

**NATIONAL CENTRE FOR WOMEN
DEVELOPMENT, ABUJA**

**UPDATE STUDY ON
COMPILATION OF LAWS,
POLICIES AND PRACTICES
THAT DISCRIMINATE AGAINST
WOMEN AND CHILDREN IN
NIGERIA**

2017 - 2019







We cannot
change what we
are **not** aware of,
and once we are
aware, we cannot
but **change** –
Sheryl Sandberg

EXECUTIVE SUMMARY

Male supremacy and patriarchy, supported by culture, religion and the law, dominate our world. However, developed countries have over the years revolted against this stance and advocated women's right and equality of all persons, races or genders. This has been achieved by various international laws, conventions, treaties and policies. Several countries of the world, including the seeming Third-World countries, have ratified these conventions, like Universal Declaration on Human Rights (UDHR), Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and Convention on the Rights of the Child (CRC). However, implementing these rights in practice has been neglected by a number of these countries. Nigeria, for example, ratified the CEDAW in 1985, but there are still various practices supported by law that discriminate against women in the society and make them subservient to their male counterparts. This discrimination cuts across various aspects of life, including family laws, labour laws, criminal provisions, and real estate.

This report by the National Centre for Women Development (NCWD) is a compilation of discriminatory laws as well as traditional and religious practices against women. This is to monitor changes and improvements carried out by the government to improve the status of women in the years under review. Nigeria, having ratified the UDHR, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), African Charter on Human and Peoples' Rights (ACHPR), CEDAW, CRC and the International Labour Organisation (ILO) conventions and their protocols, has a duty to put in place laws and policies that advance equality. In doing this, there is a need to put in place reforms that would repeal discriminatory laws and enact laws that promote gender equality. The purpose of this update study is basically to evaluate the progress made after the 2005 study, to monitor government's compliance and to identify the causes or hindrances to achieving gender parity and also to identify ways of putting an end to gender discrimination.

This project, in addition to the desk literature review, also carried out fieldwork to harmonize the existing data on inequality. The objectives of this research approach are to develop a structured framework of collecting factual information from multiple respondents about the state of women and children's equal rights in Nigeria; to generate and analyse data on the complex causes, magnitude, trend and impact of gender discrimination on the quality of life of women and children in society and the implications for national development; and to identify and document gaps in existing responses, case studies and practices relating to the phenomenon and anti-discriminatory measures protecting women and children

In the period under review, a gender and equal opportunities bill was rejected twice by the legislature. This is a hindrance to the agenda for eliminating all forms of discrimination against women.

The report considered the following themes:

- Existing laws that promote women's rights.
- Existing laws that contravene women's right
- Cultural practices that encourages women's right
- Cultural practices that inhibits women's rights
- Religious practices that are inimical to women

Key Findings

Despite the fact the Nigerian 1999 Constitution prohibits discrimination on basis of gender, customary and religious practices continue to limit women. Nigeria is a federal entity. Therefore, each state has a right to enact laws to govern its territory. However, any law inconsistent with the constitution is invalid. There are still several legislation and customary practices that are discriminatory against women.

Key Findings 1: Existing Laws That Promote Women's Rights

1. Women's Economic Empowerment

The National Commission for Women Act, 1989 empowers the Commission to promote, develop and concretize income-generation and employment through loan schemes, home and cottage industries, acquisition of skills generally for the improvement of arts and crafts and food processing and such other vocational training of women within the context of their assessed needs and potentials.¹ It also ensures self-reliance enhancement of women.²

2. Women and Employment

The National Employment Policy 2017 contains specific objectives on ensuring greater participation of women in the workforce. These objectives include promoting the implementation of CEDAW principles, eliminating discrimination against women workers,

¹ Ibid. s.5(c)

² Ibid. s.5(f)

enforcing existing maternity protection policies and establishing mentorship and self-employment programmes.³

It also stipulates that, in any public or private industrial or commercial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof, a woman –

(a) shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;

(b) shall not be permitted to work during the six weeks following her confinement.

(c) if she is absent from her work in pursuance of paragraph (a) or (b) of this subsection and had been continuously employed by her then employer for a period of six months or more immediately prior to her absence, shall be paid not less than fifty per cent of the wages she would have earned if she had not been absent; and

(d) shall, in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose.

3. Education

The various provisions of law and regulations on education, the Universal Basic Education Act, 2003 inclusive, contain no discriminatory provisions against girls. Section 2 particularly provides that: 1. Every government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age. (2) Every parent shall ensure that his child or ward attends and completes his – (a) primary school education; and (b) junior secondary school education, by sending the child to primary and junior secondary schools. (3) The stakeholders in education in a local government area shall ensure that every parent or person who has the care and custody of a child performs this duty imposed on him under section 2(2) of this Act.

Key Findings 2: Existing Laws That Contravene Women’s Rights

1. Constitution

(i) Section 42(3) of the *Constitution* has restricted the right to freedom from discrimination in appointment to public offices, as it supports any law that prohibits such appointment from being accessible to all.

(ii) Section 26 of the *Constitution* provides that only a *woman who is or has been married to a citizen of Nigeria* can become a Nigerian citizen by registration. However, the husband of a

³ National Employment Policy 2017, p.37 which is provided for in s.44 of the Labour Act

Nigerian (female) citizen cannot so become a Nigerian citizen. This is discriminatory against a Nigerian woman, who has been thereby denied the opportunity of her foreign husband being able to acquire Nigerian citizenship by registration in consequence of his marriage to her. That means that a wife is incapable of conferring such a status on her husband, when a husband can confer it on his wife.

2. Electoral Laws

There is no law or regulation which reserves any specific percentage of elective offices to women, be it in government or political parties. Only the National Policy on Women, 2000 provides for a target of 30% to be reserved for women in the legislative and executive government, as well as in political parties.

3. Tax Laws

Legal provisions treat both men and women equally. However, the Policy of the Joint Tax Board discriminates against women, in the following ways:

- (i) Allowable deductions for dependent children are given to the husband, but not the wife, unless the woman can actually prove the dependency of the children upon her.
- (ii) Single mothers are denied allowable deductions for their dependent children because of their inability to produce marriage certificates.

4. Labour Laws

- (i) (Section 34(1) and 44 of the Labour Act allows an employed person to be accompanied by members of his family, including up to two wives and children under the age of sixteen years. This interprets *family* to mean wives and children, without contemplating husbands.
- (ii) Women are not to be employed on night work in industrial and agricultural undertaking positions, except in nursing or supervisory management positions.
- (iii) Women are not to be employed in underground manual work in mines.

5. Land Use Act

Section 24 of the Act provides the applicability of customary laws of the locality of the land or of the deceased occupier to the devolution of landed property of the deceased on his death, excepