, wife's daughter, wife's son's daughter, wife's daughter's daughter, father's wife, grandfather's wife, son's wife, son's wife, daughters' son's wife.²¹ Women are not covered as subjects in the list.

Breach of Promise to Marry

If an individual reneges on his promise to marry, the offended party could sue for breach of promise to marry. However the onus of proof is on the plaintiff, who will have to convince the court that there was a promise to marry and that the defendant has failed to honor his pledge. Damages ranging from loss of status of a married person,²² emotional trauma,²³ to financial loss²⁴ could be claimed only if there are substantial verifications to support the promise.²⁵


²³U.K. Law Reports 1, 1886 Chancery Division 331, 333.

²⁴Uso v. Iketubosin (Lagos High Court, 1957) Western Nigeria Law Reports 1956/57, 186. (The court recognized financial loss as a factor in a breach of promise, but rejected the claim because the plaintiff was the person who suffered the loss.)
Marriage Procedures

Notice

A three months' notification of intention to be married is required to be given to the District Marriage registry by any of the individuals who wants to get married. The registrar in turn is required to publish the notice, for twenty one days; assess the eligibility of the couple for the exercise, and issue them a certificate to marry which is valid for another nine weeks. In essence, the marriage must take place within three months of the original notice. 26

Special License

If the individuals cannot afford to wait for the long process of Notification, for legitimate reasons, they could get a special license from the State Governor. 27 This will authorize the solemnization of marriage by a registrar or a qualified minister of religion.

If for any reason, anyone feels that the parties should not be married, the person could write "Forbidden" opposite


26 Nigerian Laws, Statute, etc., Marriage Act, Section 7 and Section 8 and Form A Schedule. If the applicant is an illiterate, Form B First Schedule is applicable.

27 Ibid., Section 13.
the entry of the notice in the Marriage Notice Book and explain why he objects to the marriage and also provide his contact address. The registrar is not allowed to issue the Certificate to Marry to the applicants unless the caveat is removed. This can only be removed by court order. In which case, the presiding judge will summon the applicants and the person objecting to a conference and listen to their concerns and make his decision. If the parties are dissatisfied, they have a right to appeal.

Marriage Formality

A marriage may be celebrated either in a church duly licensed for the celebration of marriages (upon production of the certificate to marry) or at a marriage registry or in any place indicated in the special license where this is issued.

The Marriage Act Amendment Decree of 1971 supports the celebration of marriages outside Nigeria in a Nigerian diplomatic and consular mission office, by the appropriate official.

---

28Ibid., Section 14 (1) and (2)
29Ibid., Section 15.
30Ibid., Section 14 (2).
There are several rules and regulations governing the solemnization of marriages and the officiating body is legally required to comply. Section 22 of the Marriage Act states that:

A minister shall not celebrate any marriage if he knows of any just impediment to such marriage, nor until the parties deliver to him the registrar's certificate or the license issued under section 13.

Violation of this stipulation is punishable by five year jail term,\textsuperscript{32} and may also affect the validity of the marriage.\textsuperscript{33} In church marriages, a marriage performed by a person who is not a recognized minister of a religious organization is void.\textsuperscript{34} Where the minister is duly qualified, Section 107 of the Matrimonial Causes Decree 1971 absolves him of any legal obligation to celebrate any marriage. So a minister may choose not to solemnize a marriage because one of the parties is a divorcer; if such act violates his church's rules and ethics, he could exercise his prerogative and be legally excused.

\textsuperscript{32}Ibid., Section 43.

\textsuperscript{33}Obiekwe v. Obiekwe (Enugu High Court, 1963) Eastern Nigeria Law Reports (ENLR) 196.

\textsuperscript{34}Nigerian Laws, Statutes, etc., Matrimonial Causes Decree, 1971, Section 21.
Proof of Marriage

A marriage may be proved in court or before any person authorized by law or by consent to hear, receive and examine evidence, by the production of either (a) a marriage certificate filed in the office of the registrar of marriages, or a certified true copy thereof, or (b) an entry in a marriage register, or a certified true copy thereof.\textsuperscript{35} This means that, an extract from a Church register or other certificate not appropriately filed is inadmissible as proof of marriage.

But Section 86 of the Matrimonial Causes Act 1970, broadened the acceptable verifications. It states that admissible documents in court shall cover all original or a certified true copy of any certificate, entry or record of birth, death or marriage, alleged to have taken place, whether in Nigeria or elsewhere. Thus, a marriage may be confirmed by a document which professes to be a copy of 'any certificate, entry or record.

The problem with this, is that provisions of the Marriage Act are not safeguarded, and women are quite vulnerable to this loophole. The law allows indiscriminate acceptance of certificate of marriages issued by or under the administration of religious organizations which may not

\textsuperscript{35}Nigerian Laws, Statutes, etc., Marriage Act, 1970, Section 32.
necessarily observe the prerequisites of the Marriage Act. The Act also recognizes any entry or record of marriage kept by such organizations.

There have been cases where some men deliberately skip all the necessary stipulations, celebrate the marriage, get the improper documentation with a view to claiming a non-monogamous marriage in the event that they choose to take another wife. In the absence of a solid verification of marriage, the court could accept circumstantial evidence, such as cohabitation and integrity of the litigants.

A marriage contracted abroad will be considered as monogamous if it is acknowledged by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the course of the marriage

Women should note that the Nigerian matrimonial legal provisions do not protect individuals cohabiting. Existing legislation only applies to couples who are properly married. Customary laws take similar stance over the issue

---

36 Akparanta v. Akparanta (Enugu High Court, 1972) 2 ECSLR 779.

37 Onwudinjoh v. Onwudinjoh (Enugu High Court, 1957) 11 ERNLR 1.

38 Nigerian Laws, Statutes, etc., Interpretation Act, 1964, Section 18 (1).
and would only validate a marriage if bridal price has been paid and other traditional ceremonies have been conducted.

**Deficiencies of the Marriage Act**

The prerequisites to the solemnization of a statutory marriage stipulated by the Marriage Act of 1914 and regulated by section 30 (1) and section 32 of the Act have been rendered ineffective by Section 86 of the Matrimonial Causes Act of 1970 with its indiscriminate provisions for marriage verification.\(^{39}\) The Act defeats the very institution it is aimed to protect, allowing circumvention of the rules.

Failure to define the age of marriage encourages child marriages. This deprives young women the liberty of making their own decisions when they are mature enough to do so. Child marriages not only rob them of self-determination, it also puts women in positions of dependency and subordination from infancy. Allowing members of an existing customary law marriage to undertake a subsequent statutory marriage\(^{40}\) without advising on the legal implications of that, cloud the actual status of the couples involved. Legally, it is not certain if both marriages co-exist, or if the statutory marriage supersedes the customary one, or if the customary

---

\(^{39}\)Nigerian Laws, Statutes, etc., *Matrimonial Causes Act, 1970*, Section 86.

\(^{40}\)Nigerian Laws, Statutes, etc., *Marriage Act*, Section 33 (1).

marriage is simply eclipsed and revived after the dissolution of the statutory one.

The statute provides a sweeping provision for all individuals in a statutory marriage who undertake a subsequent customary law marriage.\(^{41}\) This is an inappropriate generalization; in view of the fact that some couples in statutory marriages (especially individuals who marry abroad) do sometimes want to contract a subsequent traditional marriage just to satisfy their familial obligations. The statute needs to accommodate this class of people if they are the same parties in a statutory marriage seeking a renewal of their marital bond the traditional way. Also, the statute should clearly specify that it is unacceptable for any individual who is a party to a statutory marriage to marry another party under customary law, because that will constitute bigamy.

The existing legislation on violation of bigamy law in the Marriage Acts\(^{42}\) is not in consonance with the jail term prescribed in the Criminal Code.\(^{43}\) There is a need for uniform penalties. Also bigamy laws are hardly enforced, this needs to be changed. So far, the only recorded

\(^{41}\)Ibid., Section 48.

\(^{42}\)Ibid.

\(^{43}\)Ss. 35 and 48 of the Marriage Act assigns five years while Section 370 of the Criminal Code (Same as 348 Penal Code) prescribes seven years for same offence of bigamy.
prosecution for bigamy has been that of Bartholomew Princewell.\textsuperscript{44}

\textit{Suggested Revisions of the Marriage Act}

The Draft Bill of the Marriage Act, which proposes changes in the existing laws was submitted in 1984, however it is yet to become law. The Proposed bill still reinforces male sentiment especially with its definition of marriage in the Nigerian framework as monogamous and polygamous. Concerned women should rally round and demand that polygamy should be outlawed.

However, the bill is forthright in defining the marriageable age. It sets the marriageable age at sixteen years for boys and fourteen years for girls.\textsuperscript{45} That changes the Common Law which led marriageable age at 14 for boys and 12 for girls. But giving out a girl for marriage at the age of fourteen is akin to child marriage. A fourteen year old girl is incapable of self determination, and such an adult decision is not a choice that a fourteen year old girl could make. Although teenage pregnancy is rampant, and many fourteen year old girls are victims of teenage pregnancy,

\textsuperscript{44}The Queen v. Bartholomew Princewell (U.K. High Court, 1963) Northern Nigerian Law Reports (NNLR) 54.

the problem should not be compounded by child marriages, in fact effort should be made to stem the tide. One of the ways that this could be discouraged is to make it an offense for anyone to have sexual relations with young girls, and this should be strictly enforced. Section Four of the proposed bill validates marriages celebrated outside Nigeria. Part Five, Sections 43-46 and Section Four, article 2, give room for the voluntary registration of customary and Islamic marriages and marriages celebrated outside Nigeria. Among other changes, the bill also abrogates bigamy. This relates only to Statutory Marriages, it exonerates Muslim and Customary law married men.

Customary Law Marriage

Marriage under customary law is the union of one man and one or more women for the life span of the women. The union transcends the death of the man. It is akin to a fusion between the families concerned. Customary law marriage also entails some procedures and obligations. The parties must have the competence under the Customary law.

Capacity

Age. The statute does not specify the age at which anyone can marry under the customary law except in the former Eastern Region of Nigeria. This has spurred the
not specifically refer this exemption to couples in Section 6 of the Criminal Code Act. Since the act did

Cries under 13. Section 221 of the Criminal Code Act [definition of criminal acts under 16
Section 218 of the Criminal Code Act; and for the purpose of this section, Section 16, Cap. 42 Laws of the
State, Section 218, 221 and 223 of the Criminal Code, and for any purpose to be determined by law
Section 156, 159, and 162 of the Western Code, and for

sixteen, the act of excludes sexual relations between
they consummate a customary law marriage with a girl under 12, the Criminal Code Act exempts men of any
wrongdoing. It facts, the Criminal Code Act exempts men of any punitive measures. In
By the potential husband without any punitive measures. In

Consequently, young girls of thirteen and above

puberty is the same.
and fourteen for girls, it could be assumed that the age of
since Common Law puts the age of marriage at twelve for boys
inconsistent. Some people believe that it is fourteen, but
However, the interpretation of the age of puberty is
is postponed until the girl reaches the age of puberty.

When the girl is one day old, although marriage
daughter would marry him on his Inheritance, the promise may
Young girl may promote a very grown up man, that their

In the absence of appropriate legislation, children

appropriate phenomenon of child marriages to an incredible

172
husband and wife in its definition of "unlawful carnal knowledge."

However, three states in Northern Nigeria have fixed the marriageable age between twelve and fourteen years. Biu in Borno State in the North East, Idoma and Tiv in the Plateau; and Bourgu in Kwara, the marriage has been fixed by declaration of native law. In Biu it is fourteen for girls, in Idoma twelve years and in Borgu thirteen years.

However, in the Eastern States, the Age of Marriage Law passed in 1956 provides in Section 3 (1) that, "A marriage between or in respect of persons either of whom is under the age of sixteen years shall be void." If a man in such a void marriage is indicted under the Criminal Code for unlawful sexual relations with an underage girl, Section 3 (1) allows him to claim presumption of marital rights over the girl as a defense.

Consent. In the seventies when marriages were orchestrated by parents and guardians, the children had no choice but to comply. Refusal usually necessitated forceful compliance. But today, consent of both parties is an statutory marriages only, (as sections 10, 13, 34, and 36 of the Criminal Code Act did) it is assumed that couples in all legally recognized union in Nigeria are exempted from such punishment.

49E. Ward, *Marriage Among the Yoruba People* (Washington: Catholic University of America Press, 1937), 20

50Nigerian Native Law and Customs. *Biu Declarations Section 1(b); Idoma Declarations Sections 2(1)(b); Tiv*
integral criterion to a tenable customary law marriage. Section 361 of the Criminal Code backs up this right. It states that:

Any person who, with the intent to marry . . . a female person of any age, or to cause her to be married . . . by any other person, takes her away, or detains her against her will, is guilty of a felony and is liable to imprisonment for seven years.

Since customary law marriage is adjudged as marriage between two families, parental consent is obligatory and often times compulsory for its celebration. Parental consent for an adult male is optional.

Consent may be provided by the father or the eldest man in the family. Where this is unfulfilled, such rituals as fixing of the dowry, and giving away of the bride is jeopardized.

In Biu, Idoma, Tiv and Borgu, parental consent for a girl's first marriage is compulsory, and the bride's father reserves the right to disapprove without any legal obligation to rationalize his decision. But for subsequent marriages, parental consent is optional, and disapproval does not undermine the validity of the marriage. In some Southern parts of Nigeria where the Marriage, Divorce and

Declarations Section 1(b); Borgu Declarations Section 2(1)(b); Osamawonyi v. Osamawonyi (Lagos High Court, 1972) 10 SC 1, [1973] INMLR 25, [1972] 1 All NLR 356.

\textsuperscript{51}Nigeria Native Law & Customs. Biu Declarations Section 1(c) and Section 2(1) and 3; Tiv Declarations S 2(c); Borgu Declarations 2(1)(c) and Section 3.
Custody of Children Adoptive By Law Order\textsuperscript{52} is in effect, a customary law marriage may be celebrated without parental consent. Section 5 of the By Law Order stipulates:

When any parent or guardian of a bride refuses his or her consent to a marriage or refuses to accept his or her share of his dowry, the bride, if she is 18 years of age or above and the bridegroom jointly may insti-tute a legal proceedings in a competent court against the parent or guardian to show cause why he or she should not consent or to accept his or her share of the dowry and if the court is of the opinion that no suffi-cient cause has been shown, it shall order that the marriage may proceed without the consent of such parent.

Unlike in some parts of Northern Nigeria where the head of the family status is restricted to male only in Yorubaland, the leader of the family could be either a man or woman.

This stipulation clearly reinforces the custom that maternal consent is equally acceptable as paternal approval of a marriage. However, since the provision says the marriage may proceed if the court sanctions it, it can only be assumed that the court will undertake the necessary parental obligations, of giving away the bride.

\textit{Prohibited Degrees of Consanguinity and Affinity}

The various tribes of Nigeria delineate their different rules concerning the prohibited degrees of affinity or consanguinity. Generally, marriage is disapproved among

\footnote{Marriage, Divorce and Custody of Children Adoptive Bye Laws 1958 binding in Oyo, Lagos, Ogun, and Bendel States. Law Reports of Western Nigeria (WRLN) (WNLR) 456 of 1958.}
blood relatives. The Itsekiris\textsuperscript{53} object to the marriage between parties who are even slightly related by blood; the Efiks and the Annangs are less strict, they only disapprove of such marriage if between a man and the man's mother or sister or daughter, or between a man and his brother's wife or between cousins.

The Ibo, Ijaw and Yoruba's principle on affinity and consanguinity are similar. For instance, the Yoruba and the Ibos forbid marriage between couples of the same paternal or maternal lineage. While the Ibos\textsuperscript{54} forbid a man to marry his wife's or his wife's mother's family; the relationship by affinity, that is by marriage is not forbidden among the Yorubas\textsuperscript{55} except that he may not marry his wife's mother.

Thus, if a married man dies, his adult son may "inherit" his wife or wives. Conversely, a father may inherit his deceased son's wife.\textsuperscript{56} It is not uncommon, for a man to marry his wife's sister, even though the families may disapprove of such an act generally perceived as a disgrace.

\textsuperscript{53}Omonuekanrin, \textit{Itsekiri Law and Custom}, 46.

\textsuperscript{54}Uchendu, \textit{The Igbos of South East Nigeria} (New York: Rinehart & Winston, 1965), 26-30

\textsuperscript{55}Ward, \textit{Marriage Among the Yorubas}, (Washington: University of America, 1937), 1-14.

\textsuperscript{56}Ibid., 15.
Foreigners and Customary Law Marriage

Can a foreigner contract a valid customary law marriage in Nigeria? Assorted High Court stipulations govern the use of customary law in litigation.\(^{57}\) Customary law is applicable in non-criminal issues where the litigants are indigenes of Nigeria or persons of Nigerian parentage; where the parties are indigenes and foreigners, the courts are mandated to utilize Statutory Law.\(^{58}\) The courts have ruled that foreigners are not governed by Nigerian customary law and consequently incompetent to undertake a legitimate customary law marriage,\(^{59}\) except when the person is domiciled in Nigeria.\(^{60}\) Nonetheless, in Northern Nigeria, customary law is applicable to any person of African descent.\(^{61}\)

**Dowry or Bride Price**

Dowry is:

Any gift or payment in money, natural produce, brass rods, cowries, or in any other kind of property


\(^{58}\)The High Court statute for the Eastern States cited individuals of Nigerian lineage.

\(^{59}\)Savage v. Macfoy (Accra, 1909) 1 Renner's Gold Coast Reports 504.

\(^{60}\)Nelson v. Nelson (Lagos, 1951) 13 WACA 248.

\(^{61}\)Area Courts Edict 1967 Section 15 (1) Kwara State; Number 2 of 1967- Borno State, Number 4 of 1968, Benue State; and Number 2 of 1967 Kano State.
In Western States, children adopt the law by which they have been brought up. In these states, the law is a simple debt and the parents may take judicial action to enforce it, or in some places, request that the marriage be declared void. The custom ofدواة is for the bride to return to the house until they have been declared by the father or guardian of the custom. Under custom law, a marriage shall be deemed to be contracted upon presentation to the father or guardian of the custom.

A custom marriage shall be deemed null and void if the custom is a crucial factor of a legitimate or in respect of a woman at or before marriage. In the case of a customary gift, a husband to whatever to a parent or guardian of a female person is intended or has taken place. In the case of the marriage of such person which is...
ranges from a few hundreds to thousands, sometimes seventy
from two families. In some parts of Anambra State, bride price
in some Westernized Yoruba families. In Westernized
price is sometimes waived by the bride’s family especially
payment to the bride’s family. In some Westernized families, bride
money is rendered before or at the marriage, in
Westernized families. In the West and Middle Eastern states of
accepted without the woman’s consent. The woman may marry a
married man, so as not to have a child. Thus
restrctions which are placed on her rights if she fails
woman’s family. Thus is shown by the
transferrable place of property. The man buys by gift, a
marriage by purchase, assunmes that the woman is a
thousand naira, or more, depending on the status of the bride. Consequent to such exorbitant dowry, eligible bachelors who could not afford bridal price remain single or save up for decades, at the same time women are denied the opportunity of having their relationship transformed into permanent union because of the barriers of high bridal price stipulated by custom.

To alleviate the attendant social problems of high bridal price, several efforts have been made to regulate the amount of bride price. The Limitation of Dowry law 1956⁶⁶ applicable in four Eastern States--Anambra, Imo, Cross River and Rivers States, puts a limit of sixty naira on bride price payable for any female. The Marriage, Divorce and Custody of Children Adoptive By-laws Order, 1958⁶⁷ binding on the Western Region-Lagos, Ogun, Oyo, Ondo and Bendel States provides by statute a uniform bride price of twenty naira.⁶⁸ Any deviation from this must be approved by the Commissioner for Local Government.⁶⁹


⁶⁸Ibid., Schedule A.

⁶⁹Ibid., Section 15.
While in Biu (Bornu State), customary law caps bride price at thirty naira,\textsuperscript{70} Idoma (Benue state) native law puts the ceiling at sixty naira.\textsuperscript{71} Violations of the limitations of bride price constitutes an offense\textsuperscript{72} attracting a six month jail term.\textsuperscript{73} Despite these regulations and penalty, high bridal price continues to be a nagging problem in some parts of Nigeria.

\textit{Significance of the Payment of Bride Price}

Although bride price is a fundamental factor of customary law marriage in some parts of the country, the payment does not really constitute valid marriage under customary law.\textsuperscript{74} It, however, establishes a bond between the two families:

By accepting it, the parents of the girl evidence their consent to the marriage. It is a compensation for loss

\textsuperscript{70}Nigeria Native Law & Customs, The Native Authority, Declaration of Biu Native Marriage Law and Custom Order, 1964, Section 4 (1).

\textsuperscript{71}Nigerian Native Law & Customs, The Native Authority, Declaration of Idoma Native Marriage Law and Custom Order, 1959, Section 5 (1).

\textsuperscript{72}Nigerian Laws, Statute, etc., Laws of Eastern Nigeria Section 4 (a) and (b) of Cap 76.; Limitation of Dowry Law, 1963.


\textsuperscript{74}Ogunremi v. Ogunremi (1972) 2 University of Ife Law Reports 466.
to the woman's family of one of its members, a potential child bearer. It is a consideration for alliance of two kinship groups. It is marriage insurance to stabilize relationship and protect the wife. It is custom, pure and simple.\textsuperscript{75}

In some parts of Nigeria, payment of bride price confers the prospective husband the right to claim any subsequent offspring of the woman even if the child is fathered by another man. According to Ward,\textsuperscript{76} certain customary provisions allow a man to sue any other man who seduces his fiancee. Payment of bride price constitutes a betrothal.

\textit{Betrothal and Its Effects on Women}

For a woman, betrothal is a tremendous change of status, attitudes and a limitation on personal liberty. The acceptance of bridai price and conclusion of customary formalities takes away her sexual choices,\textsuperscript{77} having sexual relations with someone other than her betrothed contravenes the cultural prohibitions.\textsuperscript{78} Such a breach, if uncovered entitles the prospective husband to revoke the accord and

\textsuperscript{75}Anyebe (1985), 72.

\textsuperscript{76}E. Ward, \textit{Marriage among the Yoruba} (Washington: Catholic University of America Press, 1937), 20.

\textsuperscript{77}Simmons, "Sexual Life, Marriage and Childhood Among the Efik," \textit{Africa} vol. 30 (1960): 16.

reclaim his dowry. She cannot concede to another marriage proposal.\textsuperscript{79}

She is required to be submissive, and acquiescent towards her prospective husband and his family. The fact that a betrothal is an accord between two families has another consequence:

If the affianced man dies before the proposed marriage takes place, another member of his family has a right, if otherwise acceptable, to step into his shoes and carry on from where the deceased left off, any payments made so far credited to the new suitors' account. The woman is the new suitor's wife from the inception of the marriage, and any children thereof will be just as if the woman was originally betrothed to him with her family's consent.\textsuperscript{80}

In exchange for these limitations, a betrothed wife is eligible for various gifts intermittently from her prospective husband. She has a right to terminate the betrothal if he is stingy. Betrothal permits limited cohabitation with the prospective husband and his family.

In view of all these responsibilities and demands that follow the payment of bride price, there seems to be a thin line between betrothal and the actual marriage. According to Basden:

From the moment that the first installment of the dowry has been paid the girl is reckoned as the man's wife.


There are no such intermediate words as "betrothal" or "engagement."81

Celebration of the Marriage

After fulfilling the marital prerequisites of competence and bride price, the final requirement is the "handing over of the bride." This simply means the handing over of the bride by her parent or guardian to the grooms' family or his representatives. Usually, the marriage is not regarded as fully completed unless this formality is fulfilled.82 The ceremony which is usually accompanied with dining and revelry differs from clan to clan, but in most cases takes place at night. In most cases, the husband is elsewhere when his family welcomes the bride. This rite completes the marriage procedure.

Islamic Law Marriage

Islamic Law marriage is basically a customary law marriage. It entails all the requirements of a customary law marriage. However, the Maliki Islamic law accords a father


the right to marry off his children to whoever he likes without their approval. This mandate impedes a woman's right to self-determination. It breeds child marriages, with its subjugating consequences. Although the rule allows the children to retract the marriage contract at puberty, many of them are not able to redress these wrongs because of the debts in form of bridal price (sadaquat or sadaki) and gifts that they would have to pay back to their spouses, and besides financial considerations, dependency may disallow them to break away from such relationships. Appendant to Islamic law is a proscription of a marriage between a Muslim and a pagan woman. The law condones the marriage of a Muslim man to a Christian woman; however, a Muslim woman is disallowed from marrying a non-Moslem. Another distinguishing factor in Moslem marriage is that a religious service is held before noon on the wedding day by a mallam at the house of the bride's family, in the presence of at least two reliable Moslem witnesses. Although delegates of


86The Local authority Modification of Bornu Native Law and Custom Relating to Marriage Order, 1971, NESLAN 10 of
the groom's family are required to attend the ceremony called the Nikai, the groom is culturally disallowed. The "dowry" payable before or during the solemnization, symbolizes the actual legitimate pact of a Moslem marriage.

The trend nowadays among literate Moslems is to opt for a public ceremony which a mallam conducts, with the bride being given away by her father or guardian to the groom. The festivities in Islamic marriages typical of Nigerian marriages are oftentimes immoderate and the profligacy has reached such an alarming proportion that some states have passed legislation to curb it. For instance, the Sokoto State Marriage Expenses Regulation law, 1981 places a ban on bridal gifts, attendance of musicians, and reception (yinin buki) after the wedding. In Borno, modification of Borno Native Law and Custom Relating to Marriage Order 1971, forbids donations for wedding ceremonies, and restrict wedding dinners to families of the bride and bridegrooms only.

1871, Section 6 (1) and Schedule 2.

87Ibid., Section 7.

88Ibid., Section 8 and 9.

89Ibid., NESLAN 10 of 1971 Sections 8 and 9.
Registration

Historically registration of a customary law marriage was not an issue in customary law, due to the fanfare that the solemnization generated. This oversight necessitated the reliance on the recollection of witnesses or participants in the ceremonies.

The inappropriateness of relying on peoples' memories made critics to call for a change. Consequently, attempts are continuously being made in several parts of the country to record customary law marriages. In the Eastern States, the Local Government Law called Cap. 79 empowers local authorities to create By Laws for recording customary law marriages within their precinct. Some of the By Laws do not make registration mandatory nor impose any punishment for disregarding the rule.90 Consequently, these laws are not respected.

Some states impose penalties for non-registration. In the old Western Region-Oyo, Ogun, Ondo, Lagos and Bendel States, by the Marriage Adoptive By Law, 1958, a husband must notify the registrar of marriages of his status within one month of his marriage. This does not apply to the wife. Failure to register prompts a four Naira fine. In some parts

---

of the country, non-registration invalidates the marriage. In *Ashiv v. Agbende* the court ruled that failure to catalogue the native law and custom marriage as directed by Section 2 (e) of the declaration nullifies it.

It is clear that Nigeria has yet to formulate a uniform registration procedure that guarantees accuracy for customary law marriages with adequate penalty for non-compliance. Marriages need to be properly catalogued and opened for public scrutiny. This would guide against bigamy, ease the problems of proof of marriage and would also encourage statistical collation.

Other Types of Marriages

Under customary law, there are other acceptable types of marriages. These are the "woman to woman" marriage and the Sororate marriage.

**Woman to Woman Marriage.** Usually, Customary law in some parts of Nigeria allows a barren wife, afraid of being displaced, to pacify her husband by contracting another

---

91Nigeria Native Law & Customs, Native Authority Order 1955, Section 2 (e) *Declaration of Tiv Native Law and Order* states that a customary marriage between two natives of the Tiv Tribe is valid only if recorded by a native court.

92Nigeria Native Law and Customs, Native Authority Order 1976 1 FNR 216.

93*Declaration of Tiv Native Law and Custom Order, 1955.* (NRLN 145 of 1955.)
marriage for him. Under this practice, she would have to provide the required bridal price for a new wife who would produce children for him. Customary provisions regard the subsequent offspring of the new bride as the barren woman’s. This is similar to what the western society calls "surrogate motherhood." The only difference is that in the African culture, the "surrogate mother" may also be considered a wife, depending on the circumstances.

"Woman to Woman" marriages also occur in situations where the woman is barren, unmarried but wealthy. She could marry another woman to procreate for her. She would provide the bride price to secure the woman, provide her with accommodation, and select a male member of the family to have relations with her. For this purpose, the marriage is fraudulently contracted in the name of a male family of the rich woman.\footnote{95}

In *Meribe v. Egwu*\footnote{96} J.S.C. Madarikan writing an opinion for the Supreme Court observes that:

One of the essential requirements of a valid marriage is that it must be a union of a man and a woman thereby creating the status of husband and wife.


\footnote{95}This is practiced in Asaba, Bendel State. P. A. Talbot, *Tribes of the Niger Delta: Their Religions and Customs* (London: Frank Cass, 1967), 195-6.

\footnote{96}Meribe v. Egwu (Lagos Supreme Court, 1976) 1 ALL NLR 266.
Indeed, the law governing any decent society should abhor and express its indignation of a "woman to woman" marriage; and where there is a proof that a custom permits such an association, the custom must be regarded as repugnant by virtue of the proviso 14 (3) of the Evidence Act and ought not to be upheld by the court.\textsuperscript{97}

Nonetheless, the status of this type of relationship is self evident. It is not a woman to woman marriage but a marriage sponsored by a woman on behalf of a particular man.

\textit{Widow Inheritance or Levirate Marriage}

Customary law in some parts of Nigeria mainly in Igboland\textsuperscript{98} and Yorubaland\textsuperscript{99} empowers certain male members of a deceased husband's family to inherit the widow. While some tribes allow sons to inherit their deceased father's wives excluding their own mother, some restrict the right of inheritance to only brothers of the deceased or other relations. In this type of marriage, bride price or formal marriage procedures are not required.

Evidently, the whole concept of widow inheritance stems from men's assumption of women as property. Those who practice this custom believe that by passing the widow from the deceased husband to a next of kin will guarantee the

\textsuperscript{97}Supreme Court ruling, 1976. 1 ALL NLR 266, 275.


upkeep of the woman and her children after the death of her husband and ensure a proper maintenance of the widow. But in terms of an individual's right to self determination, widow inheritance is a violation of a woman's civil rights and all codes of decency. It is the ultimate in gender oppression. It is not only obnoxious, it is akin to slavery. If indeed, the whole idea is to protect the woman from poverty, alternative arrangements could be made to ensure a proper maintenance of a widow without bequeathing her to other male members of her husband's household. Although widow inheritance is not so prevalent, it is hoped that appropriate legislation would be passed to ban it outright.

**Right to Family Name**

A married woman can use her maiden name if she chooses, or she could use the last name of her husband.\(^\text{100}\) It is her prerogative. There is no legislation governing the choice, but generally, married women assume their husbands' last name. However, many professional women hold on to their maiden names. Some of them use compound names which is a combination of their maiden name and marital names. A woman can keep the last name of her husband, even after the dissolution of the marriage either through divorce or

\(^{100}\text{Cowley (Earl) v. Cowley (Countess) [U.K. High Court, 1901] AC 450, 460.}\)
death. The court has pronounced that a man cannot stop his divorced wife by injunction from using his name unless she is using it to swindle him or others.

However, under customary law, a woman loses her right to her husband's name and to her title-name after the dissolution of the marriage. If her husband dies before her, she could use these names throughout her lifetime unless she re-maries.

In some communities, especially among the Ibo, a husband and his family have a right to re-name a new wife; once the bride price has been paid, and all the marriage formalities completed. Traditionally, she is given a new first name without her consent and she must not object. Nowadays, her approval is solicited.

Rights of Spouses During Marriage

In exploring issues relating to husbands' and wives rights over one another, it is imperative to discuss the available remedies for violation either by the other spouse or by someone else. Spousal rights are called Consortium. It is the general term denoting the entire rights and obligations acquired by couples by virtue of their status as

---

101 Fendall v. Goldsmith (U.K. High Court, 1877) 2 PD 263, 264.

102 Cowley v. Cowley (U.K. High Court 1901) AC 450.
married persons. Consortium cannot be easily defined. Nevertheless, Bromley describes it as, "The living together as husband and wife with all the incidents that flow from the relationship."¹⁰³

Duty to Cohabitate

Wives have a legal obligation to cohabit with their husbands, with the location choice of the matrimonial home a joint decision.¹⁰⁴ However, cohabitation may depend on an unusual situation of the couple. A husband and wife are not mandated to live in the same house.¹⁰⁵ Couples do have several reasons for living apart such as job demands,¹⁰⁶ business location, etc.; and the court sanctions this, if the arrangement is jointly approved by both parties. Failure to cohabit either in person in the matrimonial home or in a broader circumstance by common agreement is a marital violation tagged as "desertion."¹⁰⁷


¹⁰⁴Dunn v. Dunn (U.K. High Court, 1949) Times Law Reports 570, 64.


¹⁰⁶Such as when the husband is in military service abroad. The court understands this, as reflected in Creamer v. Creamer (QBD, 1919) I Law Reports Queens Bench 564 (CA).

Under customary law, the man and his wife or wives have a right to each others' companionship. Wives have a legal responsibility to cohabit with their husbands, the matrimonial home being usually among the husbands' family. Nevertheless, the interpretation of matrimonial home in Nigeria has several meanings. In fact, it could mean any of the following: (a) a house, apartment or room shared by either a married couple, or a man and his wives, (b) a set of houses occupied by a husband and wife or wives, usually one wife to each house, and forming either a single housing unit or a part of a big housing unit.\textsuperscript{108} Generally, there is a legal obligation of a husband to provide his wife or wives shelter in correlation with his resources and location. A wife is legally entitled to live in the matrimonial home as locally understood, for the duration of her status as a married woman, even beyond the death of her husband.

What then is the legal right of a wife who lives with her husband, in the family house? The court has ruled that a man who is qualified to live in the family house could also accommodate his wife and both of them can reside there.\textsuperscript{109} The wife's right is independent of and not derived from that of her husband because, she has become a member of that


family by virtue of her marriage, and as such could not be ordered out of the family house by the family acting in opposition to her husband.\textsuperscript{110} What right does a man who lives in his wife's family house have? Under customary law, a husband has no legal right to live in any house belonging to his wife's family. Similarly, a woman has no legal right to bring her husband to live on her family's property.\textsuperscript{111} Also, a man has no right under customary law to live in his wife's house or apartment.\textsuperscript{112} On the contrary, the rule is not as stringent for couples married under the statutory law; the husband could use the matrimonial home, even if it belongs to the wife,\textsuperscript{113} but if he misbehaves, he forfeits his right.\textsuperscript{114}

Sexual Relations

Spouses are legally obligated to satisfy each other's reasonable desires for love-making. In fact, the law

\textsuperscript{110}Ibid., 41, 118, 159-160.

\textsuperscript{111}The ruling was made and presented as expert evidence in the unreported case of Omomiregun v. Sadatu in 1888 and was later repeated without disapproval by the Full Court in Lopez v. Lopez in 1924.

\textsuperscript{112}Nwugege v. Adigwe (Lagos High Court, 1934) 11 Nigerian Law Reports, 134.

\textsuperscript{113}Bromley, 428.

\textsuperscript{114}Shipman v. Shipman (QBD, 1924) Ch. 140, in Ibid., 146.
requires a marriage to be consummated. Inability to fulfill this obligation due to personal reasons such as impotence may invalidate the marriage;\textsuperscript{115} however, the occurrence of impotence after the consummation of the marriage, may not necessarily jeopardize the marriage. The marital right to sexual intimacy continues after the consummation of the marriage. Couples are legally cautioned to be reasonable in their demand, as excessiveness constitutes cruelty, and attention should be paid to the other spouse's health and personality. A woman has a right to say "No" to extreme sexual pressure from her husband especially if it could affect her health, physically or emotionally. Incompatible sexual needs or willful abstinence of a husband that takes a toll on her emotional well being falls within Section 15 (2) (c) of the Matrimonial Causes Act 1970 as proof of the irretrievable collapse of the marriage.

Under Customary law, in the past, a husband is legally empowered to fulfill his legal right to sexual relations by using force. Consequently, women were constantly raped by their husbands. Speculating on why some men do this to their wives, Obi said:

This was probably because a man would normally find it difficult to determine whether his wife's refusal (especially when young) was genuine and intended to be final, or merely inspired by modesty, or else just a

\textsuperscript{115}Nigerian Laws, Statutes, etc., Matrimonial Causes Act, 1970, Section 5 (1)(a).
preliminary to extracting favor from him. Cases of this nature seldom ever get to the law courts. And so it would be difficult to say how far, if at all, the traditional customary law stated here still holds good.\textsuperscript{116}

Under the statute, however, a husband no longer has a legal right to force his wife to have sex. If he did, he would be indicted for common assault.\textsuperscript{117} If this attack occurred during a legal separation or by mutual consent, the husband could face rape charges.\textsuperscript{118}

\textit{Common Safety}

Every one has a right to self defense. Spouses are legally mandated to protect one another against an assault by a third party, "And may kill an assailant if he or she believes that the Act is absolutely necessary to preserve the other's life."\textsuperscript{119}

Since the institution of marriage accords spousal rights to the parties of a marital union, what happens when these rights are disrupted either by the other spouse or by a third party? There are legal remedies for certain actions such as desertion, enticement, or adultery.


\textsuperscript{118}R. v. Clarke (1949) 2 All England Reports. 448.

\textsuperscript{119}Bromley, 155.
Issues of Desertion

Usually, women are faced with the challenge of being driven out of their matrimonial homes without any judicial rationalization by their husbands. Often the husbands make cohabitation so difficult by their continuous misbehavior that wives are forced to leave their husbands. What can a wife do, if she is confronted with such challenges? And when a man may choose to abandon his wife, what remedies are open to a woman in such situations?

Neither the customary court nor the superior courts have the power to force a deserting spouse back home against his or her will. Also, a husband has no right to physically force his wife to return to the matrimonial home against her wish; and if she is still at home, he has no right to keep her there against her will. And in cases of emotional abuse, a woman could solicit the intercession of her husband’s family and friends; ethical and social obligations may produce a peaceful resolution or she could file for divorce on the grounds of mental cruelty.

Under customary law, it is not so easy for a woman to get out of an emotionally barren marriage. If she leaves, the husband may sue for a refund of the bride price which he

\[120\] R. v. Jackson ((U.K., 1891) 1 Queen’s Bench. 671.
had paid or for a return to the matrimonial home.\textsuperscript{121} If she leaves and takes shelter with a non relative of hers, that person may be penalized for adultery and may have to pay damages to the woman's husband. To ease implicating other persons in her trouble, a woman who desperately wants her freedom may decide to live on her own, even so, she faces charges of bridal repayment.

Bridal price should be scrapped because it is a shackle on women's freedom. Faced with all these demands, many women are forced to stay in abusive, destructive and emotionally barren relationships to avoid the debt burden that desertion entails.

Enticement and "Unlawful Detention" of Wives

This section will examine two connected issues, that of luring a wife away from her partner with the intention of having an affair with her, and wrongly taking a wife away from her husband with a view to giving her in marriage to a third party or for some other reason. To some degree, both customary as well as superior courts hear these complaints; but they handle the problems differently.

Taking a wife away from her husband with the intention of giving her away to another person is called "unlawful

detention" and it is exclusively an issue for the customary court to decide. The perpetrators of these acts are usually the parents or guardian of the wife. Usually, the husband could petition the customary court to return his wife or refund the bride price.

Enticement Under Statutory law

If someone entices a husband away, or unlawfully influences him to leave his wife, the wife could sue that person for damages.\textsuperscript{122} Because marriage accords one the right of consortium of the spouse, including support and companionship, enticement thus violates one's right to these privileges.

Under the general law, if a third party causes one spouse to break up with the other, the person could be found guilty of enticement. But to prove enticement, there must be clear evidence of interference and persuasion. In Sharpies v. Baritone, the plaintiff's wife fell in love with the defendant, the family doctor. She willingly left her husband and moved in with the defendant. The West African Court of Appeal ruled in favor of the defendant on the premise that there was no clear indication of persuasion or incitement.\textsuperscript{123}


\textsuperscript{123}Sharpies v. Barton (WACA, 1951) 13 Selected Rulings of the West African Court of Appeals, 198.
Although adultery may serve as confirmation of alleged enticement, adultery alone is not a suitable basis to file a suit of enticement.\textsuperscript{124}

Petition for damages for enticement is open to both spouses of a statutory marriage. Thus a wife can file such suit, as well as a husband whose wife was enticed away by another man.\textsuperscript{125}

However, mothers-in-law and fathers-in-law of either spouse are exempted from being sued for marital break-up, because the courts believe that they, as parents, have the right to be concerned about issues relating to their offspring.\textsuperscript{126} Such exemption does not cover interfering sisters-in-law or brothers-in-law.\textsuperscript{127}

A good defense for an action of enticement is the honest intention. A defendant could claim that he acted in good faith to protect the spouse in question from further

\textsuperscript{124}Tiete v. Okpodu (Lagos High Court, 1964) \textit{Nigerian Monthly Law Reports} 180.


\textsuperscript{126}Gottlieb v. Gleiser (U.K., 1957) 3 \textit{All England Reports} 715.; Oke v. Oyewole (Lagos High Court, 1973) 3 \textit{East Central State Law Reports} 1000.

abuse by the plaintiff. It does not matter if the abused spouse was lying or not. It is also a good defense that the defendant only offered shelter to a spouse who had voluntarily left the matrimonial home by choice, for in such a case, the defendant has evidently done nothing to coax, persuade or compel the spouse in question to live in the matrimonial home.

While couples married under the statute can sue anyone who entices his or her spouse away from the matrimonial home, customary law does not give women in customary law marriages such right of action. Only a man can sue in this regard.

Adultery: Capacity to Sue and Damages Under Customary Law

A woman does not have a right of action under customary law if her husband commits adultery. Only a husband may claim damages from a man who commits adultery with his wife. The amount of recoverable damages depends on the prominence of the affected husband, where the adultery took place, (if

---


130 Sharples v. Barton (WACA, 1951) 13 West African Court of Appeals. 198; Newton v. Hardy (1933) 149; Law Times Reports, 165.
it occurred under his roof, the embarrassment is assumed to be more hurtful, so the damages payable will be higher;) his relationship to the perpetrator (the closer the relationship, the smaller the damages if the family ties could be classified as incest, appeasement to the family gods may be the only remedy).

A husband whose wife committed adultery may choose to divorce his wife, and claim damages in terms of the bride price from the defendant.\textsuperscript{131} Under customary law, acceptable defenses for adultery include a husbands' impotence, infirmity, insanity, or old age impairing rights of conjugation for procreation. In Igboland, a common defense is that the adultery was orchestrated by the in-laws for one of the above reasons, and in some cases to produce offspring with what they think are improved genes especially if the husband is a midget, or if he is unsightly, or of any shameful idiosyncrasies. In these kinds of situations, the defendant may be exonerated from paying any damages, but may be required to make pacifying offerings to the family gods.\textsuperscript{132}

\textsuperscript{131}Chawere v. Aihenu and Johnson (Lagos High Court, 1935) 12 Nigerian Law Reports, 4.

Statutory Marriage Provisions

Couples married under the statute have a legal right to sue for divorce on grounds of adultery; each spouse also has a mandate to sue a third party for damages for committing adultery with his or her partner.\textsuperscript{133} To make a valid claim for damages, the petitioner is required to adhere to these prerequisites: a supplementary divorce petition on grounds of adultery,\textsuperscript{134} a proof of disapproval of the act of adultery\textsuperscript{135} and a timely claim which should be filed within three years of the adultery.\textsuperscript{136} Plaintiff also needs to indicate the exact amount of damages being sued for.\textsuperscript{137}

Damages for adultery are not disciplinary measures but forms of redress to a spouse who loses the consortium of the other as a result of the action.\textsuperscript{138} It is also a reparation for the economic, emotional and psychological consequences of betrayal, broken dreams, and embarrassment.

\textsuperscript{133}Nigerian Laws, Statutes, etc., \textit{Matrimonial Causes Act, 1970}, Section 31.

\textsuperscript{134}Ibid., Section 31 (1).

\textsuperscript{135}Ibid., Section 31 (2); Berstein v. Berstein (U.K., 1892) 63 \textit{Law Journal Probate}, 3.

\textsuperscript{136}Ibid., Section 31 (3).


Assessment of Damage Claims

The key elements generally evaluated in rating such damages due to adultery are the following:

The actual worth of the spouse. This includes the income earning capabilities of a spouse and other values in terms of support and help as a homemaker, mother, and business companion. While a woman can sue for economic loss of a husband, only a husband can sue for loss of consortium of his wife, depending on the scruples and decency of the woman in question.\(^{139}\)

Emotional and psychological damages. The assessment of damages in regard to the effect of adultery on a spouse is also based on the magnitude of the emotional damage (normally severe where there was strong closeness between the couple, where a precious wife is enticed, where the husband himself is decent and illustrious, or where the adultery took place under their roof); the hurt would be less intense if the woman concerned was immoral, or the relationship emotionally barren, or where the couples had separated amicably.\(^{140}\)

---

\(^{139}\)Apena v. Apena (Lagos High Court, 1978) 1 Law Reports of Nigeria 123. The court awarded only 100 dollars to the plaintiff, because the wife in question had little respect for her marital obligations, and was not considered a loyal and virtuous wife.

\(^{140}\)If the marriage had broken down before the adultery, the plaintiff cannot claim damages for loss of consortium of the wife; Adeyinka v. Ohuruogu (Lagos High Court, 1965) 1 All Nigeria Law Reports, 210.
The economic status of the defendant is not a constant factor in assessing damages for adultery. But in Butterworth v. Butterworth, one of the presiding judges, J. McCardie\textsuperscript{141} opined that the usage of the defendant's wealth was relevant in assessing the wife's worth and may exacerbate the husbands' emotional hurt. L. J. Diplock dissented.\textsuperscript{142}

The conduct of the spouses. In assessing damages for adultery, the court also examines the character of the spouses, to determine if either party is abusive, offhanded, nonchalant about the other, had neglected the other or in anyway caused the other to be unfaithful.\textsuperscript{143}

Adultery while living apart. A man may still sue a third party for damages if his wife commits adultery while they live in separate homes. The exception is when the husband had, prior to the adultery, voluntarily relinquished his rights to his wife's consortium.\textsuperscript{144} A defendant may be exonerated from paying any damages if he can clearly prove


\textsuperscript{142}Pritchard v. Pritchard (London High Court, 1967) 2 Weekly Law Reports, 264, 277. L. J. Diplock said that adultery committed with a poor man may cause more emotional damage to a spouse than that committed with a wealthy defendant.

\textsuperscript{143}Butterworth v. Butterworth (U.K., 1920), 126, 145.

\textsuperscript{144}Weedon v. Timbrell (U.K., 1793) 5 Term Reports (Durnford & East), 357; Winter v. Henn (U.K. 1831) 4 Law Reports, Chancery Division. 494.
that he was unaware that the woman was married when he had an affair with her.\textsuperscript{145}

\textit{Forfeiture of Right to Consortium}

A spouse may forfeit the legal power to the consortium of the other spouse in several ways if they both decide to live separately. A couple may jointly concede to live independently. Such understanding may be incorporated in a legal note called a separation agreement. The agreement terminates some features of the right of consortium. Also a court order of separation dismisses the marital right to cohabit.

\textit{Dissolution of Marriage}

This section deals with the dissolution of marriages. The first part covers customary law divorce, the various methods of ending a marriage, the role of the bride price in dissolution of marriage, women's rights in divorce. The second part of the section examines divorce under the statute, covering acceptable parameters of divorce, child support laws and alimony rights of women. In both overviews, the section points out the inadequacies of the available divorce laws in meeting the needs of women.

The rules for the customary system of marriage and its statutory counterpart are different. While the regulations governing statutory marriages are clear-cut and precise, the procedures for dissolving traditional marriages are varied and flexible. A customary law marriage may be dissolved by a legal directive of a customary court or a non official means.

Non Official Technique of Divorce

A customary law marriage can be terminated without any legal involvement.¹⁴⁶ This is a crucial and unique facet of customary marriage. Unofficial dissolution is recognized and accepted, except under Tiv Native Law and Custom¹⁴⁷ which banned such action.

Uncertified termination may be initiated by a joint decision of the spouses or through an individual undertaking of one of the couple. Whichever method is adopted, family members of both families are required to play an active role in the matter. Even in situations where both parties have


¹⁴⁷Nigeria Native Laws & Customs. Section 5 (2) of the Native Authority (*Declaration of Tiv Native Law and Custom*), Order 1955. (*Northern Nigeria Law Reports* 149 of 1955); Section 9 of the Native Authority (*Declaration of Idoma Native Marriage Law and Custom*), Order 1959 (*NRLN* 63 of 1959.)
concluded that the marital union had failed, family members usually attempt to reconcile the quarreling parties. If such effort proves futile, the families would negotiate the refund of the bride price. Oftentimes, when there is no compromise over the amount to be refunded, the husband takes the case to the local customary law court.

Individual action for divorce proceedings may take different formats. In some instances, a man may force his wife out of the matrimonial home, and announce his decision to his in-laws; or a woman can abscond from her matrimonial home, with the intention of not coming back. If there are no objections, the marriage is deemed dissociated.

In the case of the woman, her father or guardian has to refund the bride price paid on her, or face a lawsuit. If the woman feels cheated and decides not to refund the bride price, her next suitor may be asked to pay it on her behalf.

In some communities, a woman cannot terminate a marriage on her own accord, only the husband is empowered to do that. However in the Northern part of Nigeria, Section 8 of the Biu Native Authority (Declaration of Biu Native Marriage Law and Custom) Order 1964,\textsuperscript{148} maintains that:

1. upon the granting of a divorce by a court on the application of either husband or wife: or

\textsuperscript{148}Northern Nigerian Law Reports, 9 of 1964.
2. upon oral repudiatio of his wife by the husband in her presence before two male witnesses of full capacity; or

3. upon repudiation of his wife by the husband in writing signed by himself and dated.

The Maliki code sanctions a comparable process of divorce as stated above in section (b) called *talaq*. *Talaq* is restricted to men only. The *talaq* allows a man to verbally divorce his wife. If *talaq* is pronounced thrice, in the presence of two adept witnesses the marriage is considered divorced.

Obviously, restricting the power of termination of a marriage to men only, is quite discriminatory. Not only does it provide an avenue for male abuse of marriage, it is also a controlling provision which limits the power of the women in such unions to self determination. The implication of this rule, is that a woman may be value bound to stay in a marriage against her will, since only the husband has the power to denounce the marriage. This is also a violation of the provisions against forced servitude which the Constitution grants every citizen.

The Muslim religion\textsuperscript{150} provides an ambiguous avenue for disgruntled women to escape such marriages. This is referred

\textsuperscript{149}The Maliki code approves a similar action, called *talaq*, restricted to men only. The *talaq* allows a man to verbally divorce his wife. If *talaq* is pronounced thrice, in the presence of two competent witnesses, the marriage is considered dissolved.

\textsuperscript{150}The Maliki Code.
to as khul.\textsuperscript{151} It is a form of negotiated bribery. Under this procedure, the wife asks for her freedom in exchange for the payment of a settlement\textsuperscript{152} to him. If the husband refuses to allow the woman to buy her freedom from the marriage, she could seek judicial recourse to compel him to do so. But a settlement has to be offered. If she could not afford to raise the stakes, she continues to endure the bondage.

The whole array of bridal price refund and settlement procedures reinforce the notion of women as chattel, owned by their husbands. Obviously, customary law favors men more at the expense of women. The laws are generally made to reinforce the subjugation of women implicitly classified within Nigerian value system as second class citizens, to be bought through a dowry system, to serve a man, and when opportune to escape, she has to repay whatever has been spent on her; but her labor and servitude are not compensated. The lack of documentation of non-official divorce is one of its greatest flaws. Often, women who are able to organize for the refund of bride price to their spouse, and who actually pay them, often face pressures of re-payment from disgruntled husbands who are not willing to let go; and since there is no valid documentation of a


\textsuperscript{152}This could be a refund of all expenses paid on her including the dowry.
previous settlement, the men still hold a claim on the woman. An enforceable legal requirement of the registration of *talaq*—a legally sanctioned process of verbal repudiation of marriage by the husband, should be a must for divorcing spouses. This would constitute a valid proof of divorce. The same requirement is needed for all non-official divorces.

*Divorce Through Legal Directive*

Due to the uncertainties of non-official divorce, individuals are beginning to use the court system to end marriages. Besides, people also go to the courts if they cannot reach a consensus on the dissolution of the marriage, for instance, if the man rejects a refund of the bride price; or if the woman declines an eviction notice given by her husband or if there is a disagreement over the amount of bride price repayable.

The legal dissolution of customary law marriages falls absolutely within the orbit of customary courts,\(^{153}\) and they are primarily required to suggest reconciliation if possible.\(^{154}\) However, they have no right to deny a declaration of divorce.

\(^{153}\)Section 9 (1) High Court Law (WR) Cap.44; Section 17 (1)(b) High Court Law (NR) Cap. 49.

Grounds for Divorce

In several parts of the country, including the western region of Nigeria, there are no explicit bases for divorce. It seems that the unwillingness of one of the marriage partners to renew cohabitation with the other is an agreeable argument. Nevertheless, there are a number of reasons that are morally and culturally acceptable to seek a dissolution. These include inadequate maintenance, incurable disease of one of the spouses, brutality, incestuous behavior, belligerence, filthiness, criminal activities, and adultery on the part of the woman.

Interestingly, a husbands' adultery is not a sufficient basis for divorce. Nigerian culture is silent on the issue of adultery for men, silence implies acceptance, but it is a taboo for women. The prevailing attitude is that adultery is normal for men "men will always be men" This is a part of the socio-cultural double standard precepts in the Nigerian society, that need to be challenged. Women have feelings just like men, and infidelity hurts both genders and should not be condoned at all.

---

some consequences of divorce. Some consequences of divorce are also the result of the imposition of same consequences on same Nigerian women by socio-cultural norms. The imposition of such consequences on women are considered absurd and repulsive. It is unjust to insist on such a condition when a woman is alleged to have engaged in adultery, and yet remain after the separation regardless of the natural father of the child. After the separation, regardless of the nature of the marriage, the woman may have any claim on the man's property that the woman may have from the marriage. The regulation of this regulation is that until there is a settlement made, the marriage is not dissolved. If the marriage is over when the child is free, the marriage is determined. In the case of a non-official divorce, the appropriate customary court, divorce may be granted. Customary marriage is not dissolved simply because a determination of a divorce of a customary law marriage
are that women may lose property and custody of children. When a woman is forced out of her matrimonial home, or departs voluntarily, customary law allows her to take all her personal effects, pre- and post-conjugal possessions, that are independently acquired by her. However, she is disallowed from taking away any property given to her by her husband for her use in the matrimonial home. Clothing, trinkets, pots and cooking utensils and other gifts are required to be left behind. If she took them away, the husband reserves the right to ask for a refund in cash.159

The overwhelming precept under customary law is that custody of children whose parents are divorced or separated belongs to the father, regardless of the causes for the dissociation and it is immaterial if the father was the guilty spouse. On the death of the father, his family is entitled to take custody.

Even among the matrilineal societies of Eko, and "small dowry" marriages among the Ijaw, the guardianship of children is granted to fathers in event of divorce. However, a mother may be allowed to keep the children temporarily, if any of them is too young to be disengaged from her.160 In some communities, customary law officially grants custodial

159 Basden, Among the Ibos of Nigeria, 77.

rights of children under seven years of age to women.\footnote{Nigeria Native Laws & Customs, Section 33, of the Igbira Native Law and Custom Declaration. Custody right is however not absolute for mothers. As a husband could retain custody of the under-seven if he could hire a female caregiver, to support the child.} Also under the Maliki Code, custody rights are given to the mother for male children until they are fourteen years old, and for girls until they get married.

Generally, customary law is superseded by English Law in some areas, where the Marriage, Divorce and Custody of Children Adoptive By Laws Order, 1958 of the Western and Mid-West Regions are effective. In these regions, the courts are mandated to put the interest and welfare of the child first in deciding who should have custody of the child.\footnote{Tbid., Section 14 (1).}

Termination through Death

The death of a husband does not necessarily make a customary law wife a single woman. She remains a married woman. In the western region and some other parts of Nigeria, as recent as 1970s and oftentimes in the 1990s, widows are passed over to the husbands' next of kin. Acting on the premise that a widow is a property, she is passed over to another family member, usually the brother or son of her late husband who has succession rights over the deceased estate. Under this arrangement the widow is asked to remarry
the heir or the person chosen for her, but no fresh bride price is required.\textsuperscript{163} But a son cannot marry his mother.

Although, widow inheritance,\textsuperscript{164} still exists, it is not as automatic as before. The widow has a voice in the matter. On the death of her husband, she may choose to continue living in her husband's family home or move back to her parents. If she chooses to stay with her husband's family, she could marry one of her husband's family members, or stay as wife of the deceased. Whatever choice she makes, the marriage is considered operative.\textsuperscript{165} Especially, since custom dictates that subsequent children born after the husband's death legitimately belongs to the deceased husband\textsuperscript{166} regardless of who the natural father is, so long as she remains in her late husband's family home.

Oftentimes, a widow in this position has very limited choices. If she chooses to return to her parents, she has to pay back the bride price to the family of her late husband.

\textsuperscript{163}A. Coker, Family Property among the Yorubas (Lagos: Macmillan, 1958), 287-289.

\textsuperscript{164}Some learned writers with conservative ideology denounce this terminology. But the truth is, the whole concept is a sophisticated form of widow inheritance.

\textsuperscript{165}A 1976 ruling debunked such claim of existing marriage after the death of a spouse as fiction; and restricting a widow from having affairs is contrary to natural justice. Yesufu v. Okhia (Benin Magistrate Court, 1976) 6 ECSLR 276.

\textsuperscript{166}This is sometimes called "ghost marriage."
on re-marriage, and also grapple with fending for herself, which she may not be able to afford. And since customary law except the Maliki code, disallows a widow to inherit her husband's property, opting to leave the deceased husband's home may be a gamble with poverty, unless she has children that would support her.

The customary system however assures her maintenance. If she stays she would be given land to plant crops if needed, she would be given shelter if necessary, provided she remains in her late husbands' family home. It is therefore, not a surprise that some widows opt to stay, for the sake of survival. Again, if a woman wants to remarry, she may do so, but she has to marry within her late husband's family, and whatever children she bears are considered those of the deceased.\textsuperscript{167} Oftentimes, the choices are negotiable.

On the other hand, a customary law husband is released from all obligations to his wife and her family on her death. In fact, the death of a customary law wife puts an end to the marriage. Her death does not make any difference to her husband's capacity to marry other women, if he chooses.

\textsuperscript{167} In the event of any dissension between the biological father of the children and the deceased relatives, the right of the father predominates; Nwaribe v. President Oru District Court and Anor (Enugu, 1964) 8 Eastern Nigeria Law Reports.
Divorce: Statutory Marriage

There are several statutory ways in which a marriage can be dissolved and these include judicial separation, divorce, and annulment. The law governing the dissolution of marriage is the Matrimonial Causes Decree, 1970. Most of the provisions of this Decree have been borrowed with certain modifications, partly from the Matrimonial Causes Act, 1959 of Australia and partly from the Divorce Reform Act, 1969 of England.

Decree of Judicial Separation

A decree of judicial separation absolves the applicant from the legal responsibility of cohabiting with the other spouse. The order excuses a spouse of the charges of desertion or neglect, it also gives a spouse the right to refuse sexual relations; if a husband attempts to force such a spouse against her will, he may be indicted for rape.\(^{168}\)

However, the decree does not confer a single status on the spouses, thus neither can re-marry nor change domicile.\(^{169}\) But the decree does not affect the rights and responsibilities of the spouses in matters regarding tort or contract, in which case they have the freedom to take each

\(^{168}\)R. v. Clarke (U.K., 1949) 2 All English Reports ER 448.

\(^{169}\)Ford v. Ford (1947) 73 CLR 524.
other to court.\textsuperscript{170} The wife will be treated as a \textit{femme sole}. Should any of the spouses die during the duration of the decree, the other party loses all rights of a spouse on intestacy.

The Decree, whilst allowing a marriage to be judicially dissolved on the ground of irretrievable breakdown, allows some reconciliation attempts of the dissenting couples. The reconciliatory provision (section 11) empowers the court and the judge to attempt such reconciliation, only after the institution of the proceedings.

The question here is why the attempts at reconciliation should come after proceedings have begun rather than before. The Australian experience of similar provision has shown that only on the rarest occasion have attempts been made successfully to effect a reconciliation after a hearing had begun because usually by this time, the parties would have grown too far apart and one of them, if not both would have become anxious to see a final determination of the suit.

A woman's right to child support and alimony under the statute The Matrimonial Causes Act 1965 states that:

\begin{quote}
(1) Where a husband has been guilty of willful neglect to provide reasonable maintenance for his wife or the infant children of the marriage, the court, if it would have jurisdiction to entertain proceedings by the wife for judicial separation, may, on the application of the wife, order the husband to make such periodical
\end{quote}

\textsuperscript{170}Nigeria Laws, Statutes, etc., \textit{Matrimonial Causes Act}, 1970, Section 42 (1).
payments as may be just; and the order may be enforced in the same as an order for alimony in proceedings for judicial separation.

(2) Where the court makes an order under this section for periodical payments it may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife the periodical payment, and for that purpose may direct that a proper deed or instrument to be executed by all necessary parties shall be settled and approved.\textsuperscript{171}

A neglected wife has the legal right to file a suit for alimony and child support.

\textit{Summary and Conclusions}

This chapter has taken an in-depth look at the Nigerian marriage procedures, eligibility requirements, prohibited relationships, the Marriage Act of 1914 and the Matrimonial Causes Act of 1970 which both govern statutory marriages. Both the Muslim marriage and Customary Law marriage procedures were discussed in detail.

Some key points to note in the chapter are the fact that Nigeria recognizes two forms of marriages. The first one is monogamy, which is the union of one man to one woman, to the exclusion of any other persons. Monogamy is practiced mostly by Christians and is governed by the English laws which are already incorporated into Nigerian statutory laws.

The other form of marriage recognized in Nigeria is polygamy--which is the union of one man with several wives.

\textsuperscript{171}Nigeria Laws, Statutes, etc., \textit{Matrimonial Causes Act, 1965}, Section 22, 177.
Polygamy is practiced mostly by non-Christians, some Christians, Muslims and those who are not so inclined to religion and some atheists. Polygamy is governed by Customary laws and also Muslim laws. It is necessary to note the legal recognition accorded to polygamy and the non-recognition of polyandry. Polygamy has been in existence in Nigeria for centuries. The historic reason for polygamy was that men needed to keep several wives for economic reasons. The women and their offspring’s provide extra hands in tilling the land and plant crops to boost subsistence farming. Having numerous wives was an indication of affluence.

With the introduction of mechanized farming and technology, coupled with the present economic demands of day to day living in an austere economy, having numerous wives is more of a burden, than dignity. Yet, the practice continues. The Nigerian government and its legal infrastructures allow Nigerian men to have as many wives and concubines to their hearts’ content; the government allows men to father children indiscriminately, out of wedlock if they so desire. In marriages that are declared monogamous, children fathered illicitly out of clandestine relationships are given recognition as those born during the marital union. Oftentimes, some statutorily married women may not know about their husband's affair until he is dead, and the
illicit offspring's and the concubine show up at the man's burial ceremony to pay their last respect and claim a share of the man's property. The laws governing monogamous marriages tolerate bigamy, even though there are anti-bigamy laws they are hardly enforced since the society accepts polygamy. Polygamy should be prohibited, and anti-bigamy laws need to be enforced.

The chapter also examined the customary law marriage which calls for the payment of dowry in exchange for the bride. According to the old men and women interviewed for this research, acceptance of dowry symbolizes the groom's appreciation of the value of the bride. The groom pays dowry as an expression of his gratitude to the bride's family for allowing him to marry their daughter. Tradition supports the bride price because it symbolizes the African cultural heritage. To critics of the bride price, dowry simply means paying for the bride, especially in some tribes in Eastern Nigeria, where the bride price is so exorbitant that many bachelors are forced to save for several years to afford the payment. Some prospective grooms are discouraged from marriage because of high bride price. When eventually they are able to afford the bride price and subsequently get married, they treat the women as their property. Oftentimes, dowry leaves an impression of total ownership in the minds of the groom, and this influences how the wife is treated,
as property. In some cases, the dowry refund which is required if the woman wants to leave could be an impediment to her leaving the marriage if she is treated wrongly. Critics argue that dowry is demeaning and the exchange of a cash gift in return for a bride facilitates male dominance and reinforces the subjugation of the woman. Regardless of what critics of the bride price feel, conservatives hold strongly to their belief that dowry is just a part of the socio-cultural heritage of the African marriage system.

As the definition of monogamy and polygamy differs, so also are the rights and protection that each of these marriages accord the parties involved. The traditional laws and codes governing the customary marriages are pro-male. Under customary law, a man can terminate a marriage with his wife if the wife commits adultery; he can also sue and claim damages from the man who commits adultery with his wife. Customary law does not allow a woman to do this. On the other hand, couples married under the statute have a legal right to sue for divorce on grounds of adultery, and can also sue a third party for damages for committing adultery with a spouse.

Under customary law, the dissolution of a marriage can be done without any legal involvement. Oftentimes, the refund of the bride price is required to complete the process of dissolution. If a woman is unable to refund the
bride price, her physical absence in her matrimonial home does not buy her freedom. Her ex-husband has a right to any subsequent children she produces in subsequent marriages, indeed any sexual relationship with another man before the dowry is refunded is considered adulterous. Some consequences of divorce are that women may lose property and custody of their children.

Under customary law, the death of a husband does not terminate a woman’s marriage, because the woman is passed over to the husband’s next of kin to marry and bear children. This is called widow inheritance. But for a man in customary marriage, the death of a wife terminates any obligation. For statutory marriages, a divorce can only be completed through the courts. Both parties to the marriage can sue for adultery, or irreconcilable differences. Custody and alimony may be granted to either parties or as the courts deem fit. Women in unhappy relationships are free to desert their husbands, but for women in customary law marriages, refund of dowry is required and this may discourage battered women to leave the marriage.

The chapter also noted that child marriage continues to be a major concern. In some communities, especially in the Northern parts of Nigeria, young girls as young as eight years old are betrothed to older suitors and by the time these kids attain the age of eleven or twelve they are
already married off to much older men. Child marriages in the African culture historically is a way of securing a future for a child. By betrothing a child to another man at an early stage, creates an opportunity for the bride’s family to familiarize themselves with their future in-laws, and build a lasting communal relationship before the child bride is adopted into the home as a wife. To them, betrothal is a relationship building process that becomes fruitful when the child finally assumes the role of a wife in the man’s home. Marriage in the African culture is not an individual undertaking; neither is it independent of extended families of both spouses. As a matter of fact, a woman does not just marry her husband, she marries the family. Thus, marriage in the traditional African relationship is a communal relationship. Tradition supports this process as a building block to a lasting marriage.

Nevertheless, one cannot ignore the fact that teenage pregnancy is becoming rampant, the situation cannot be compounded with socially approved destructive practices such as child marriages. The world is changing. Human needs are dynamic. Women do not have to wait for men to feed them and cloth them. Marriage does not have to be the essence of a girl’s life pursuit. Girls grow to be women, women need to be able to fend for themselves and their children. They need to be able to receive education and be self-reliant. Child
marriage is a travesty of a person's civil rights and rights to self-determination. It promotes dependency, children are robbed of their youths and are saddled with adult responsibilities of childbearing and child rearing, it limits their ability for personal growth. Stricter laws need to be enacted to curb this social problem. Adults sleeping with young girls should be punished and the age of marriage should be increased to at least sixteen years old and the existing legislation's need to be enforced.

It is interesting to note that there are differences in the Statutory law provisions and the Customary law provisions. Part of the reason for this is the customary law's adherence to tradition and cultural heritage. The customary law is shaped by history, the African heritage of community spirit, attitudes, perceptions, practices and also religion. All of these influence familial relationships. Socio-cultural, historical and religious factors shape the African way of life, especially the marriage institution. In spite of the infiltration of western culture which advocates individualism, sanctity of marriage and survival of the fittest; African culture co-exists with western ideology. But in familial relationships, the African belief system of the supremacy of the male in the home, subservience of the female, reverence of elders and a strict code of conduct for relationships often eclipse the other.
The enduring notion of the man as the head of the household tilts power greatly to his side, thereby short-changing women who are also human beings with feelings, needs and aspirations. All these subtle code of conducts endure despite modernization and infiltration of egalitarianism, because of social engineering. Children are still raised in accordance with gender roles, and they learn from their surroundings and consequently perpetuate the system as they grow.
CHAPTER V

SPOUSES AND THE LAW OF WILLS

Chapter Five examines the laws of wills, covering such issues as criteria for writing wills, the consequences of marriage on existing wills and more importantly succession rights of a wife to her husband's estate under the statutory laws and customary Laws. Although the focus of this study is the Western Region of Nigeria comprising of the states of Lagos, Oshun, Ogun, Ondo, Oyo, and Bendel States, the study also provides an overview of the inheritance rights of women in other regions of the country. This is necessary not only for comparison, but also to show the differences in the customary guidelines.

Two sets of Acts regulate the issue of Wills.¹ The first group include:

1. The Wills Act of England, 1837, amended in 1852, which applies to all parts of the Nigerian federation;

2. The Succession Law Edict, 1987 applicable in Anambra State;²

¹The Law and Practice of Nigerian Wills, Probate and Succession (London: Sweet and Maxwell, 1968).

²Some of the laws are similar to those in the Wills Law, 1958.
3. The Wills Law, 1958 (No.28) of the Western Regions which is a re-modification of the 1837 English laws, the Wills Amendment Act of 1852, a few excerpts of the Wills (Soldiers and Sailors) Act, 1918 and two key provisions independent of the English laws.\(^3\)

The second group of laws which deal with the competence of women to write wills, incorporates the Married Women's Property Acts of 1882 and 1893 of England which are applicable as general laws in Nigeria.

A will in legal terms, is a document that disposes of a person's property and becomes effective after the person's death. A man who makes the will is called the testator, if she is a woman, she is called the testatrix. The persons named in the will to inherit property are usually called the beneficiaries. Personal property left by the will is called a bequest, or a legacy. Real estate left by a will is called a devise. It is crucial to have a will drafted by an attorney to effectively dispose of property and to ensure that it may not be successfully challenged by persons who object to its provisions. If a person owns more than a certain amount of property upon death, the government of the state where the person lives and the federal government collect an estate tax. Unless the will has been carefully

\(^3\)Both pertain to customary law marriages. Section 3 (1) which affirms that only estates which are disposable legally through customary laws may be discarded by wills; and section 15 which states that a will may not be revoked by virtue of a subsequent marriage in customary law marriage.
drawn by a lawyer, his estate tax may be needlessly huge and the beneficiaries may not obtain as much as the testator had wanted them to receive.

People may dispose of their property in any way they choose, so long as the disposal is not contrary to law. The will usually names one person as the executor. The executor has the duty of seeing that the provisions of the will are carried out. If no executor has been named, the court which has jurisdiction over estates may appoint an administrator, whose duties are the same as those of an executor. The general rule is that all executors, even close relatives, must give a money pledge called a bond or surety for the completion of their duties. If an executor does not truly execute the terms of the will, the bond is forfeited. Usually, the giving of a bond may be waived if the will states so.

It is suggested that persons who own considerable property have an estate plan in which the will is only a part. An estate plan is prepared by an attorney, often after consultation with the will maker's family, insurance agent, accountant, and business associates. The purpose of the estate plan is to make the provisions of the will consistent with the will maker's insurance policies, business circumstances, the wills of other family members, and the state and federal tax laws. Codicil is an addition made
after the will has been prepared. It alters or adjusts the will somewhat.

People may change or shred their will at any time. Such changes will be legal provided that the testator is sane and there is evidence to show that the change was not caused by undue influence from those interested in the change. In addition, the codicil must be made according to the formalities required by the state law just as the will must be. For example, if the will must be witnessed by two people, or by three people, then the codicil must be witnessed by the same number of people.

Generally all wills become effective from the day of the death of the testator.\textsuperscript{4} A testator has the right to give away all his personal and real estate property at the time of the death.\textsuperscript{5} However, properties (such as un-apportioned family property which cannot remain in the exclusive disposition of the testator and) which cannot be disbursed by bequest under the appropriate customary law, cannot be disposed of by will.\textsuperscript{6}

\textsuperscript{4}Nigerian Laws, Statutes, etc., Succession Law Edict, 1987, Section 85; Wills Law, Section 21; Wills Act, 1837, Section 24.

\textsuperscript{5}Nigerian Laws, Statutes, etc., Succession Law Edict, 1987, Section 68; Thompson Oke v. Robinson Oke (Lagos High Court, 1974) 1 ALL Nigerian Law Reports, 443.

\textsuperscript{6}Nigerian Laws, Statutes, etc., Wills Law Section 3 (1); Davies v. Sogunro & Ors., (Lagos High Court, 1936) 13 Nigerian Law Reports 15, 153.
However, spouses need to take note of three main issues in the law of wills. The first is the competence of women to make testamentary dispositions; the second is the consequence of marriage on an existing will; and the validity of a duly certified gift made to a spouse in a will.

Testamentary Capacity of Women

Single women have rights to make wills. Previously, married women could not. However, this inability was eliminated by section 1 of the Married Women's Property Act, 1882, and Section 3 of the Married Women's Property Act, 1893 acceptable in all parts of the federation with the exception of the West and Midwestern region. Married women in West and Midwestern states are accorded the same rights by virtue of the Wills Law, and the Married Women's Property Law, which clearly gives women the right to

---

8 U. K. Laws, Statutes, etc., Wills Act, 1837, Section 8.
9 Nigerian Law, Statutes, etc., Cap. 133.
10 U. K. Laws, Statutes, etc., Married Women's Property Law, 1882, Section 3 (a) Cap. 76.
acquire, own or dispose of any property. In short, women property owners have testamentary capacity.\textsuperscript{11}

**Impact of Marriage on Wills**

Marriage revokes a will of marrying spouses. According to Section 18 of the Wills Act, 1837, "Every will made by a man or woman shall be revoked by his or her marriage."\textsuperscript{12} The message here is that individuals should re-write their wills after a marriage. Failure to write a new will on marriage, will legally imply as not having any will at all, should death occur. This provision assumes that the dead person has forgotten to revise his will on marriage; and on his death the law treats the issue as intestate (having made no will at all). This allows a widow and her offspring to have rights to her deceased husband's estates. In effect, the provision is a form of protection for widows.

However, women in customary law marriages do not have such protection. Section 15 of the Wills Law excludes customary law marriages from revocation by marriage. Nevertheless, there is a deviation to the general rule that marriage invalidates a will. A will may be valid after a

\textsuperscript{11}\textit{Nigerian Laws, Statutes, etc., Succession Law Edict, 1987, Section 67 (1); Adesunbokan v. Yinusa (Kano High Court, 1977) Law Reports of Northern Nigeria, 77.}

\textsuperscript{12}\textit{Nigeria Laws, Statutes, etc., Wills Act, 1837. Cap. 133.}
subsequent marriage if made in such a way that the allocation of the property would go to the testator's heir, or statutory next-of-kin. If there is power of appointment, repeal by marriage is limited only to situations where the agent establishing the power declares that in case of lack of authorization, the property is to be handled as if intestate.

Validity of a Gift Made to One's Spouse

Under customary law, a woman loses her right to a gift given to her by her husband, once he is dead. Especially, gifts in the form of real estate, farmland, or any landed property. It is irrelevant if the wife has been using such landed property during her husband's lifetime. According to the West African Court of Appeal in Dosumu v. Dosumu.\(^{13}\)

If such native law and custom existed it would mean that on the death of a childless wife, not of the same family as her husband, property vested in her would pass away from her husband's family, from whom the wife became entitled to it, to the wife's family.\(^{14}\)

Succession Rights of a Wife to her Husband's Estate

Traditionally in Nigeria, a wife is deprived of succession rights in her husband's estate, regardless of her efforts towards the accumulation of the property. Nigerian

\(^{13}\) West African Court of Appeals, 1954, 527.

\(^{14}\) Ibid., 528.
customary laws of succession epitomize the inequality, intense prejudice, and suffering which women face in Nigeria. It clearly depicts the forces of subordination (customary laws and dictates) and their calculated efforts to restrict the economic independence of women in a patriarchal order.

The ordeal of women can be elucidated by thousands of cases. For instance, in Eze v. Okwo. Mr. A married the defendant and two other wives. Before he died, Mr. A instructed his eldest wife, the defendant, to take possession of all his property and use the dividends to support herself and the other two wives. He clearly specified that all the women should stay in his residence, hoping that they would have children of their own someday. However, Mr. A. died without any children from all three wives. The eldest wife tried to execute the wishes of her late husband, but the son of Mr. A's late brother, (deceased's nephew) filed a lawsuit against her. Claiming preference, as Mr. A’s nearest male descendant, he affirmed that he is the proper person to inherit and manage the property. He also asked the court to issue an eviction

15Unreported (1959) Obollo District Court Suit No. 29/59 and Nsukka County Court Appeal Suit No. C/S. 31/59; Nezieanya v. Okagalue, unreported, (Onitsha High Court, 1961) Suit No. 0/17/1956. This judgement has been confirmed by the Federal Supreme Court, in Unreported cases (1963) Selected Judgement of the Supreme Court No. 398/1962.
notice to expel the defendant from her late husband's residence. The nephew won the lawsuit against the widows. In the ruling, the Obollo District Court opined that:

1. A wife has no rights to possess or administrate a deceased husband's estate under customary law;
2. Only male descendants or relatives possess such rights;
3. Relatives or male descendants have the right to evict her from her deceased husband's residence, if she violates traditional dictates that would have made her husband to divorce her, if he was alive;
4. By acquiring the property of the deceased, regardless of the deceased's verbal instruction to do that, the nephew of the deceased had the right to circumscribe the unwritten wishes of the deceased and evict the widow out of her late husband's home.

The defendant appealed Obollo District Court's decision. But the Nsukka County Court affirmed the district court's ruling. Not satisfied and desperate to get justice, the defendant took the case to the Enugu Magistrate Court, which also affirmed the previous ruling, but gave the defendant a reprieve of the eviction order. The legal impact of this ruling is that the customary legal system approves or supports the subordinate status of women in customary law.
marriages; the ruling also supports the denial of the succession rights of women in their husband’s estate. Thus, childless widows continue to be treated like strangers in their homes by in-laws and the customary courts.

Actually, in almost all Nigerian societies, customary laws accord males succession privileges in land and other properties and deprive women such rights. Several reasons have been advanced for this action:

1. That an unmarried daughter is a temporary member of her father’s household;

2. That the likelihood of marriage, confirms her transient membership because on marriage she assumes the membership of her husband's family;

3. Consequently, giving her the right of succession in her father's landed property will in effect allow her to cart away her family's heirloom to another lineage.

This validates the perception that Nigerian social norms do not regard the Nigerian woman as an individual but an appendage of a father or husband. The likelihood of divorce, and being a non-blood relative in her husbands' family, cancels her chances of succession rights in her husbands' estate.

The question now is: does a woman have any rights, at all, in inheritance?
1. Does she have a right to her parents estate?
2. Does she have any right as a wife and a surviving widow in her husband's estate?
3. And what right does she have as a mother regarding her children's property?

Testate Succession or Inheritance by Will

Customary Law

In testate succession, property may be succeeded to by anybody to whom a valid bequest has been made. Generally, where wills are written, customary law does not limit women's rights of inheritance. Testate succession also restricts the possibility of gender discrimination in property disposition.

Testamentary disposition of property in customary law is not so popular; perhaps people hate to think about death, and some believe that writing wills may attract death. Consequently, the property of a dead person under customary law is usually acquired by his heirs in compliance with the regulations of intestate succession. Such native laws actively favor succession of only the descendant of the deceased. The customary laws governing this issue vary from one tribe to the other.
The Yorubas

In Yorubaland, when a man died without writing a will, his acreage, farm, and real estate were automatically bequeathed to his sons, while his personal effects that were transportable were handed over to his younger brothers. Yoruba custom disallows daughters, sisters and older brothers of the deceased to inherit any of his property.

But the rules have been changed; a brothers' right of succession has been abrogated and children of both sexes can now partake in their father's inheritance.\(^{16}\) Thus, a daughter is entitled to a share of her father's property on intestate. Her inheritance rights are also validated in her mother's estate. Actually, the regulations governing a mother's estate are similar to that of a father's estate. The only difference is that the issue of illegitimacy is irrelevant in the deliberations over disposition of a mother's estate, which is shared on a per capita basis.\(^{17}\) A surviving spouse is not entitled under Yoruba customary law to inherit the property of the deceased spouse.\(^{18}\)

\(^{16}\) Sule v. Ajisegiri (Kano High Court, 1937) 13 N.L.R., 146. Lewis v. Bankole (Lagos High Court, 1909) 1 N.L.R. 323.

\(^{17}\) Divided among a number of persons in equal shares. Per capita in this instance means, division of the woman's estate equally between her children.

\(^{18}\) Suberu v. Sunmonu (Supreme Court, 1957), vol. 11, Selected Judgement of the Supreme Court (FSC) 33; Cauerlrick v. Harding (U. K., 1926) 7 Nigerian Law Reports 48.
are no offspring living, the property of the spouse goes back to the kin of the deceased.

What rights does a woman have as a wife and widow in her husband's estate? A wife in Yorubaland belongs to another lineage, and is disallowed from inheriting her husband's property.\textsuperscript{19} But she has a right to live in the family house after her husband's death, throughout her lifetime or until she remarries. If she has children, her children are entitled to their father's estate. If she is the only surviving wife, distribution is per capita, shared equally among the children. If the deceased is survived by several wives and children, his property is divided per stirpes,\textsuperscript{20} equally according to the number of wives.

What rights does a woman have regarding her son's property? The mother of a child who dies intestate has a right to her deceased child's estate,\textsuperscript{21} but she is required to share it equally with her husband, in the absence of any surviving sibling, or any children of the deceased.

\textsuperscript{19}Oloko v. Giwa (1939) 15 Nigerian Law Reports, 31.
\textsuperscript{20}The person from whom a family is descended.
\textsuperscript{21}Adedoyin v. Simeon & Ors., (Lagos High Court, 1928) 9, Nigerian Law Reports, 31.
The Bini System

The Binis and Ishans live in Bendel state in the western region of Nigeria. Their customary systems are very similar, even though they have different dialects. Bini and Ishan Law\(^\text{22}\) of inheritance are unique in that only the eldest son has exclusive succession rights to a deceased person's estate.\(^\text{23}\) In practice, for the sake of family harmony, on his own volition, he gives some portion of the estate to his younger brothers. In a polygamous setting, where a man is survived by children born to him by two or more different mothers, his real estate is equitably distributed among the eldest sons of the various wives—to the exclusion of their younger brothers.

The heir or heirs have a moral responsibility to effect their father's burial arrangement and take care of all his dependents. Similarly, a woman's property devolves to her eldest son when she dies, but her personal effects like jewelry or kitchen pots and pans are shared by her daughters.

\(^{22}\)The natives of Bendel State are called the Binis and their customary law is Ishan Law.

\(^{23}\)Ogiamien v. Ogiamien (Supreme Court, 1967) 1 All Nigerian Law Reports, 191. In this ruling the Federal Supreme Court affirmed that the principle of primogeniture was ok.
The Eastern States

In Igboland, succession is primarily patrilineal, as in Yorubaland, although there are a couple of matrilineal communities in Ekoï, Afikpo and Ohafia areas. Women (aside from Efik and Umon) are not allowed to inherit a woman's or a man’s immovable property; are barred from succeeding to a man's movable estate, and their right of succession to a woman's movable estate is not to the exclusion of males.

In patrilineal Ibo native law and custom, primogeniture is the norm. The eldest son of the deceased acquires the exclusive rights of inheritance of all his estate and his residence, by virtue of his position as the new head of household, and he is legally mandated to fulfill the requirements of his job description, which includes performance of the burial ceremony perceived as the last rite. Failure to care for his siblings and other dependents of the deceased may involve legal action which will force him to share the landed holdings of his inheritance, with the rest of his siblings. Per capita or per stirpes methods of disposition may be adopted depending on the constitution

\[24\] There are exceptions to this doctrine among the western Ibos. In which case a daughter may choose to be a single parent in her father's house and raise children in her fathers' name.
of the surviving family.\textsuperscript{25} When a woman dies, her inessential possessions pass over to her daughters on intestacy.\textsuperscript{26} Her real estate and money are inherited by her sons. In situations involving a single woman, her brothers inherit her landed property, while her sisters acquire the intangibles.

Women cannot inherit land on intestacy in Igbo land, (except Efik and Umon) as wives\textsuperscript{27} and as daughters.\textsuperscript{28} Consequent to this doctrine, a mother cannot inherit her late son's property on intestacy, in Iboland. She could however, inherit her daughters' personal effects on intestacy, in the absence of a surviving female sibling of the deceased. The real estate, where applicable goes to male members of the family. The same customary law that limits the inheritance rights of the Ibo woman; that denies daughter the right to a father's real estate, that denies a widow the right of inheritance in a husband's estate, allows


\textsuperscript{27}Nezianya v. Okagbue (Supreme Court, 1962) \textit{Selected Cases of the Supreme Court}, 398/62 (Unreported).

\textsuperscript{28}Except in Efik and Umon societies, where a daughter either single or married has inheritance rights in her father's estate including landed property.
a husband to inherit a childless woman's estate on intestacy. The husband is dead, her property is passed over to her husband's surviving eldest son. The only exclusion, are her landed property before marriage which rolls back to her maiden family.

There is no doubt that Ibo customary laws of inheritance are discriminatory because of their patriarchal foundations. Regardless of the intention of the laws, their operative effect subjugates women and reinforces the economic dependence of the female population. One of the implications of these patriarchal succession laws is the high premium placed on male children in Nigerian society, and women who have female children go to great lengths to get a male child even if that requires numerous trials like giving birth a dozen times or more, to have a male child.

Northern States of Nigeria
(Excluding the Yoruba Speaking Areas)

In this part of Nigeria, there are two types of native laws. One is general custom, the other one is Muslim law.

29 The Yoruba’s practice (as well as the Ekois and the Yakos) is that a man cannot inherit his wife's property on intestacy. Her principal beneficiaries are, her children. If she is childless, her siblings (brothers and sisters) inherit her property. Lloyd, Yoruba Land Law, 304; Partridge, Native Law and Custom in Egbaland, 433.

30 Nwugege v. Adigwe (Benin High Court, 1934) 11 Nigerian Law Reports, 134.
Both are intertwined to a large extent except for a few variations. Under the Muslim law or the Maliki Code, male children have equal shares and female offspring half of a share.\textsuperscript{31} For instance, if a man is survived only by a daughter, the Koran dictates that she gets half of the net estate of her father. If there were more than one surviving female offspring, all of them will have to share the same half portion equally among themselves. On the other hand, an only surviving child who is a male is entitled to the whole estate.\textsuperscript{32} The Maliki code ranks women as persons of impaired ability. Thus men are treated differently, they get preferential treatment, because of the traditional presumption that the male sex have more obligations. Nevertheless, the Koran unequivocally accords all widows (childless or with offspring with the deceased) the right of inheritance.\textsuperscript{33}

If a man died without writing a will, his widow is qualified to have one-quarter of his estate, if there are no surviving children. But if there are children or grandchildren, her share is automatically reduced to one-eighth.

\textsuperscript{31}Yunusa v. Adesubokan (Lagos High Court, 1970) 14 Journal of African Law, 56.

\textsuperscript{32}Ibid., 57.

\textsuperscript{33}Koran 4, verse 11.
In a polygamous setup, where there are numerous wives, all the widows will have to share the one-quarter (in the absence of surviving children or grandchildren) or one-eighth where applicable; disbursement for the children is done per capita. The Koran's instruction, which is binding on all Hausa Moslems, is supposed to be a kind of defense for Moslem women against economic dependence and dominance by in-laws. In practice, the rights have been curtailed in interpretation to be no more than the right of abode accorded to widows under Yoruba customary law to farm and reside on the family real estate during her lifetime or until she remarries outside the kinship group.

The non-Muslim Hausas are governed by various local customs. Under non-Koranic custom, only male offsprings have succession rights. In the absence of any surviving male child, the deceased brothers acquire inheritance rights over the property, and a responsibility to give the female offspring the proceeds of the farmland. A widow is also regarded as a chattel, "Handed over to one of the husband's agnatic heirs who is interested...and must remain within the family because she is regarded as part of the deceased.

estate."\textsuperscript{35} Although some women are considered chattels, some communities such as Zaria, allow women to inherit landed property in equal proportion to the men; and among the Igbira tribe, customary law now allows spouses to inherit each other's property on death.\textsuperscript{36}

\textit{Statutory Law}

\textit{Intestate Succession.} A Nigerian has a choice to marry either under customary law or under the Marriage Act\textsuperscript{37} viewed as English law legislated in a local statute. If a couple opts for the traditional method, all matters involving legal discourse in their marriage falls under customary law; on the other hand, if a couple marries under the Act, the English dictates constituted in the Act will be applicable.

Thus, the type of marriage contracted while alive determines intestate disposition of a deceased person's property. If the deceased had contracted a statutory marriage, or a Christian matrimony, then his/her property will be distributed, on intestate, according to acquired

\textsuperscript{35}Maraji Isa Shani, "The Status of Muslim Women in the Northern States of Nigeria," \textit{Journal of the Center of Islamic Legal Studies} 1, no. 2 (1989): 43.

\textsuperscript{36}Nigeria Native Law & Customs, \textit{Igbirra Customary Law}, Section 46 (1980).

\textsuperscript{37}Nigerian Laws, Statutes, etc., Cap 115.
English law. Also the relevant law of succession to their movable property is the general law of the state of their permanent residence.\textsuperscript{38} The rules are complex and diverse. To simplify the complexities, the different regulations in states of the federation will be explored.

\textit{Historical Background.} Section 36 of the Marriage Act regulates the intestate succession to the property of persons who married under the Act.\textsuperscript{39} Such persons must be subject to customary law\textsuperscript{40} and must have been survived by a spouse or a child of that marriage.\textsuperscript{41} The various sources of the law are:\textsuperscript{42}

1. Common Law;
2. Statute of Distribution, 1670;
3. Statute of Frauds, 1677;

\textsuperscript{38}Dicey Morris, Conflict of Laws (London: Peterson Books, 1985), 8th ed. 80, 98.

\textsuperscript{39}This section applies only to Lagos; section 36 (3).

\textsuperscript{40}Customary Courts in Lagos, and Ondo States have jurisdiction over all citizens of Nigeria, while in Ogun State jurisdiction may be exercised over all persons. Customary Courts Law 1981, (Ondo State), Section 15; Customary Courts Law, 1973, (Lagos State), Section 16; Customary Courts Law, 1980 (Ogun State), Section 26; (2) Nigeria Laws, Statutes, etc., High Court Law, 1955, (Lagos State) Cap 52 Laws of Lagos State, 1972; Section 12 (2) High Court Law, 1955, Cap 44 Laws of Western Nigeria, 1959. All Nigerians are subject to customary law.

\textsuperscript{41}Nigeria Laws, Statutes, etc., Laws of Western Nigeria, 1959, Section 36 (3).

4. Administration of Estates Act, 1685;
5. Statute of Distribution, 1685;
6. Matrimonial Causes Act, 1857;
7. Intestate Estates Act, 1890.

A synopsis of the stipulations of these laws will not be provided in this study.\(^{43}\)

**Allotment under the English Law or Section 36 of the Marriage Act**

Under these Acts if a man dies without writing a will (intestate) and has no surviving widow, his children are entitled to his net estate in equal proportion; if he is survived by a widow and children, his widow takes one-third of his estate while the remaining two-thirds are shared equally among his offspring, irrespective of the gender.\(^{44}\) Conversely, if a woman married under the ordinance dies intestate, without a surviving widower, her estate devolves in equal proportion to her children; but if she is survived by her husband, her children lose any stake in her estate as the law stipulates that her estate is inherited solely by the surviving husband.\(^{45}\) On the other hand if a deceased man

---


\(^{45}\) Nigerian Laws, Statutes, etc., *Administration of Estates Law, 1959*, Section 49.
was childless, the widow is qualified to take one-half of
his estate while the other half goes to the parents.\textsuperscript{46} Thus,
the stipulation accords a wife an unequivocal right to a
portion of her husband's estate regardless of her being a
mother or not.

\textit{Rights of Other Widows}

Although the stipulation was made to protect wives of
statutory marriages, but widows of other marriages may be
included.\textsuperscript{47} Also, the widow may not necessarily be a widow of
that marriage. The application of the pre-1914 law of
England (for Lagos) in matters of intestate disposition is
also applicable to a statutorily married person even if he
later contracted a customary law marriage.

Accordingly, if Mr. A marries Ms. B in agreement with
the stipulation of the statute and if on the death of B, A
marries Ms. C under customary law, who outlives him, then
Ms. C may be legally considered Mr. A's widow. The decisions
of the Judicial Committee of the Privy Council\textsuperscript{48} gave
credence to this supposition.

\textsuperscript{46} Coleman v. Shang (Lagos, 1961) Appeal Cases, 481.

\textsuperscript{47} Bamigbose v. Daniel (WACA, 1954) West African Court of
Appeals, 16.

\textsuperscript{48} Bamigbose v. Daniel (WACA, 1942) 8 West African Court
of Appeals, 108. The court opined that "it would be strange
result that in the converse case where a marriage of the
parents were recognized as valid, the children should be
It is not certain what the position of the Court would have been if there had been more than one widow. Perhaps, the widow's share would be allocated evenly per stirpes. Regardless of the problems encountered in distribution of the surviving spouse's allotment, the rights of the children are safeguarded.49 However, in Goodings v. Martins, the West African Court of Appeals denounced the validity of a customary law marriage, following the dissolution of a marriage under the Act; and denied the defendant a right to partake in his deceased father's estate.

Monogamous Marriage Outside Nigeria

Monogamous marriages contracted outside Nigeria are regulated by English law. Sections 14 and 17 of the Supreme Court Ordinance 1914 call for the adoption of English law50 and offers no consideration for local custom if the issue falls within the jurisdiction of English law or if it is alien to customary law.

deprived of their rights of succession because of a difficulty in working out the rights of the wife."

49 Common law of England, the principles of equity and statutes of General application in force on January 1st, 1900.

50 Ibid.
Applicable General Law in Western and Mid-Western States

Succession in the Western and Mid-Western States is covered by provincial edict, which is the Administration of Estates Law (1959). This legislation concerns immovable estates situated in the regions where the laws are operative, regardless of the permanent residence of the intestate, plus other intangible belongings of a resident who dies intestate, irrespective of the situation of the estate. This legislation is premised on the English Intestate Act, (1952) but the class of individuals qualified and the percentage of their portions vary from those indicated in the stipulations of the English laws. Under section 49 (1) of the law, children are only appropriated the residuary estate with the spouse of the deceased, with the latter taking the larger quota of the deceased's personal estate. If the intestate leaves offspring, but no husband or wife, the residuary estate is shared equally among the children. The Act is gender-neutral, a subsisting widow is offered the same treatment as a widower. In this respect, a widow in a monogamous marriage seems to have a better advantage in the regions covered by this legislation than other monogamous widows in the rest of the country.

\footnote{Cap. 1.}

\footnote{Section 49, (11) Administration of Estates Law, 1959.}
By Section 50 (2)(c) of the same enactment, where an offspring dies before the intestate, his progeny, that is the grandchildren of the intestate, take an even portion of their parents, provided that they have reached the age of 21 or have married. Females seem to have an advantage with this clause. In essence, a 15 year-old married female child is allowed a share of her parents' allotment of an intestate estate, whereas a 15 year old boy may not be allowed because he has not attained puberty and cannot contract a legal marriage. Suffice it to add that mothers are not completely exempted from their children's property. If a child dies intestate, unmarried and childless, the mother is allowed to share his estate with the deceased brothers and sisters if the father is not alive.

The Eastern and Northern Regions

The Eastern and Northern states do not have any statutory stipulations about sharing estates on intestacy. Some writers\(^{53}\) have advocated the use of the relevant customary provisions to administrate the property of intestate residents, in the absence of any statutory provisions. However, it has been proved by a chain of sometimes conflicting actions that in situations where the

intestate contracted a Christian marriage in or outside Nigeria (but whose property is outside Lagos or the West and Midwestern States, and who dies intestate domiciled outside these places) the property is distributed in accordance with post 1900 English laws. For instance, in Cole v. Cole\textsuperscript{54} the intestate had undergone a Christian marriage in Sierra Leone and later resided in Lagos; the bone of contention was which court should decide his succession in the absence of any statutory provision. Justice Bradford Griffith writing his opinion said:

In such circumstances can it be contended that the question of inheritance to the deceased in the present case should be decided in accordance with the principles of native law and custom? I think not. Such a contention would be contrary to the principles of justice, equity and good conscience. Were such a contention to hold good, then an educated native Lagos gentleman, maybe a doctor, or a barrister, or a clergyman, or a bishop (for there are all such)— marrying an educated native lady out of the Colony and coming to reside permanently in Lagos would have his estate subject to native law in case he died intestate, his widow being required by a strict undiluted, native law to act as wife to her brother in law in order to obtain support. It was to avoid such monstrous consequences that the Legislature in framing section 19 of the Supreme Court Ordinance, dealing with the application of native law and custom, exercised so much caution and reserve.\textsuperscript{55}

It is imperative to point out that the right accorded monogamous spouses in Cole v. Cole is not absolute, as some

\textsuperscript{54} Nigerian Law Reports (1898), 15.

\textsuperscript{55} Okoro, 186.
court rulings have attested.56 Such contradictory rulings are unavoidable because the Nigerian society is governed by dual laws (customary and assimilated English law) without any adequate linkage.

The Eastern Region Administration of Estates Bill, 1965

Consequent to the aforementioned problems, the defunct Government of former Eastern Nigeria, attempted to formulate a statutory framework for the apportionment of intestate property, in 1965. Fashioned after the Western Region Administration of Estates Law, the Eastern Region’s attempt had profound distinctions which are patriarchal thus reinforcing male domination. Some of the questionable provisions of The Administration of Estates Bill, 1965, include the broad definition of "wife" to represent the wife of a Christian church ceremony, union under the Marriage Act, Muslim Law marriage or other customary marriages. While this may be a way of giving legal recognition and protection to second wives, it also encourages and reinforces the twin indulgence of polygyny and male promiscuity; it is also a clear endorsement of polygyny which should be outlawed.

56Smith v. Smith (U.K., 1924) 5 Nigerian Law Reports, 105; Ajayi v. White (Lagos High Court, 1946) 18 Nigerian Law Reports, 41; Benjawa Jembe v. Priscilla Nyodo (Lagos High Court, 1967), 4 E.A.L.R.
Also, the word "child" was interpreted to embrace the child of all categories of marriage previously referred to, and those acceptable under the Legitimacy and Adoption Law of 1965 including children born out of wedlock during the existence of a statutory marriage, provided customary law sanctions it.\textsuperscript{57}

The Bill gives more consideration to the extended family of the deceased male than his spouse, and children. For instance, if the deceased was survived by children and no subsisting parents, the residuary estate would be held for his brothers and sisters, and also for "other" dependents, such as children of half-brothers or half-sisters, cousins and other extended family members.\textsuperscript{58} The Western Region Administration of Estate Law has more sympathy for the male spouse of the deceased.

The Eastern Region Administration of the Estate Bill 1965, included a section on "Family Provisions" which is akin to the English Inheritance (Family Provision) Act 1938, and the Intestate Estate Act 1952. This section allows the court to intervene if maintenance provisions for a dependent is not made according to the will or regulations of intestacy.

\textsuperscript{57}Clause 2 (4). If passed, the Bill would have invalidated Cole v. Akinyele etc.

\textsuperscript{58}Clause 50.
The prejudicial nature of the Bill caused a furor by women activists and other civil rights groups but the coup d'état of 1966 ended the proposal. Nevertheless, the Bill symbolizes a bizarre effort to harmonize the contradicting paradigms of English and customary succession rights with its paradoxical provisions and omissions all etched on patriarchal sentiments.

The Current Situation in Eastern Region

The final analysis is that, there are no definite regulations guiding intestate succession of Christian marriage spouses in Eastern Region. Until then, litigants will have to rest on the whims and caprices of the presiding judge of their individual cases. If the court follows Cole v. Cole, the case will be decided according to English law; on the other hand if the Chief Justice's suggestion in Onwudinjoh v. Onwudinjoh is considered by the courts, Customary law will be implemented. If the court opts for English law, the resulting distribution is not necessarily the same as would have been applicable had section 36 of the Marriage Act applied.

---

59 Administrator General v. Egbuna. (Lagos High Court, 1945) 18. Nigeria Law Reports, I; In 1957, in Onwudinjoh v. Onwudinjoh (Benin High Court,1957), 11 Eastern Region Law Reports, 1, 5) the presiding judge deviated from Cole v. Cole and warned that its validity may be questioned by the Federal Supreme Court.
The Statutes of Distribution make no differentiation between female and male children and they also grant to the widow rights of succession but the common law of England does not give females any rights of succession to realty. Only the eldest son is qualified, but the widow is granted dower, that is, to an estate for life in a third of all her husband's freehold of which he had possession at any time during coverture. The principle, was premised on the notion that the widow had the right to produce an heir capable of inheriting his fathers' estate; it is immaterial if such a child was really born or not.

Northern States

As in the Eastern States, the Northern states have no statutory provisions governing administration of intestate estates. As a result of this, the decision in Administrator-General v. Egbuna\(^60\) or Cole v. Cole may be acknowledged as a corollary.

Conclusion

The chapter has demonstrated that every woman has a right to write a will, both the spinster and the married woman. However, marriage renders a will invalid. The Law of Wills becomes effective on death. When a will is written,

\(^60\) *Nigerian Law Reports* (1945), 1.
spouses and children of a marriage are protected from misinterpretations of a deceased's intent for property disposition. However, in cases where there are no wills, a woman married under the statute is legally entitled to a reasonable portion of her husband's estate, while her offspring gets the rest.

But for a woman in Customary law marriages, the death of a husband could be a disaster as she could be rendered homeless at the whim of her in-laws. This is because Customary law forbids a wife to inherit a husband's estate. If the wife has children, her problem could be eased, because the children could inherit their father's estate.

Childless women are put in limbo, they are denied succession rights to their husband's estate. In some tribes women are considered as part of the deceased property and distributed along with the estate to the deceased relatives. Thus if Ms. B marries Mr. A, in the event of Mr. A's death, she is denied access to her husband's property and Ms. B herself may be asked to marry Mr. A's brother. The underlying assumption is that the widow is part of the deceased estate and could be shared. Widows generally are allowed to live in their husband's house until they remarry but they could be thrown out by relatives if they disobey them. Even gifts given to a wife by the husband while he was
alive could be taken away from her regardless of her financial contribution to the property.

Those women who do not have male children may not be entitled to anything depending on the tribe of the husband. In some tribes only male children succeed their father, in some, only the heir succeeds the father. Such inequity is evident in all the different customary laws regulating inheritance in the country. The laws in the Eastern part of Nigeria are the most discriminatory, as they forbid a woman to inherit her father's estate as well as her husband's. The Koran has liberal laws that offer both a wife with children and a childless widow a stake in her husband's estate, but many people hardly follow the stipulations of the Koran, on issues of testamentary disposition.

In view of the aforementioned reasons, it can be concluded that the Nigerian Customary laws of inheritance are very cruel, and prejudicial. An illustration that came to mind was the case of a middle class childless woman who attended one of the focus group workshops conducted for this study. At a one on one discussion after the workshop, she stated that she had been married to her husband for eighteen years, then suddenly he died. Her husband's relatives came and took possession of the family car and the only home she knew, including all her husband's belongings and drove her out of her matrimonial home. She said, since her husband's
death it has been impossible for her to sustain herself. Many women in customary marriages who have struggled to build a home with their spouses have found themselves in dire economic situations following the death of their husbands intestate. Even if a will is written, the relatives of the husband could circumvent the will, take over the deceased estate and throw her out of her marital home.

One of the implications of the inheritance laws is that it retards the economic progress of women, in a nation where there is no social security program and where life insurance policies are uncommon and where applicable, payment is often dishonored, life after the death of a husband can result in serious economic reversal and sometimes poverty for a wife. For women with children, it is not a bed of roses either, because the children may not have access to their father’s property until a certain age. The inequalities and injustice of the various laws need to be re-examined and corrected, and if the Nigerian decision makers cannot resolve the issue, efforts may be made to bring it to the attention of Human Rights organizations.
CHAPTER VI
SURVEYS AND ANALYSIS

The preceding chapters have examined the various legal stipulations that impact on the Nigerian female in the South Western Region politically, socially and especially in family relationships. Chapter five covered the dissolution of marriages property rights of spouses, maintenance and custody of children. Chapter six mainly covers field research. Its aim is to support the findings of the preceding chapters. The field research is basically surveys, interviews, and focus workshops which were held to seek provincial opinions concerning the legal structure and its inter-relationship with the development of women. The survey also asked Nigerian men and women their opinion of themselves and the opposite gender and their place in the society. The results are discussed in this chapter.

The field research was conducted in Lagos, the capital of Lagos State, and the city of Ibadan, the capital of Oyo State, plus the villages of Eruwa and Igbo-Ora both in Oyo State. The cities of Lagos and Ibadan both urban areas provide a good representation of the urban perspective which is presumably liberal while the other two villages which are
rural areas stand for alternate viewpoints presumably traditional/conservative.

The results of this survey may be generalized to the wider diverse South Western Nigerian society, because many women all over these areas share similar concerns and men and women can be classified into three ideological groupings: The conservatives, the liberals and the centrists. The conservatives irrespective of their gender usually hold strongly to traditional precepts and an invisible code of conduct of gender relations; the code is premised on the endorsement of patriarchy, cushioned by religious and socio-cultural dictates of gender roles. The conservatives cut through sex, creed, financial, and educational lines. The liberals are more centrists in their ideological lineage. They are more broadminded, more receptive to change, somewhat educated, respect customs but favor the rights of the individual. The centrists are in-between these two ideological groupings.

The goal of the survey was to measure accurately people’s attitudes, beliefs, and behavior towards the status of women and gender relations by asking them questions. The focus group workshops were held at Ibadan and Igbo-Ora.
TABLE 1

QUESTION 1: "IS THERE A HUGE GAP IN THE LEVEL OF DEVELOPMENT OF MEN AND WOMEN IN NIGERIA?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>85.0</td>
<td>60.0</td>
<td>80.0</td>
<td>80.0</td>
<td>77.5</td>
</tr>
<tr>
<td>No</td>
<td>14.0</td>
<td>40.0</td>
<td>20.0</td>
<td>20.0</td>
<td>22.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>1.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>.5</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the question, "Is there a huge gap in the level of development of men and women in Nigeria?", 77.5

---

A quick explanation of the figures in Table 1 is imperative. The formula used for the figures is applicable to all the Tables in Chapter six. 100 urban women were polled. 100 of them responded to question 1. 85 out of the 100 said "yes." That is 85%. 14 of them said "no" =14%. Only 1 of them said she did not know, which is 1% of the urban women polled. 50 rural females were polled. 30 of them said "yes" to question 1. To obtain the percentage, 30 was divided by 50 and multiplied by 100=60%. 20 rural women said "no". The percentage was derived by dividing 20 by 50 and multiplying by 100=40%. 25 urban males answered question 1, 20 of them said "yes" =20 divided by 25 multiply by 100 =80%. 5 of the 25 urban males said "no" =5 divided by 25, multiply by 100 =20%. 25 rural males responded to question 1, 20 of them said "yes" thus 20 divided by 25 multiplied by 100 =80%. 5 of them said "no"=5 divided by 25 multiplied by 100 =20%. To obtain the percentage of the total number of the respondents who said "yes", add the actual figures--85 rural women + 30 rural females + 20 urban males + 20 rural females =155 (155 out of the 200 persons polled said "yes"). To obtain the percentage divide 155 by 200 multiply by 100 =77.5% total respondents. To obtain the percentile of all the respondents who said "no" add 14 urban women + 20 rural women+5 rural male +5 rural female=44 (44
percent of those interviewed said "yes," while only 22 percent disagreed. Eighty percent of rural male and urban male respondents affirm that there is indeed a huge gap in the level of development of the gender in Nigeria. Eighty five percent of urban women and more than half of rural women, (60 percent) acknowledge the disparity.

However, some respondents do not feel that there is much disparity. Most of those who disagree are the rural women. According to Table 1, forty percent of rural women disagree.

What is clear in Table 1 is that majority of men and women overwhelmingly agree that the gap between men and women is huge in terms of development.

The word "development" in this comparative context is synonymous with "underdeveloped" and "less developed." The out of the 200 persons polled said “no". To obtain the percentage divide 44 by 200 multiply by 100=22%.

2Economists always use these words to describe nations that are poor. A typical developing nation has a shortage of food, few sources of power, and a low Gross National Product (GNP). GNP is the value of all goods and services produced by a country during a year. Economists classify nations on the basis of per capita (for each person) GNP—that is the GNP divided by the population. The average per capita GNP in developing countries was $820 in 1984. This amount compared to an average of $9,000 in developing countries, and $15,490 in the United States. Most developing nations have an increasing population, (for instance, Nigeria has a population of 100 million) simply because death rates are decreasing and birth rates remain high. These population increases put pressure on scarce resources. Physical capital, such as machinery and efficient transportation systems is scarce in developing countries. So is social
focus groups and those polled seem to realize the true meaning of the word "development" according to one of the participants of the focus groups "development is the level of advancement economically, socially and politically." They mostly seem to agree that women are behind.

TABLE 2

QUESTION 2: "ARE MEN MORE PRIVILEGED POLITICALLY, ECONOMICALLY, AND SOCIALLY IN THE SOCIETY?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>85.0</td>
<td>72.0</td>
<td>60.0</td>
<td>40.0</td>
<td>72.5</td>
</tr>
<tr>
<td>No</td>
<td>11.0</td>
<td>26.0</td>
<td>40.0</td>
<td>60.0</td>
<td>24.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>4.0</td>
<td>2.0</td>
<td>0.0</td>
<td>0.0</td>
<td>3.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

Table 2 reveals that 73 percent of all respondents admit that men are more privileged politically, economically and socially in the Nigerian society, while an overall total of 23 percent of the respondents disagree. A breakdown of capital, such as good education and health systems and stable government. Disease, illiteracy, and inadequate equipment keep agricultural and commercial production low. These factors are most harmful in rural areas, where most of the people in developing areas live. The people depend on one or two crops, and suffer if these crops fail. About three-fourths of the people in the world still live in developing countries.
this shows that 85 percent of urban female agreed, only 11 percent dissented and 4 percent of the women were not certain. Seventy two percent of rural female acquiesced in the affirmative while 26 percent disagreed. What is interesting in the responses stated in Table 2 is the responses of the men. Fifty six percent of the urban men interviewed acknowledged that Nigerian men are more privileged, but 44 percent dissented. While 40 percent of rural men accept that the Nigerian socio-political and economic system empower men, 60 percent of them disagree. The focus group workshops however provided more insight into these responses. According to some of the male participants, the privileged status of the Nigerian male is justified because men are more burdened in terms of their social-cultural responsibilities as bread winners and head of households to their families.

**TABLE 3**

**QUESTION 3: "DO WOMEN SUFFER DISCRIMINATION AND SEXUAL PREJUDICE IN NIGERIA?"**

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Yes</strong></td>
<td>70.0</td>
<td>30.0</td>
<td>76.0</td>
<td>40.0</td>
<td>57.0</td>
</tr>
<tr>
<td><strong>No</strong></td>
<td>25.0</td>
<td>60.0</td>
<td>24.0</td>
<td>60.0</td>
<td>38.0</td>
</tr>
<tr>
<td><strong>Don't Know</strong></td>
<td>5.0</td>
<td>10.0</td>
<td>0.0</td>
<td>0.0</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Total %</strong></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>All Polled</strong></td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.
In response to the question "Do women suffer discrimination and sexual prejudice in Nigeria?" 70 percent of urban women said "yes," while only 25 percent said "no." Five percent of urban women were not certain. The opinion of the rural women however was different; 60 percent of them said they are not victims of discrimination, only 30 percent of the rural women polled, agreed with their urban counterparts that they are being discriminated against. Table 3 shows that 76 percent of urban males support the views of the urban female but in contrast, 40 percent of the rural male disagreed. In all 57 percent of the total respondents acknowledged sexual discrimination while 38 percent differed.

It is however imperative to note the urban men and women's views about this problem. Over 70 percent of both urban men and women acknowledge the issue of sexual discrimination. Most of the dissenting respondents are the rural female, 60 percent, and the rural male 60 percent. The focus group workshop held in Ibadan shed more light on this survey response. While urban respondents feel that sexual discrimination is limiting for women, 60 percent of the rural people believe the contrary. They feel that what is being depicted as discrimination is actually, protection of women. According to them, women are biologically and emotionally fragile and they should stop competing with men
aggressively because nature has different roles for the sexes. They could not understand why women have to go to war, or take up occupations that are cut out for the male. Some of them invoked the religious dictates of female subservience and secondary role as the ideal and warned that the status quo should be preserved.

**TABLE 4**

**QUESTION 4: "IF YOUR ANSWER TO THE PREVIOUS QUESTION IS YES, WOULD YOU BLAME THE LEGISLATIVE PROCESS FOR THE SUBORDINATION OF WOMEN?"**

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>54.0</td>
<td>12.0</td>
<td>36.0</td>
<td>5.0</td>
<td>35.0</td>
</tr>
<tr>
<td>No</td>
<td>31.0</td>
<td>58.0</td>
<td>60.0</td>
<td>52.0</td>
<td>44.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>15.0</td>
<td>30.0</td>
<td>4.0</td>
<td>43.0</td>
<td>20.5</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the question of whether the legislative process should be blamed for the subordination of women, only 35 percent of total respondents said "yes," while 44.5 percent said "no." The percentage of those who are not sure are over 20 percent. Evidently, people are just not sure if the blame should be put on the legislature. But most urban
women, 54 percent of those surveyed clearly blame the legislative process.

**TABLE 5**

**QUESTION 5:** "IT IS EASIER FOR A MAN TO SECURE AN APARTMENT FOR RENT. SINGLE WOMEN ACTING WITHOUT A MALE REPRESENTATIVE ARE BOMBARDED WITH ENDLESS QUESTIONS BY MALE LANDLORDS, AND OFTENTIMES TURNED DOWN."

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>81.0</td>
<td>30.0</td>
<td>32.0</td>
<td>4.0</td>
<td>52.0</td>
</tr>
<tr>
<td>No</td>
<td>13.0</td>
<td>40.0</td>
<td>68.0</td>
<td>64.0</td>
<td>33.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>6.0</td>
<td>30.0</td>
<td>0.0</td>
<td>32.0</td>
<td>14.5</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

The question in Table 5 may seem strange but it was included in the survey questionnaire to focus on the subtle prejudice that Nigerian women go through in their own society. In some multi-racial cultures such question may not seem strange because of the reality of racism but in the Nigerian context gender bias is also an unsettling reality. Urban females who live in the congested city of Lagos are more likely to experience problems securing apartments. Table 5 shows that 81 percent of urban women surveyed said single women generally have problems in securing apartments to lease, while only 30 percent of the rural females said
"yes." Thirty two percent of urban males acknowledge that it is harder for women to secure a place to lease, but a big majority, 68 percent said "no" as did similar number of rural men, 64 percent. However many of the rural men and women polled acknowledged a lack of information on the issue --about one third said "don't know." Focus group workshops indicated that urban men favor more scrutiny of women apartment seekers. Some of them claim that such scrutiny was necessary to determine their ability to pay because of the extremely high cost of leasing homes, in cities such as Lagos and Abuja. And since it is assumed that women are supposedly less economically able, securing steady income to meet the rent is presumed to be a problem. But the women said that the extra scrutiny of female home seekers had more to do with the prejudice of male landlords who see single attractive females as promiscuous and consequently a security threat to the neighborhoods in terms of their perceived association with men.
TABLE 6

QUESTION 6: "HAVE YOU OR YOUR FRIEND ATTEMPTED TO BUY A LANDED PROPERTY? DID YOU EXPERIENCE ANY BIAS?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>40.0</td>
<td>40.0</td>
<td>0.0</td>
<td>0.0</td>
<td>31.0</td>
</tr>
<tr>
<td>No</td>
<td>40.0</td>
<td>31.0</td>
<td>60.0</td>
<td>60.0</td>
<td>43.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>20.0</td>
<td>29.0</td>
<td>40.0</td>
<td>40.0</td>
<td>24.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the question of discrimination in land purchases the urban women polled were split on the responses: 40 percent said "no," 40 percent said "yes." The limitation of this question as a good measure of discrimination in land purchase is noted because it is a double-barrel question. The responses could have been "No, I have never attempted to buy a landed property" or "Yes, I have attempted to buy a landed property, but no I did not experience any bias." It is really hard to know. Nevertheless, a significant number of both rural and urban men said they did not experience any bias at all. In fact, the table shows that 60 percent of urban male and 60 percent of rural men did not experience any form of bias.
TABLE 7

QUESTION 7: "WOULD YOU SAY THAT YOUR MALE COLLEAGUES WITH THE SAME QUALIFICATIONS ARE FAVORED MORE IN THE WORKPLACE IN TERMS OF PROMOTIONS AND WAGES?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>45.0</td>
<td>14.0</td>
<td>28.0</td>
<td>12.0</td>
<td>31.0</td>
</tr>
<tr>
<td>No</td>
<td>50.0</td>
<td>40.0</td>
<td>60.0</td>
<td>80.0</td>
<td>52.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>5.0</td>
<td>46.0</td>
<td>12.0</td>
<td>8.0</td>
<td>16.5</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In answer to the question of gender disparity in income and advancement in the workplace 45 percent of the urban women said "yes," while 50 percent of them said "no". Although more urban women said they have not experienced discrimination in earnings, it is necessary to note that the survey indicates that a huge number of women claim to be victims of discriminatory pay. The law stipulates equal pay for equal work, but obviously this is not being respected. Twenty eight percent of urban men also acknowledge preferential treatment of men in the workplace in terms of promotions and wages, although 60 percent of urban male disagreed. Rural women mostly did not know or disagreed that
women are favored while rural men overwhelmingly disagreed that men are favored in the workplace.

Focus group discussions revealed some facts. Indeed, the law provides for gender neutral compensation for equal work, which is strictly adhered to in the civil service. But in the private sector the opposite is the case. Employers determine their own terms of compensation based on their own convictions, and sometimes they pay men more than women simply because of the underlying assumption that men have more family responsibilities. It is necessary to note that on the whole, men have greater economic power. Although, equitable pay structure is not the issue in the civil service, promotions and advancement to key positions are not guaranteed to women in public service.

TABLE 8

QUESTION 8: "HAVE YOU OR ANY OF YOUR FEMALE FRIENDS EXPERIENCED SEXUAL HARASSMENT IN THE WORKPLACE?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>45.0</td>
<td>40.0</td>
<td>40.0</td>
<td>16.0</td>
<td>39.5</td>
</tr>
<tr>
<td>No</td>
<td>45.0</td>
<td>50.0</td>
<td>56.0</td>
<td>80.0</td>
<td>51.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>10.0</td>
<td>10.0</td>
<td>4.0</td>
<td>4.0</td>
<td>9.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.
In response to the question, "Have you or any of your female friends experienced sexual harassment in the workplace?" 45 percent of the urban women polled said "yes," while another 45 percent of them said "no"; 10 percent of the urban women said they "don't know." Most of the urban women respondents in Table 8 work in settings with men and this may explain the figures in Table 8. However the responses of the rural women polled are surprising in view of the fact that their work settings are different from their urban counterparts. They work mostly on the farms as a family unit or in the market, trading or at home raising their families. Thus their work settings are not likely to be a breeding ground for sexual harassment. On the other hand, it is possible that they have friends or relatives in other settings who have been sexually harassed. The question provided room for that. So, it is not really certain if the rural women are the actual victims or their friends. A quick look at Table 8 on this issue shows that 40 percent of the rural women polled said they or their friends have been sexually harassed, 50 percent said "no." Only 16 percent of the rural men polled claim that someone they know has been sexually harassed, 80 percent said they do not know any females who have been sexually harassed.

However, the focus group workshops provided more insight into the researcher's concerns. The workshop
informed the participants about the true meaning of "sexual harassment" which is the badgering of a person because of his or her sex, making unwelcome sexual advances continuously, denying the victim appropriate raises, promotions, or advancement in the workplace, causing the victim mental anguish, one or all of which could be termed as sexual harassment. And sometimes sexual harassment could simply be sexist practices that cause the victim loss of income, psychological torment and discomfort. Working women and students are oftentimes victims of sexual harassment. At the Igbo-Ora workshop, with a fresh knowledge of an actual definition of sexual harassment, some of the rural women in the focus group intimated that their own interpretation of sexual harassment was not actually in terms of sexual advances, but it has a lot to do with the sexual stereotype of women being the weaker sex, the taunting and jeering by the opposite sex because of their sex.

However, at the focus group workshops held in Ibadan, more than half of the women participants understood the concept and in a way this buttresses this study's depiction of the urban female as "more aware, more enlightened and more educated" than the other groups polled. Table 8 also indicates that 40 percent of the urban males polled said they or their female friends have experienced sexual harassment while 56 percent said no, 4 percent do not know.
Harassment can happen to men, but its victims are overwhelmingly women. These figures are not indicative of men as victims per se, but it shows that the men polled also have female friends who have been victims of this little recognized social problem in Nigeria. The few men who attest to sexual harassment say that some female workers simply feel that they need to seduce them to get ahead in the workplace, even though most of the women perpetrators are not necessarily in a position to be vindictive, because they do not have the power edge to do so.

It is nevertheless important to note that sexual harassment could be acute if the perpetrator has the influence, position and the wherewithal to make life unbearable for the victim, if she fails to succumb to his wishes. Some of the female victims of sexual harassment who attended the focus group workshops recounted painful experiences of psychological torments in the hands of male bosses, who failed to take "no" for an answer. Some also recounted how severe this issue is. They said that for job seekers, the situation is very appalling, most employers believe that a woman has to offer herself in order to secure an appointment and are often denied employment when they refuse the employer's sexual advances. At the Igbo-Ora focus sessions two university students were in attendance, on vacation from college. They said they have never heard the
term "sexual harassment," but in retrospect, they could identify with it. They and a few of their closest friends have also been victims of sexual harassment by educators. At the Ibadan workshops many of the women have had college experiences. Many of them said they have been victims adding that sexual harassment is just as common on the campuses, as in the workplace. In fact, many of the workshop participants in Ibadan claim that the problem of sexual harassment is almost on the same level as bribery and corruption in the country. "Corruption in our society is well known, but sexual harassment is not recognized, but it is real," said a banker who attended one of the sessions in Ibadan. Some of the women at the Ibadan group sessions claim that sexual harassment was an on-going battle in their lives and some of their friends as they struggle with their conscience and values on one hand and male employers and professors who insist on having their way or keep them cowed. At its most basic level, sexual harassment is a reflection and abuse of male power.

Sexual harassment is a manifestation of the powerlessness wrought by women's economic situation and reinforced by their psychological training. Women have been

---

conditioned to accept and seek sexual attention from men. Our economic weakness adds to our vulnerability. A woman who needs her job to pay the bills and feed her children or herself is in a weak position to challenge the advances of an insistent boss or to risk reprisal from a slighted coworker that could threaten her career. The phenomenon even has capacious implications. As women continue to enter the job market in growing numbers, the exercise of power by the dominant male shifts to an actual power struggle. Men see their jobs - the economic source of their influence - at risk; at this point sexual harassment sometimes include a calculated debasement of a woman’s capabilities—work sabotage. According to one session participant, the whole issue is further complicated by the fact that some women use their sexuality to enhance their careers, to get the promotion they want, or to work their way into the power hierarchy. The fact that women are compelled to resort to this is an indication of how unequivocally profound the impediments are, to honest honorable advancement for women. While people talk about the woman who ‘made’ it through sex, there can be an embarrassed or hostile silence regarding the many more women who are sexually harassed. For them, humiliation, anxiety, loss of confidence and self esteem, chronic stress, and psychological problems are the most common results. What saddened most of the women at the focus
group sessions who report some form of unwanted sexual attentions in the course of their employment or college era include the lack of an official recognition of sexual harassment in the Nigerian society, the anguish of its victims and the lack of governmental protection.

TABLE 9

QUESTION 9: "WOULD YOU SAY THAT OUR CUSTOMARY LAWS AND TRADITION HINDER THE DEVELOPMENT OF WOMEN AND ENCOURAGE SUBSERVIENCE."

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>55.0</td>
<td>20.0</td>
<td>52.0</td>
<td>0.0</td>
<td>39.0</td>
</tr>
<tr>
<td>No</td>
<td>32.0</td>
<td>76.0</td>
<td>44.0</td>
<td>96.0</td>
<td>52.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>13.0</td>
<td>4.0</td>
<td>4.0</td>
<td>4.0</td>
<td>8.5</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

The majority of urban male and women polled said that customary laws and tradition limit women's potential. According to Table 9, 55 percent of urban females and 52 percent of urban males said customary laws and tradition hinder the development of women and encourages subservience. Thirty-two percent of the urban women, and 44 percent of the urban men who responded to the survey disagreed. Thirteen percent of the urban females and four percent of the urban
males said they are not sure. The views of the city dwellers are very much different from the rural men and women polled. A huge 96 percent of rural men and 76 percent of rural females disagree with the notion that the customary laws and tradition encourage subservience and impede women's development. However some of the participants at the focus sessions at Ibadan disagreed. They offered another perspective on the issue. They emphasized that gender social differences and the consequent marginalization of women are largely a social construction—contrived by men themselves, and male-dominated institutions. The idea of differences between the gender and "superiority" of the male gender is created and perpetrated by men. Because this socially constructed inequality has been going on for so long, it has been upheld as tradition and culture. The various religions created have emphasized and affirmed the status quo in gender relations which in a way, is the reinforcement of gender inequality.
TABLE 10

QUESTION 10: "THE PROBABILITY OF A WOMAN BEING ELECTED PRESIDENT OF NIGERIA IS VERY LOW. A WOMAN RUNNING FOR SUCH OFFICE IS JUST WASTING HER TIME. AGREE OR DISAGREE?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>85.0</td>
<td>80.0</td>
<td>76.0</td>
<td>92.0</td>
<td>84.0</td>
</tr>
<tr>
<td>No</td>
<td>13.0</td>
<td>14.0</td>
<td>12.0</td>
<td>4.0</td>
<td>12.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>2.0</td>
<td>6.0</td>
<td>12.0</td>
<td>4.0</td>
<td>4.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

When asked if respondents agree or disagree with the statement: "The probability of a woman elected president of Nigeria is very low," 84 percent of all polled, both rural and urban male and female, said they agree. Twelve percent of all polled disagreed. Breaking the total down to categories, table 10 reveals that 85 percent of urban female and 80 percent of rural females and 90 percent of rural men overwhelmingly agree that the chances of a woman ruling Nigeria as a president is very negligible. Seventy six percent of urban males said the chances are remote, 12 percent of them do not know. When this issue came up at the focus group sessions, it was approached more in terms of women's political participation, the opinion of the women at the sessions were varied according to the location. At the
Igbo-Ora session, the issue was largely dismissed as more of a male issue. But at the Ibadan sessions, the issue provided a more intuitive and lively discussion. Some of the women acknowledged that they should participate more in politics as a whole but the dire economic condition of the country, rising inflation and collapse of public service, political instability are some of the reasons for their discouragement.

These are hard times, there are more problems facing the average woman in our society. Surviving which means putting food on the table, high prices, low wages, no light, no water, no fuel, no good medical care, the schools are shabby, . . . it is an on-going nightmare . . . so politics is the least of our troubles.  

Mrs. Yinka Siyanbolu, a nurse who attended one of the Ibadan workshops sounded overwhelmed at the deterioration of the public service. Other women told the group that the domination of the political machinery by the military for more than 25 years has provided no incentive for an active political role for women. A number of factors were also blamed for the low participation of women in politics. These include the lack of a distinctive voting block for women, lack of campaign financing for women candidates, difficulties in persuading men dominated political party leadership to field women candidates, lack of support for women candidates, lack of cohesion among women, the

---

4Yinka Siyanbolu, a nurse speaking at the focus session held in Ibadan.
assumption that politics is outside of a woman's role and so on. The issue did provide a very brilliant and lively discussion at the focus group sessions. On the whole, the women accepted that only through political involvement will they be able to find answers to their myriad problems. They are very hopeful for a more conducive political environment and they all said they will do more.

**TABLE 11**

QUESTION 11: "WOULD YOU SAY THAT THE MAJORITY OF NIGERIAN WOMEN HAVE NEGATIVE SELF IMAGE WHICH LIMITS THEIR ASPIRATION IN TERMS OF CAREER CHOICES, ADVANCEMENT AND RIGOROUS ECONOMIC PURSUIT?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>37.0</td>
<td>30.0</td>
<td>56.0</td>
<td>60.0</td>
<td>40.0</td>
</tr>
<tr>
<td>No</td>
<td>48.0</td>
<td>50.0</td>
<td>40.0</td>
<td>40.0</td>
<td>47.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>15.0</td>
<td>20.0</td>
<td>4.0</td>
<td>0.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the question "Would you say that majority of Nigerian women have negative self image which limits their aspiration in terms of career choices, advancement and rigorous economic pursuit?," 37 percent of the urban women polled said "yes," 48 percent disagreed.
Thirty percent of rural women responded in the affirmative, 50 percent dissented, 20 percent are not sure, 15 percent of urban women were not sure either.

The men polled responded in sharp contrast to the women. Fifty-six percent of the urban men, and 60 percent of rural men said "yes," they believe that low self esteem is one of the factors that limits women's advancement. Forty percent of rural and urban male disagreed. Although a considerable number of those polled disregarded the issue of self esteem as a mitigating factor in the advancement of some women in Nigeria, it is a factor worth looking at thoroughly. Having a favorable image of oneself, having the confidence in one’s ability to achieve a goal enhances the fulfillment of such a goal, on the other hand a negative opinion of oneself and the lack of a belief in one’s ability dissipates one’s enthusiasm and oftentimes kills the dream. In which case, it is possible that an overall climate of low expectation in the achievement of females can lower their aspirations and may also affect their self esteem.
TABLE 12

QUESTION 12: "CUSTOMARY MARRIAGE PROVISIONS WHICH REQUIRES THE PAYMENT OF DOWRY IS A FORM OF TRADE BY BARTER, IN WHICH CASE A WOMAN IS SOLD TO A MAN. DO YOU AGREE OR DISAGREE?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>37.0</td>
<td>20.0</td>
<td>36.0</td>
<td>0.0</td>
<td>28.0</td>
</tr>
<tr>
<td>No</td>
<td>60.0</td>
<td>78.0</td>
<td>64.0</td>
<td>96.0</td>
<td>70.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>3.0</td>
<td>2.0</td>
<td>0.0</td>
<td>4.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

The majority of all polled regarding the issue of dowry as trade by barter vehemently disagreed. Even the cosmopolitan minded urban dwellers disagreed with the notion of dowry as selling of a woman to a man. Table 12 shows that only 37 percent of the urban females and 36 percent of the urban males polled claim that payment of dowry for a bride constitute the purchase of the bride. Sixty percent of the urban women and 64 percent of the urban male polled, objected. Interestingly, not one of the rural men interviewed admitted to the notion of "dowry as purchase" 96 percent of them said "no" it is not, only 4 percent were not sure. As revealed in the focus group workshops, the payment of dowry is a traditional rite which symbolizes the
appreciation of the gift of a bride, and according to one of the participants, "Men value what they pay for."

But the truth is that many societies (such as the South eastern region of Nigeria) demand enormous amounts of money as bridial price and wedding rites. The bridial price in some of these societies is dependent on the academic status of the bride. For instance, if a bride is a high school graduate, the bride price could be 40,000 naira which is about 500 dollars, if the bride is college educated, the bride price could run up to 100,000 naira. The economic demands of wedding ceremonies and bridial price make it hard for young graduates to dabble into marriage unless they have been able to amass substantial savings. One of the participants of the focus workshop opined that the heavy dowry price makes some of the men to act as if they own their wives. Thus, it is not a surprise some men ill-treat the women and treat them like slaves. In the western part of Nigeria, dowry prices are not so daunting. According to some of the focus group participants, the whole concept of dowry has a negative connotation on women. It is synonymous to purchase.
TABLE 13

QUESTION 13: "DOWRY REFUND INHIBITS WOMEN FROM LEAVING ABUSIVE MARRIAGES ESPECIALLY IF THEY CANNOT AFFORD THE REFUND OF THE BRIDAL PRICE TO THE HUSBAND. DO YOU AGREE OR DISAGREE?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>39.0</td>
<td>30.0</td>
<td>36.0</td>
<td>52.0</td>
<td>38.0</td>
</tr>
<tr>
<td>No</td>
<td>46.0</td>
<td>60.0</td>
<td>44.0</td>
<td>44.0</td>
<td>49.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>15.0</td>
<td>10.0</td>
<td>20.0</td>
<td>4.0</td>
<td>13.5</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

Responses are divided over the issue of dowry refund as a barrier to escaping abusive marriages. Thirty nine percent of urban women polled say "yes," it is true, 46 percent dissented, 15 percent simply did not know, although 60 percent of rural women said "no," 30 percent of them said it is true that dowry refund can indeed be a problem.

If the marriage ends, some of the grooms demand for their dowry back, in some cases the next suitor will have to pay back the dowry to the soon to be ex husband; failing that, the woman may be stuck in the marriage unless she is able to refund the dowry. Nevertheless, some women participants at the focus group workshops conducted for this study noted that other factors besides the inability to
refund a dowry could also hinder a woman's ability to quit abusive marriages. Chiefly among these is the custody right of children which are generally pro-male. "Many women are apprehensive about leaving their children behind, so they stay in the marriage," said a workshop participant.

According to other workshop participants, if a woman chooses to leave, she would be required to pack her suitcases and leave her matrimonial home and the children for the man, without any expectation of alimony. If she succeeds in taking her baby with her, she could not expect child support. Because, there are no provisions in the other legal systems for such. The statutory laws which govern Christian marriages have provisions for alimony, but they are hardly enforced.

TABLE 14

QUESTION 14: "POLYGyny IS DEHUMANIZING, UNHEALTHY FOR WOMEN AND THE OFFSPRINGS. POLYGyny SHOULD BE OUTLAWED. DO YOU AGREE OR DISAGREE?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>80.0</td>
<td>50.0</td>
<td>40.0</td>
<td>12.0</td>
<td>59.0</td>
</tr>
<tr>
<td>No</td>
<td>20.0</td>
<td>50.0</td>
<td>60.0</td>
<td>88.0</td>
<td>41.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.
In response to the question: "Polygyny is dehumanizing, unhealthy for women and the offsprings. Polygyny should be outlawed," 80 percent of the urban women responded in the affirmative, while the rural females feel less strongly in agreement, although 50 percent said "yes," it is dehumanizing. Forty percent of the urban males polled agree that polygyny is unhealthy and should be outlawed. However, a majority of men favor polygyny--a huge 88 percent of the rural men polled and 60 percent of the urban males support polygyny. At the focus group sessions, the men and women who defended polygyny at the group sessions warned that polygyny should not be outlawed because many women will be left without eligible husbands. Men, they argued, are merely saving the society by marrying more than one wife to help reduce the number of women without husbands. They also claim that polygyny is the African culture which should be preserved, and the Moslem doctrine which should be respected, and that keeping a large family is a status symbol. Critics of polygyny disagreed. At the group sessions they said, the overwhelming male support for polygyny is because polygyny affords men, the indulgence of changing women's bedroom as they wish-getting two or more women to be courting their favors.

A female participant who is a psychologist, said that polygyny is the "bedrock of the breakdown of the family
unit." She and other critics at the sessions argued that polygyny breeds unspoken hatred between wives, rivalry and strong competition between women sharing the same husband, and jealousy and distrust even among offsprings who rarely love their half siblings as much as their full siblings. Besides the emotional trauma and psychological insecurities of the women in polygamous setups, polygyny is more likely to spread diseases. According to one of the focus group participants:

Polygyny is simply cruelty to children! How in the world do you expect a man that has 16 children between four women or 52 or 178 children to ever have time to nurture and care for such children or give them the attention they deserve?

Another participant observes that polygyny lowers the economic development of the parties concerned.

TABLE 15

QUESTION 15: "BIGAMY LAWS ARE HARDLY ENFORCED. THERE IS A NEED FOR STRONG ENFORCEMENT OF EXISTING LAWS."

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>75.0</td>
<td>50.0</td>
<td>36.0</td>
<td>4.0</td>
<td>55.0</td>
</tr>
<tr>
<td>No</td>
<td>15.0</td>
<td>32.0</td>
<td>60.0</td>
<td>84.0</td>
<td>33.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>10.0</td>
<td>18.0</td>
<td>4.0</td>
<td>12.0</td>
<td>12.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.
Seventy-five percent of the urban females polled agreed that bigamy laws should be enforced, 15 percent said "no," while 10 percent do not know. Fifty percent of rural females, in contrast to only 4 percent of rural males feel that stronger bigamy laws are needed. Thirty-two percent of rural females and 84 percent of rural males do not think so. Generally more men than women are not in favor of stricter bigamy laws, 60 percent of urban male said "no" to stronger laws.

### TABLE 16

**QUESTION 16: "CUSTOMARY LAW MARRIAGES ARE BIASED AGAINST WOMEN ESPECIALLY IN TERMS OF INHERITANCE AND PROPERTY DIVISION AFTER DIVORCE."**

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>60.0</td>
<td>60.0</td>
<td>40.0</td>
<td>8.0</td>
<td>51.0</td>
</tr>
<tr>
<td>No</td>
<td>35.0</td>
<td>38.0</td>
<td>56.0</td>
<td>80.0</td>
<td>44.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>5.0</td>
<td>2.0</td>
<td>4.0</td>
<td>12.0</td>
<td>5.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the statement: "Customary laws are biased against women especially in terms of inheritance and property division after divorce," 60 percent of urban male and 60 percent of rural female agree, while 35 percent of
urban women and 38 percent of rural women dissented. Men do not seem to share the views of women on the issue of inheritance. Eighty percent of rural male said "no," they do not feel that there is anything wrong with the inheritance laws, as did 56 percent of rural men. But urban men generally seem more liberal, with 40 percent of them said "yes" it is biased, in contrast to only 8 percent of rural men.

TABLE 17

QUESTION 17: "CHILDLESS WOMEN SUFFER MOSTLY FROM THE DISCRIMINATORY ARRANGEMENT OF INHERITANCE IN MARITAL RELATIONSHIPS."

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>70.0</td>
<td>80.0</td>
<td>71.0</td>
<td>20.0</td>
<td>66.0</td>
</tr>
<tr>
<td>No</td>
<td>25.0</td>
<td>18.0</td>
<td>29.0</td>
<td>80.0</td>
<td>31.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>5.0</td>
<td>2.0</td>
<td>0.0</td>
<td>0.0</td>
<td>3.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

The majority of those polled with the exception of rural males accept that customary inheritance laws are punitive to the childless wives in families. Seventy percent of urban females, 80 percent of rural females and 71 percent of urban males agree that "childless women suffer mostly
from the discriminatory arrangement of inheritance in marital relationships." Eighty percent of rural males said the inheritance laws do not hurt childless women. In all, a total of 61 percent of those polled said "yes," the inheritance laws are discriminatory to women, only 31 percent of all those surveyed said "no." The focus group sessions revealed that the inheritance laws generally forbid women to inherit their husband's estate at death. For women with children, the assets of the deceased go to the children, male offspring's are always given preference in sharing. Some societies disallow daughters to inherit their father's real estate, the belief is that, once the daughter gets married he will be carting away family heirlooms to a new setting. The situation is more serious for a woman without offspring. Upon the death of her spouse, she is disallowed from inheriting any of her husband's possessions. Such properties go to the deceased brothers and family members. Some greedy in laws can send the widow packing, some may grant her the liberty to remain in her husband's home until she remarries or dies.
TABLE 18

QUESTION 18: "WOMEN IN CHRISTIAN MARRIAGES HAVE A LOT OF RIGHTS AS PRESCRIBED BY LAW, HOWEVER MOST OF THEM ARE STILL IGNORANT OF THESE PROVISIONS, THUS THEY SUFFER INEQUALITY."

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>65.0</td>
<td>20.0</td>
<td>72.0</td>
<td>0.0</td>
<td>46.5</td>
</tr>
<tr>
<td>No</td>
<td>20.0</td>
<td>60.0</td>
<td>28.0</td>
<td>40.0</td>
<td>33.5</td>
</tr>
<tr>
<td>Don't Know</td>
<td>15.0</td>
<td>20.0</td>
<td>0.0</td>
<td>60.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

An overall total of 46.50 percent of those polled believe that women in Christian marriages have a lot of legal protection, but are unaware of their rights, thus they still suffer inequality. Thirty-three and a half percent of all those polled disagree. Table 18 shows that 65 percent of urban women and 72 percent of urban men accede that Christian marriage couples are unaware of their rights, and still suffer inequality like their customary law peers.
TABLE 19

QUESTION 19: "DO YOU SUPPORT CHILD MARRIAGES, (GIVING CHILDREN UNDER SIXTEEN OUT FOR MARRIAGES)?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10.0</td>
<td>50.0</td>
<td>40.0</td>
<td>60.0</td>
<td>60.0</td>
</tr>
<tr>
<td>No</td>
<td>55.0</td>
<td>40.0</td>
<td>52.0</td>
<td>40.0</td>
<td>98.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>35.0</td>
<td>10.0</td>
<td>8.0</td>
<td>0.0</td>
<td>42.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the question "Do you support child marriages?" Urban women were largely in opposition. Only 10 percent lent it support, 55 percent of urban female said "no," 35 percent were not sure. Most of the rural men and women seem to support it to a certain extent. According to Table 19, 50 percent of rural female said "yes" in support of child marriages, forty percent said "no." Sixty percent of the rural males supported the idea, only 40 percent disagreed. At the focus group sessions supporters of child marriages claim that it is a tradition which bonds families together and enhances marital stability. Critics argue that child marriages limit the potential and aspirations of young girls. Child marriage is child abuse. Some participants equated child marriages to other forms of child exploitation in the Nigerian society. A good example which came up at the
Ibadan session was the issue of "kids living with relatives" or "the housemaid." As the discussion drifted on, one participant said:

The young children are overworked, work long hours, they are paid very little, oftentimes they are paid nothing. They are subjected to the worst kind of domestic violence. There have been numerous cases of house-girls being assaulted by women employers who suspect them of having affairs with their husbands. Indeed, some have been raped by employers or turned into some kind of sex slaves.5

Miss Chukka who had written her thesis on child exploitation told the workshop that the spotlight should be on the issue of child labor. Official attention seems directed only at child labor in factories and other forms of formal employment, ignoring the abuse of workers in most homes.

It is indeed true that it is difficult to establish who these child laborers are as some people hire their relatives. Again, the widespread poverty, especially in the rural areas, is what drives many parents into sending off their children to work as housemaids. Once girls drop out of primary school, there is little hope of any further training. But even if they had some vocational skills training, the high unemployment rate means that many of them cannot be gainfully engaged. The problems would seem insurmountable. Ms Chukka said there is need, therefore, to

5Georgina Chukka, a freelance journalist, Ibadan.
promote public awareness about the problem. Perhaps if the abusers of these child workers realized that somebody else is watching them and that the long arm of the law may soon catch up with them, they may start to treat them better. Those employing children must be made aware that they are breaking the law even if the youngsters are related to them.

TABLE 20

QUESTION 20: "HAVE YOU EVER BEEN ABUSED BY A SPOUSE?"

<table>
<thead>
<tr>
<th></th>
<th>Urban Female</th>
<th>Rural Female</th>
<th>Urban Male</th>
<th>Rural Male</th>
<th>Total Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>40.0</td>
<td>40.0</td>
<td>0.0</td>
<td>0.0</td>
<td>31.0</td>
</tr>
<tr>
<td>No</td>
<td>40.0</td>
<td>31.0</td>
<td>64.0</td>
<td>60.0</td>
<td>43.0</td>
</tr>
<tr>
<td>Don't Know</td>
<td>20.0</td>
<td>29.0</td>
<td>36.0</td>
<td>40.0</td>
<td>26.0</td>
</tr>
<tr>
<td>Total %</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>All Polled</td>
<td>(100)</td>
<td>(50)</td>
<td>(25)</td>
<td>(25)</td>
<td>(200)</td>
</tr>
</tbody>
</table>

Source: Surveys conducted for this study in South Western Nigeria in 1997.

In response to the question of spousal abuse, the urban women polled were split on the responses: 40 percent said "no," 40 percent said "yes." 40 percent of rural females responded in the affirmative while 31 percent said "no." It is interesting to note the numbers of those who said "don't know." According to Table 20, 16 percent of urban women and 29 percent of rural women do not know if they have been abused. The limitation of this question in terms of its
vagueness is noted, and the cultural interpretation of the word "abuse" as later revealed by the focused group sessions indicated a lack of understanding of the actual meaning of the word "abuse." All these may have influenced the responses in Table 20. Thus, these responses cannot be a true measure of the degree of spousal abuse. As the focus group sessions suggested most of the women polled may not have really understood the meaning of the word "abuse." According to some of the participants of the focus group sessions "abuse" was perceived as largely verbal. As the issue unfolded, focus sessions participants were informed about the dynamics of the word "abuse." Spousal abuse can be categorized into three parts. Verbal, physical and emotional. Physical abuse which involves hitting and kicking, is also known as battery. When the women in the focus group sessions were asked to indicate if they have been hit by their husbands by raising up their hands, 80 percent of those present did. But, most of the women were not so offended by the battery. Some were quick to offer excuse for their spouse's aggression, some attributed it to provocation, stress, job redundancy, alcoholism, in-law interference and so on, but generally many of them did not consider battery a big issue.

However, when the discussion turned to emotional abuse which was clearly explained to them, many of them could
identify with this psychological paradigm of domestic abuse; they were deeply troubled. The group sessions were informed that emotional abuse is very different from battery, it is more of mental anguish and it involves maltreatment of a spouse and infliction of psychological pain through a spouse’s misconduct and actions. Threats of physical violence, threats of deprivation, hostile and cruel environment all fall under emotional abuse.

Some women participants at the workshops recounted several experiences of emotional cruelty caused by the interference of in-laws in their marital affairs, unsubstantiated allegations of witchcraft, spousal adultery, etc. Perhaps one of most emotional moments of the discourse was when one woman, explained how her husband, her childhood sweetheart, took another wife without her knowledge and brought her home to live under the same roof. She said she was very upset, she raved, fought but she was asked to either move over and share or leave. She said, having examined all her options, if she left, she would lose her children, because the men keep the children and the house and everything, alimony is not guaranteed, she was out of job, sustaining herself would be an uphill struggle. If she left her children behind, they will be raised by the other woman and the in-laws, and they may not treat them well. She
said, she decided to stay in the marriage for the sake of her kids. She said:

I was simply caught off-guard. The first few years of the live-in situation was what one could call a hostile environment. It was a nightmare. I suffered depression. I struggled really hard to keep my sanity intact.\textsuperscript{6}

The sad thing is, many women go through such experience all the time; and the irony is, most men could never take that.

\textsuperscript{6}Mrs. A. Bamidele, a participant at the focus group session held in Ibadan in 1997.
CHAPTER VII
SUMMARY AND CONCLUSIONS

The research set out to evaluate the status of the women in the Southern parts of Nigeria. In measuring the status of women it is necessary to examine women's position in relation to that of men. A United Nation's 1993 Human Development Report, declared that there is no country in the world in which women's status is equal to that of men, according to a multifaceted appraisal which involves life expectancy, condition of health, educational possibilities, employment and political rights.¹

Some countries have more gender differentiation than others. In the developing countries, the situation is distressing. In Nigeria the particulars of women's status differ from one region to another, nevertheless patterns of marginalization exist, and in south southern Nigeria the situation is not different: diminished labor market access, increasing vulnerability to crime, loss of family oriented benefits, and exceedingly low political representation.

Women in Nigeria constitute 20 percent of the labor force in 1990, remarkably lower than in many nations of sub-Saharan Africa; female literacy is still only 63 percent of that of males, maternal mortality at 750 per 100,000 live births, is comparably high, more than the total figures for Zimbabwe and Kenya, and 2.5 times that of Botswana.²

Evaluating the status of women involves an analysis of their socio-economic and political development. From our findings, in pre-colonial times women in Nigeria except the Muslim women, were highly visible in distinguished positions. They were palace administrators, village heads, queen mothers; princesses; chiefs; transient soldiers and occupied positions in cities and boroughs. Women were noticeable in the economic pursuit of their communities, being involved in plantation, trade, or craft making. At that time, the roles of female and male in the societies were separate and complementary.³ In short, traditional virtues provided women in the western and eastern regions of Nigeria a system of significant control both in familial and private relations and also in the administration of the economy. But the forces of modernization and development


robbed women of this power, denying most Nigerian women equal access to formal education and undermining their contribution to the political and economic arena.\(^4\)

Proponents of this viewpoint believe that western civilization brought dependence of women, in Nigeria. According to Nkiru Nzegwu, the women's traditional power was gradually eroded by the influence of British values of appropriate women's deportment, emulated by the elite. As Nzegwu had further argued in previous chapters, the conjecture underlining the European notion of the "private" and the "public" spheres have proven detrimental to the development of women, as women's managerial experience was scorned. Nevertheless, Westernized family arrangements curtailed women's social power and legal autonomy, by comparison to their traditional familial and legal role.\(^5\) Indeed, the colonial system of allocation of values and regulations originally ostracized not just Nigerian women but Nigerian men. As the British constructed executive and

\(^4\)The discriminatory consequences of "development" on women is chronicled in many studies made by women. The inquiry records the disenfranchisement of women in developing countries by denying them the devices, the means and training they need. Barbara Rogers, The Domestication of Women: Discrimination in Developing Societies (London: Kogan Page Ltd., 1980), 36; Ester Boserup, Women's Role in Economic Development (London: Allen & Unwin, 1970), 36-68.

legislative assemblies for the central government, they decided to affiliate Nigerian men with their newly constructed councils. From the inception, the British made territorial politics a men only affair by constructing a dissonant political framework that empowered male administrators to make decisions for women.

By 1960, when independence was achieved, it had become accepted in Nigerian communities, where the gender division of roles was the standard, that politics, both national and indigenous was a man's sphere. As the years passed, both the civilian and military governments have occasionally tried to gain validity by affiliating individual women with their administration. Such tokenism has not given the post independence governments the desired legitimacy.

In the political arena, our findings suggest that the South Southern Nigerian women, a huge part of the estimated 20 million Yoruba indigines in Nigeria, having got the franchise in 1957, have been part and parcel of the political struggle for a long time; however only a negligible number are involved in the political decision making process.

Women in western Nigeria, like the other 32 million women registered voters in the country, have minimal

---

involvement in government. Although very few of them hold elective or appointed office, their participation in the gender biased political machinery of the country is undeniably superficial.

The women's annex of the political parties have always toiled diligently for their political groups ever since the introduction of party politics in 1950, but western Nigerian political parties have consistently been unwilling to field women candidates. During the recent elections, there were several political parties, none of them nominated a woman for the position of president or vice-president. However, the Peoples Democratic Party of president elect General Olusegun Obasanjo exempted female aspirants of the party from paying nomination fees for the House of Representatives or Senate. In spite of this, women got only three senatorial seats out of 109, and five federal House of Representatives seats out of 306, while five women secured five local government seats out of 774 positions. Previous transition program indexes show that in the 1997/98 transition elections eight females were elected to the 109 member senate, and 16 females to the 369 member house of representatives. In 1979, only the National Party of Nigeria (NPN), fielded two women for the vice-gubernatorial candidacy. Although both women lost the governorship race, Janet Akinrinade, a Yoruba indigine was later offered the
portfolio of the minister of state in the Federal Ministry of Internal Affairs, while Ebun Oyagbola of the NPN was offered the position of Minister for national planning.\footnote{The second woman governorship candidate is from Eastern Nigeria. Her name is Oyibo Odinamadu.}

There were no women in the 95-member Senate of the defunct second administration, only two women in the 449-member House of Representatives, only one woman of full cabinet rank in the 45-member federal cabinet, and three women junior cabinet ministers. During Nigeria's third attempt at democracy in 1983 less than 100 women ran for political office, 11,900 men did. Out of the almost 100 women contestants, only two ran for vice-gubernatorial positions, four for senatorial positions (one won), 19 women ran for the House of Representatives seats and 71 for seats in the state assemblies. The only party that announced a woman vice presidential candidate\footnote{Bola Ogunbor.} was the People's Redemption Party (PRP), led by Aminu Kano.\footnote{Aminu Kano, although an aristocrat, was sympathetic to populist causes. As leader of the Northern Elements Progressive Union (NEPU), he appealed to the "talakawas," the masses and campaigned for social justice within the ideals of Islam. NEPU soon transformed to Peoples Redemption Party (PRP) in 1979. Aminu Kano's dedication to equal rights for men and women in an era of new voting rights accorded to Northern Muslim Women encouraged a huge female support in the 1979 polls. The PRP won Kano state in a landslide, a} However, when he died shortly after the announcement, the dream died.
Since independence in 1960, there have been three attempts at democracy, two of the experiments were aborted by military coup d'etat. In essence since its 39 years of post independence era there have been less than 10 years of democratic rule, and almost 28 years of military dictatorship. If women's political experience in the democratic experience is minimal, their political participation during the military regime is worse indeed. The pretense of representation has been replaced by today's transparent exclusion.

Despite their occasional tokenism, the military has always adopted an all-male membership policy in its highest political machinery--the Supreme Military Council (SMC) or the Armed Forces Ruling Council (AFRC), thus no women has ever been appointed to these bodies. However Vision 2010 Committee, which recently drew up a vision document for Nigeria has 11 females among its 179 member. The number of females may seem inadequate but in the past it was worst. The Constitution Drafting Committee appointed by General Muritala Mohammed to decide the fate of the nation's 100 million citizens, more than half of whom are women, was an all-male committee. Also the Constituent Assembly that ratified the Constitution of 1979 consisted of only three women members. Such a negligible number cannot swing much in huge surprise for the conservative National Party of Nigeria (NPN).
favor of women. Thus when the Constituent Assembly endorsed
the stipulation for including Sharia (Islamic Law) in the
constitution of 1979, no one challenged their decision. The
Sharia Law\textsuperscript{10} is a set back for Muslim women. Sharia Law
places issues of marriage, divorce, and child custody, under
the sole jurisdiction of the states and they are not under
the protection of the constitution,\textsuperscript{11} which means that each
state can interpret these laws the way it deems fit. In the
Northern States where women's subordination is
institutionalized, having no federal protection in this
realm is a problem for Muslim women. Sharia Law not only
diminishes a woman's deposition in court it also limits her
property right. Sharia law is upheld in the 1983
Constitution which incidentally guarantees equality of
rights, opportunities for men and women--a contradiction
indeed to its provisions regarding Sharia Law.

However, in spite of these problems, women have found
channels for self expression and development through various
movements, e.g., churches, clubs, and organizations. Over

\textsuperscript{10}According to the 1979 Constitution, Sharia concern
issues of marriage, divorce, family relationship, or the
guardianship of an infant (sec.242 [ii]); all matters of
Islamic personal law (sec.243); any question of Islamic
personal law regarding an infant, or person of deranged mind
(sec.241 [4]), as well as instituting Sharia courts of
appeal in each of Nigeria's ten "Islamic" states, all in
Muslim Hausaland (sec.240 [1]).

\textsuperscript{11}Callaway, Muslim-Hausa Women in Northern Nigeria, 102-8.
the past few decades, women have formed more than 300 non-
governmental organizations nationwide—these include the
National Association of University Women, Women in Nigeria,
the Nigerian Market Women Association, the Federation of
Muslim Women Association in Nigeria etc. All these
organizations have found a common voice through their
affiliation with the 40 year old National Council of Women's
Societies (NCWS), which acts as their parent organization.
The NCWS's principal goal is to advance the interest and
well-being of women in all spheres with accent on literacy,
consciousness raising and skill building, a vision endorsed
by all its affiliated organizations. Sharing a common canopy
has provided national recognition and respect for these
organizations, as attested by the military government's
acknowledgment of the NCWS as the representative coalition
for women in Nigeria.  

The activities of the women organizations continue to
generate awareness to the plight of Nigerian women. In the
mid nineties, Abacha's wife established the Family Support
Program which was aimed at disadvantaged women. In 1987,
Maryam Babangida the wife of the military Head of State also
promoted this awareness when she launched the Better Life

---

12 Kamene Okonjo, "Reversing the Marginalization of the
Invisible and Silent Majority: Women in Politics in
Nelson and Najma Chowdhury (New Haven & London: Yale
Program for Rural Women. The Program aimed to promote the welfare of rural women and to draw the attention of the nation to their condition. What is indisputable is that the Program did bring women issues to the fore, what is not certain, is if the program actually helped the targeted groups, some of which tagged it "bitter life program for women."

As attention focused on the plight of women, the Babangida administration in 1990 responded to UN General Assembly\textsuperscript{13} resolutions 3320 and 3523 of 1975 by creating a National Commission on Women, consisting of mostly women\textsuperscript{14} and chaired by Professor Bolanle Awe, a Yoruba woman. The Commission's role was to create programs to foster the development of women and offer them opportunities such as acquiring skills, on the job training, education and knowledge.

Evidently, women are taking steps to fight for social justice, but their achievements have been minimal. Changing

\textsuperscript{13}The UN continues to focus on the plight of women globally. The United Nations World Conference on Women held in Beijing in 1995 and a series of world conferences organized by the United Nations Decade for Women--Equality Development Peace--1975-1985 spearheaded special development plans to encourage women's development plans globally. Its continuing goal is to draw attention to the needs of women which are entirely neglected in all international development programs.

\textsuperscript{14}The Commission consisted of 11 members, only two of them men.
the status quo in a society that is male dominated and highly stratified by class and gender is a severe struggle indeed. For a society to be truly representational of all its citizenry, the political structure should have equal representation of women at all levels of government.\textsuperscript{15} In fact, the Fourth World Conference on Women held in Beijing in September, 1995 had recommended some form of affirmative action by reserving 30 percent of elective and decision-making positions to be vied for and occupied by women. This is essential because only women can truly represent the needs and interest of women. If equal gender representation is achieved and sustained, gender specific issues of relevance can be strategized at top levels and adopted.

Women as a group need to start addressing the impediments to their political representation. While some of the conspicuous impediments such as the absence of a consistent democratic framework may be beyond their control, problems such as the absence of campaign funds can be tackled through innovative fund-raising strategies. They could establish partisan organizations to fund women candidates; institute voting blocs to support female candidates, and conduct grooming workshops to improve candidate's electoral skills. However, the best way to boost the digit

\textsuperscript{15}Women make up more than 50 percent of the population, yet their involvement in the political structure is minimal.
of women legislatures is to adopt a quota system that requires a certain percentage of women to be nominated or elected.

On the issue of civil rights, some of the battles for equal rights have been won. For example, during the past thirty years women's enrollment in primary education has risen from 59 percent to 93 percent, and the rate of post-secondary enrollment is now up to 38 percent of that of males, boosting the literacy rate of women in relation to men from 40 percent in 1970 to 63 percent in 1990.\textsuperscript{16}

Unlike before, women receive equal pay for equal work, but only in the government sector, where they also have paid maternity leaves, and equal access to education. But a lot of wrongs still need to be corrected. Most of the women tend to be clustered in the low-paying occupations. Gender-biased hiring and promotion practices are becoming deeply entrenched; gender-based layoffs, lower pay, and meager career opportunities contribute to the economic decline of women. Although the public service guarantees equal pay for equal work, the private sector is not regulated. Promotions and advancement of women even in the public sector is not regulated, giving room for the inherent gender biases to

infiltrate the evaluation procedures for advancement in the workplace.

Sexual harassment continues unabated in the workplace without any protection from the government. Sexual harassment is not recognized as a problem by the male dominated political structure, yet it is profound.

For working wives, the taxation system continues to deny them independent status. Despite a UN resolution which declared that "a married woman should have the option to be taxed as an individual,"\textsuperscript{17} Nigerian taxation laws do not recognize independent taxation for married women. According to the Inland Revenue Ordinance (IRO), the wife's income is considered to be her husband's income for the purposes of the salaries tax and personal assessment and is chargeable accordingly under his name. It is the husband's obligation to file tax returns for both himself and his wife, and it is also his responsibility to pay the tax. Treating a married woman's income as her husband's is out of tune with social developments and the changing status of women. The ramification of this is that working single parents are denied the allowance for domestic and private expenditure.

Although there are no legal impediments to women's ability to have contractual obligations, to sue or be sued in tort and in contract, purchase property or secure credit, banks and landowners independently erect structures to frustrate women's efforts in securing these commitments, a consequence of the ingrained gender bias. The problem is more severe for married women who are usually required to secure their husband's permission in securing bank credit, banking loans also have stiff collateral requirements which most women cannot provide; for land purchase, most women always use male proxy to purchase land,\textsuperscript{18} to rent apartments in the urban areas many single women are discriminated against simply because they are single women. Despite all these unequal treatments, there are no any legal recourse for women.

On the issue of development, since independence, national development in Nigeria has been premised on an understanding of development primarily in terms of economic

\textsuperscript{18}In the past, land was a communal good in Nigeria. In the traditional tribal system, land is distributed by each chief to each male head of the family for his wives to till. The colonial system introduced private property and private landholding patterns, with ownership limited to men. Women were excluded from ownership under both systems and continue to be excluded until independence. Even though the law has changed, there is no way for women to exact their rights in the face of male control. Even if they know their rights—which in most rural areas women don't (up to 80 percent are still illiterate), the male village chiefs supported by the male elders obviously will obstruct all attempts of women to assert any rights.
growth. Though achieving a modicum of growth and increased industrialization, Nigeria has nonetheless failed to achieve growth with equity. A central example of growth without equity has been the way that development has totally bypassed the needs of Nigerian women, so also is the negative impacts of economic globalization and structural adjustment policies, which have created nightmares for women and children in a society where there is no any form of social welfare programs. Part of the reason for the slow development of women in the society is the dual nature of the Nigerian economy. One sector is illustrated by the participation of individuals with myriad levels of education and proficiency, which enable them to participate properly in the monetary segment of the national economy. Such persons would include, for example, teachers, attorneys, engineers and physicians. However, various socio-cultural conditions, policies, and programs have impeded women's active participation in this monetary sphere. The principal interest should be the transfer of more women into the modern economic sector. The other historically traditional sector includes persons engaged in barter, exchange, and subsistence agriculture, and such persons frequently have no formal educational training. The majority of Nigerian women are in this sector. Often the traditional sector is not fully taken into account in official estimates of national
economics statistics, such as the gross national product (GNP), and in national development efforts. Other hindrances to development for women in Nigeria can be attributed to the prevalence of polygamy, and the failure to force fathers to pay child support for their numerous children born out of their polygamous relationships. Likewise, absence of a social safety net of child care, health care, and pensions make life precarious for women, who are usually expected to shoulder 100 percent of family responsibilities. Indeed, many women are increasingly becoming heads of households, including second wives left to fend for themselves and their children, single parents, divorcees with no child support,\(^{19}\) widows left with nothing, struggling to survive, raising their children without any social safety net and with the gradual disappearance of the extended family structure. What is apparent is the feminization of poverty;\(^{20}\) in fact, the

\(^{19}\)Although there is a legal backing for child support, it is not enforced.

\(^{20}\)Poverty has many dimensions and it is difficult to measure. Calculated in dollars and cents, it is inadequacy of income, measured in terms of the human condition, it is inadequacy of health and nutrition, education, and other components of well-being including leisure time. Current trends suggest that women account for a growing proportion of those considered poor. Part of the causes of the vicious cycle of impoverishment include lack of access to commercial credit, training skills. Mayra Buvinic, "Women in Poverty: A New Global Underclass," Foreign Policy (Washington, D.C.: Carnegie Endowment for International Peace, Fall 1997), 134
burden on many women is intense.\textsuperscript{21} While the per capital GNP\textsuperscript{22} has risen, the health,\textsuperscript{23} educational\textsuperscript{24} and economic status of women have remained much worse than men's or even declined.

While urban life\textsuperscript{25} provides awareness of all these problems, and a basis for comparison and consequently opportunity to get together and organize for change, most women in the rural parts of the country lack this privilege. Yet, urbanization and modernization present key components for transformation and development. In spite of the fact that the social and economic situation of the women in the rural areas are worse, they continue to be enslaved by tradition, they are unaware of the injustice of their conditions, the prejudices surrounding them, the

\textsuperscript{21}In rural areas, most women are overburdened with children and farm labor. Illiteracy prevents them from contact with any laws designed to help them. All laws are administered by men who are interested only in keeping women ignorant of their rights.

\textsuperscript{22}The Gross National Product per Capita: U.S. $378.

\textsuperscript{23}In 1995, the maternal mortality rate is 750 per 100,000 live birth. See Kamene Okonjo.

\textsuperscript{24}The Literacy Rate for Female: 6% ; Male: 25.0% ; Source: Human Development Report.

\textsuperscript{25}Urbanization is transforming Nigerian custom which sustains unquestionably male supremacy and dominion over every facet of women's lives and the manipulation by men is exposed in a modern urban setting, as egotistic, self centered subjugation. As women increasingly perform the same jobs as men, men's customary affirmation of supremacy is unmasked as a ruse.
exploitation by men, they are uninformed about their rights and possibilities being burdened by an endless chain of daily chores, with inconsiderable time to reflect about their possibilities, or their lives—let alone change or what is called development. To become conscious of one's circumstance one needs an element for comparison and an alternative or some choice. But women who have never lived away from their families lack the opportunity to see another way of life. The gap between men and women is growing. It is the gap between the present and the past, and often it is the gap between an urban and a rural way of life. The need to implement development projects geared to meet the needs of women materially and to increase women's voices in national development planning and implementation cannot be over-stressed; this will ameliorate the immediate problems of poverty and economic marginality.

On the issue of criminal law, abortion is criminalized. While critics believe that reproductive decisions should be made by individual women in consultation with their doctors, the government does not share that viewpoint. Consequently, quack doctors dominate the back-ally abortion clinics to the detriment of young women who sometimes have their health and reproductive mechanism jeopardized in the process. The impetus for change must come for women. Given the large number of women who have abortions, one might think that
this might be a popular cause with them. Unfortunately, this is not the case, the moral and religious conditioning of abortion continue to place it as a private issue in the real and metaphysical sense. But as long as abortion remains illegal, it may be difficult to see the importance of having highly qualified people to perform abortions at low cost in hygienic, safe conditions for women who want the procedure.

Women in Nigeria continue to face, many forms of violence simply because they are women. Among the most extreme forms of violence that arise from patriarchal religious views and economic consideration are genital mutilations, Gishiri cuts, child marriages, and dowry. Other violence include rape and domestic violence.

Female Genital Mutilation (FGM) - genital operations mostly excision and clitoridectomy is widespread in Nigeria. The Yorubas traditionally practice these on

---

26Since child marriage is widely practiced and the girls of ages 9-12 are too young for sexual intercourse, they are cut open to make penetration possible. These gishiri cuts are performed by local practitioners. Gishiri is common in the Northern parts of Nigeria.

27Although the societies practicing this butchery call it "female circumcision," the delegations from more than twenty African countries at the 1990 conference in Addis Ababa by the Inter African Committee on "Traditional Practices affecting the Health of Women and Children" voted unanimously that "Genital Mutilation" was the term they and all others concerned with this issue would use.

28The "culture and tradition" label is often used as reason for many atrocities against women: FGM, polygamy, the seclusion of women, and the bride price, etc. But it is
newborn babies, which is not only dangerous but jeopardizes the baby's survival. FMG, a culturally approved form of violence against women has no medical necessity, the general reasons for the ethnic practice is to curtail sexual promiscuity in women.29

The truth is that FMG is simply an affront to a woman's sexuality,30 a human right's violation,31 a health issue and child abuse.32 These practices sometimes result in complications such as hemorrhage, development of infections or tetanus. Contrary to traditional beliefs that FMG assures

necessary to know that those who benefit from tradition are men, because it enforces rules made by men, who are in control. Most traditional practices victimize females and support patriarchal rule; they enhance the power of men and they specifically support the control of the male head of the family.

29The need for the sexual control of men is much greater; rape and assault are increasing in the world; male excision is a better option to take care of that and curtail the spread of AIDS.


32The International Children Rights Convention.
and enhances fertility.\textsuperscript{33} FMG causes serious health problems, and difficulties in childbirth.\textsuperscript{34}

The good news is that some women are making efforts to stem the tide of FMG, through preventive actions, information and training programs. The National Association of Nigerian Nurses and Midwives (NANNM) in conjunction with the Inter African Committee of Nigeria (IAC)\textsuperscript{35} and Medical Women's Association and some other women organizations have been working hard to stop FMG. Many more local campaigns and

\textsuperscript{33}So much premium is placed on childbearing in Nigeria, and in most African societies. The African male cannot condone any skepticism regarding his sexual prowess, or his ability to father children. He seldom admits that his wife's infertility or propensity to produce only girls may be due to him. In Nigeria, it is always the woman who is blamed for failing to produce children. This places so much pressures on women such as anxieties and severe depressions. FMG thrives in Yorubaland, presumably because of the erroneous assumption that it can prevent stillbirths. According to the myth, if the clitoris touches the head of the child during birth, the child will die.

\textsuperscript{34}A common reason of obstructed labor is the hardened scars of excision that hinder dilation and often cause tears and lesion of the mother and sometimes death of both mother and child. Sometimes, fistulae develop due to the obstruction of the opening, in essence they rupture. Women with fistulae are incontinent and become outcasts of their families and communities.

\textsuperscript{35}The IAC of Nigeria was organized following the 1984 NGO Conference in Dakar on traditional practices affecting the health of women and children, which in turn was based on the 1979 Khartoum seminar and its recommendations. The IAC has gained the support of other notable organizations such as NCWS, Nigerian Red Cross Society, etc. For further information, the IAC is located at Mandilas Motors Complex 9-13, Atitebi Street (Off Apapa Road) Ebutte-Metta (Lagos) Nigeria.
national efforts are needed to convince the male leadership in Nigeria to take action on FMG and provide governmental support to abolish this butchery that is sanctioned by almost all the fathers of the victims.\textsuperscript{36} In order to effectively deal with the abolishment of these mutilations, it is pertinent to recognize that we are concerned here with a basic power issue: The issue is control of female reproduction and sexuality, control of all men over all women- or the arrangement of society along patriarchal sequence.

Child marriages continue to be a problem for many children who are paired off usually to older men, twice their age when they are very young. The young girls are married off to the older men to be second, third, or fourth wives, often times for the bride price.\textsuperscript{37} The vaginas of some of these girls are cut to enable sexual intercourse. The act is called "gishiri." The girls suffer infections, pain and bleeding, sometimes incontinence occurs, or they become sterile because of infections. The child victims are used as breeding devices, being forced to start childbirth at youth.

\textsuperscript{36}President Arab Moi of Kenya abolished FMG in 1982 by Decree.

\textsuperscript{37}Bride price is also called dowry. Dowry is prevalent nationwide. Some cultures charge enormous amount for their daughters. Tradition regard it as compensation to the bride's parents, for the toil and care of the bride to adulthood. Critics call it "selling a daughter."
Child marriages though practiced in the western region is more common in the Moslem North. Child marriage is a blatant sexual aggression and abuse of children, children are robbed of their basic human right to self determination, robbed of the right to make informed decisions about their life choices but instead they are propelled into adult responsibilities at such a vulnerable age, an age where they are simply not matured enough for self determination. Yet child marriage is practiced nonchalantly by some men in Nigeria under the guise of custom.

The Borno, Bauchi and Kaduna state governments have passed laws imposing fines on parents who instigate child marriage.38 While the intervention is a good start, it is hoped that the other state governments will follow suit. Nevertheless, the impact of the Borno, Bauchi and Kaduna's government's intervention is yet to be assessed, but the crusade against child marriages conflict forcefully against customs especially in the Moslem North where an unmarried 14 year old is looked down upon.

Complicating their situation even further, women in some parts of the South Eastern and South Southern part of Nigeria are disproportionately vulnerable to rising crime. Trafficking in women, which is spiraling exponentially, ravages the bodies and spirits of impoverished young women

promised jobs in Europe only to find themselves controlled by pimps. A distressingly unexceptional case is that of a teenager recruited for an all expenses paid trip to Brussels for a job assignment as a clerk only to discover that she was being enslaved for prostitution by a notorious pimp. The recruiter threatened to kill all her family in the village if she failed to prostitute herself for a period of years in payment for the opportunity to come abroad and the incurred expenses. There has been a tragic surge in trafficking in women since the economic distress of the nineties.

Similarly there have been increased incidence of rapes of all kinds, individual, custodial, and gang rapes, rape by armed robbers. Date rapes and rape by armed robbers are also common. In the case of armed robber rape, armed robbers, always in groups of ten or more could hold a house siege, attack the man of the house, incapacitate him, pack all their belongings at gun point and descend on the woman of the house and rape her in the presence of her husband, children, guests and househelps. Since most people do not own guns, only armed robbers have illegal weapons, and the communication systems are inefficient, even when the police precincts are reached, the police are oftentimes unable to help because, they fear for their lives in the absence of modern equipment to counter armed robbery attack. Such armed robbery/rape attack is increasingly becoming common, moreso
because of the severe economic situation of the country and the lack of grip of the government on law and order. Armed robbery rape attack is more severe on women because of the humiliation of the attack, while the victims feel violated and embarrassed to face their family or to talk about it; their husbands often do not know how to deal with the occurrence, and sometimes opt to reject their wives feeling that she is "soiled." In essence, the lives of victims are gradually turned to shreds. Date rape which is also common is highly underreported, date rape is not recognized as rape in the society, neither is marital rape. The general understanding of rape is the attack performed by a stranger. Rape is one of the worst forms of aggression and humiliation of women. Given the symbolic importance attached to women's physical purity among both Muslims and Christians, and the social stigma attached to rape, rape is incredibly devastating to women and their families. Because of the stigma and social ostracism that rape victims undergo, most rapes go unreported.

Thus the lack of governmental protection of women from the serious violence is astonishing. The existing rape law places the burden of proof on the victim and prosecuting attorneys sometimes demand for witness, and proof of resistance, and with date rape, the general feeling is that the woman asked for it.
Date rape is a crime, and being attacked by an acquaintance or a friend does not make it less of a crime. Men should understand the word "No," and "Stop." It is imperative that women's group try to persuade the government to enact legislation recognizing date rape and armed robber/gangster rape and enforce existing laws on rape.

Women organizations should take a community approach to the issue of rape and see it as a social problem concerning both men and women. The campaign should emphasize social service and public education. The campaign should provide much-neglected aftercare services for rape victims such as pregnancy prevention, medical examinations, treatment for venereal diseases, and short term counseling. They should also train volunteers how to handle calls and visits by victims. Public talks and community meetings should be organized to change public attitudes toward rape and rape victims. The police should be retrained and set up a working procedure for the intake of a rape complainant, with the rape victim assigned to a woman police officer, mount public campaign to report rape. Radio and television stations can be encouraged to air documentaries showing the psychological and social problems that rape victims face and the resources available to them.
Women and the Family

Nigerian women's roles and social behavior have been entrenched in the family. Women's situation in the family and the changes that have occurred in it should be understood within the context of the interplay of English law and Nigerian customary law. According to Nigerian customs the English law is despicable and traditional ethics and virtues determine the family as a social unit, but according to English law, the courts and the government can determine the nature and existence of the rights and liabilities of members of the family. The parallel social forces have simultaneously propelled women's modernization and weighed women down with conflict and guilt. Changes in women's status in the family have been achieved largely through legislation brought about by the colonial British government, which is heavily influenced by the English laws. Because traditional Nigerian culture has remained strong, women's roles are still traditionally defined. A woman is supposed to follow her father when she is young, her husband when she marries, and her son when she gets old. At menopause she is no longer considered a woman, all sexual relations are halted,\(^{39}\) if she is barren or unable to have

\(^{39}\)In Nigeria, and most parts of Africa menopausal women are treated in this form. Whereas, menopause should be embraced after a life of continuous childbearing and fatigue, a time when couples should have time to enjoy themselves and welcome the freedom of being single again
male offspring, her status is threatened and she may slip into despondency. In fact, an often accepted reason for a husband to take another wife, or a concubine or to divorce his wife is the lack of a son, or menopause. Even today, regardless of a wife's level of education or economic status, the inability to bear a son weighs heavily. The absence of a true Marriage Reform act in Nigeria epitomizes both this cultural conflict and the role that legal reform could play in changing the status of women within the family.

Currently two forms of marriage forms are recognized in Nigeria. The monogamous marriage which is governed by the English law and the Marriage Ordinance Acts. Monogamy allows an exclusive relationship between a man and woman. The other form of marriage is polygamy. Polygamy is the marriage of one man and many women.

Polygamy permits multiple wives and concubines. Polygamy is widely practiced in Nigeria, mostly by Moslems but Christianity is not a deterrence for others. Bigamy is rampant, yet it is rarely prosecuted because of the after all the kids are grown up and gone their separate ways.

Originally the concept of polygamy was premised on economic considerations. In traditional Africa, a male farmer, his wife and children constitute an agricultural production unit; by contracting a second marriage to a potentially fertile wife and producing more children, he becomes in charge of a second economic unit.
pervasive culture of polygamy. Often the men do not even have the financial means to support one wife and her children, but they still marry three or four wives. The wives then have to support themselves and their children, as well as assume the burden of clothing him, feeding him and entertain his guests, to the detriment of the children's nutritional needs. The woman may end up suffering emotional distress from competing with other wives in securing affection of the husband, or she may live in fear of the co-wives if they do not get along.

Polygamy has outlived its agrarian usefulness, in contemporary times where economic austerity of the country cannot sustain many children, or needless large families and with the spread of AIDS and other sexually transmitted diseases. polygamy should be banned. In most polygamous households, distrust and acrimony between competing co-wives reign, spilling disaffection and distrust on the offspring. Polygamy undermines women's development, it pits woman

---

41Nigeria claims to have only 182 reported cases of AIDS in 1992 according to WHO in their worldwide HIV/AIDS statistics. These figures are unrealistic, considering the fact that statistical coalition of data is a problem in the country, but given the customary sexual practices of the society such as child marriage which is prevalent in the Moslem Northern community, nationwide practice of polygyny, rape and prostitution... all of which contribute to AIDS, AIDS cases are underreported. WHO estimates that 7.5 million are infected in sub-saharan Africa, with Nigeria taking the lead in the population statistics, the number of reported AIDS cases is questionable.
against woman and it contributes to the destruction of love and trust in the family. Also polygamy is a form of child abuse.42

In all, our findings suggest that there are many legal support for women's right in the country. The Nigerian Constitution professes these rights to all its citizens regardless of the gender, the Common laws also known as the English law, the Statutory laws—a culmination of ordinances, bills, and decrees affirm substantial protection. The legal books are essentially English Law legislated in local Statutes.

There are lots of legal protection, yet there are inequalities. Ironically, many of those inequalities are a consequence of contemporary law. The criminal justice system treats women and men differently, so that women are disproportionately subject to criminal violence. The failure to render appropriate protection against rape, sexual harassment, FGM, and forms of sexual assault and abuse could be seen to raise equality issues. Indeed, the fact that rape within marriage is generally not a crime, and that domestic violence is often not the object of real police concern,

42When a man marries two or more wives, the tendency is to have many children. Besides the usual inability to adequately support the numerous children, how does the man have time to nurture and offer emotional support to the children? Most polygamous homes have minimum of eight children; some have 50 kids some have 100 kids or more.
might well be treated as an embodiment of sex discrimination. Or the fact that after divorce, women's economic welfare goes sharply down, whereas men's goes sharply up. This is the consequence of legal rules that assure this result.

The final analysis is that reforms are seriously needed in the political, and socio-economic spheres to assure equal gender access to the country's resources; laws concerning marital rape, date rape, sexual harassment, domestic violence, FMG, child marriages, need to be reassessed and existing laws on bigamy need to be enforced.

Our criticism of the inadequacy of gender specific legal rights aside, it is pertinent to point out that even the array of available legal rights in the Nigerian legal books do not reflect a correspondingly equal status of the Nigerian woman, as documented in the preceding chapters. The reason why many women are not feeling the impact of the existing legislation are diverse. First, many women are unaware of the rights that they have under the law, and they continue to be subjugated by their ignorance and cultural perception of issues. It is pertinent to stress that internalized laws that do not require external enforcement are often greater impediments to women's autonomy than formal legislation.\textsuperscript{43} Nigerian government has not enacted any

\textsuperscript{43}Ibid., 1000.
legislation to restrict women from certain professions, to confine their mobility or limit their political involvement, yet in all these facets women's lives are impeded by internalized social precepts. Until, women organizations intensify consciousness-raising campaigns to educate women about their rights and possibilities, women will continue to be clouded in ignorance. Second, most of the existing laws only protect certain kinds of women. Single women and married women in statutory marriages. Family law which is more important to all women in marital relationships and aspirants to the marriage institution, only covers women married under the statute.

A huge percentage of women in Nigeria are married under the native law and customs or under Islamic law. Although, anyone has a choice to marry under the customary law, or under the Marriage Act governed by the English Law, those who opt for Christian or legal marriage automatically acquire all the privileges and status of marriage as stipulated by the Marriage Act a prototype of its English counterpart. However, those who are married under the Nigeria native Law and Customs strip themselves of all the rights and privileges of the Marriage Act. This is essentially because, marriage under the native Law and Customs is governed by Customary Law of the place of
marriage. The customary laws include the Sharia laws which are fashioned according to the Moslem religious doctrine and the other customary laws are laws which evolved through tradition. Most of the customary laws are pro-male and chauvinistic in orientation. Customary laws are not even coded.

Women married under customary law face hardship over several issues including the problems arising from domicile—securing legal intervention on marriage-related concerns are rigidly related to the husband's place of residence, and when that is not known, the woman may not be heard. Other problems faced include lack of protection over polygamy, battery— in fact customary law allows a husband to chastise his wife for imprudence which violates his dictate as husband and head of household, lack of protection against domestic violence, lack of rights to her husband's assets, lack of custody rights of children after divorce, no child

44 The 1979 Constitution of the Federal Republic of Nigeria extended absolute legislative authority of "christian" or statutory marriages to the State High Courts. It clearly exempted marriages under the native law and customs and islamic law marriages from this protection. Consequently issues in marriage such as formation, annulment, and dissolution of marriages are outside of the jurisdiction of the lower courts as well as the magistrate courts.

45 Please see Family Law and Associated Problems; The Marriage Institution. Chapter Four of this research.

46 Please see the Chapter Four on Family Law.
support rights or even alimony to a separated wife or divorced woman,\textsuperscript{47} inability to dispose of her property without husband's consent, lack of right of inheritance of husband's estate,\textsuperscript{48} minimal protection in criminal law,\textsuperscript{49} etc.

Customs, in short, are important causes of women's misery and underdevelopment. It seems compelling on anyone concerned about justice, to be aware of the information about women's status that studies such as the Human Development Report presents, and which this study provides to inquire about the correlation between culture and justice. It then seems necessary to provide an analytic assessment of culture that is beneficial to the society as a whole and that is gender repressive, whose basic aim is to protect the status quo.

\textsuperscript{47}Because customary law does not require men to pay child support or alimony to a wife, many men find it easier to toss out their wife for a younger one without any accountability for her maintenance. In fact, customary law requires the woman to pay back the dowry paid on her at the onset of the marriage. Oftentimes, women protesting over a recalcitrant husband or a cheating husband are sent out of their matrimonial homes with only a suitcase, without money or access to their children. Because of the financial consequences of divorce, many women are forced to stay in emotionally barren relationships for the sake of their children and to keep a roof over their heads.

\textsuperscript{48}See the section on Spouses and the Law of Wills of this research.

\textsuperscript{49}Please see Chapter on Family Law of this research.
The norms that produce sex discrimination are in significant part reflected in customs rather than in law, because in customary law, there is no line between custom and law. Yet the Nigerian customary law emanates from the ideology of patriarchy and conservatism. It encourages and reinforces the subservience of women confirmed by traditional polygamous marriage arrangements which make women into wholly owned property of men. The traditional exclusion of women from land ownership, the principal resource in every agricultural society, assures their dependence on men while the fruits of their labors in the field as well as their children are owned by men. Such traditions deprive women of all personal rights and make them into wholly owned resources of men.

Customary laws clearly reinforce gender inequality and inhibit women's socio-economic and political development. The government can and should correct the laws that intrude on human rights. There should be a process where the higher courts, and the Constitution should invalidate the customary laws violating women's rights. The customary laws should be totally overhauled to respect women as human beings. They need to be reformed to meet with women's changing needs, to respect the personal liberties of Nigerian women, as women and as rational beings.
Thus, the goal of using law to eliminate sex discrimination is expected to face exceptional hurdles in this part of the world. Although it is plausible to argue that law is responsible for most sex discrimination in the world, and also that law can correct injustices. But law can accomplish a good deal. It can set forth aspirations. It can give voice to rarely articulated hurts. It may not produce massive social change by itself, but it can bring about some improvements in people's lives.
BIBLIOGRAPHY

Books


Bernard, Jesse. *The Female World from a Global Perspective.*


Hull, Gloria T., B. P. Scott and B. Smith, ed. All the Women are White, All the Blacks are Men, But Some of Us are Brave. Old Westbury, New York: The Feminist Press, 1981.


Ifeka-Moller, Caroline. "Female Militancy and the Colonial Revolt: The Women's War of 1929, Eastern Nigeria." In


Talbot, A. P. A Woman's Mysteries of a Primitive People. The Ibibios of Southern Nigeria. 1915.


Temple, O. Women in Northern Nigeria. Edinburgh: Blackwood Magazine, 117. Daily life of Nupe women, their occupations, the customs with which they must comply in marriage, marriage offers, mourning etc., their high degree of freedom.


---------. "Fighting Two Colonialism: The Women's Struggle in Guinea Bissau." In Political Economy of Africa:


Ward, E. Marriage Among the Yoruba. Washington: Catholic University of America, 1937.


Journals


Simmons, E. B. "Sexual Life, Marriage and Childhood Among the Efik." Africa 30, 161.


------. "Status of Women in West Africa." African Women 13 (1955): 63-6. (Their social position is high owing to
their economic activities. Article deals with the Ibos.)


Magazines and Newspapers


Unpublished Materials


Youssef, N. H. "Women Status and Fertility in Muslim Countries of the Middle East and Africa." Prepared for
the Symposium on Women's Status and Fertility Around the World, at the annual meeting of the American Psychological Association, New Orleans, 30 August-3 September, 1974.

Government Documents


Criminal Code. Section 370.


Declaration of Tiv Native Law and Custom Order. NRLN 145 of 1955.


Law Reports of Lagos State. Cap. 74, 1972. Section 71.de


Law Reports of Western Nigeria. WNLR 456 of 1958.

Limitation of Dowry Law. 1963.

Marriage Act. 1914.


Nigerian Evidence Act. Section 176.


Sharia Law Reports.

The Local Authority Modification of Bornu Native Law and Custom Relating to Marriage Order. NESLAN 10 of 1971.
The Native Authority Declaration of Biu Native Marriage Law and Custom Order. 1964, Section 4.

The Native Authority Declaration of Idoma Native Marriage Law and Custom Order. 1959, Section 5.
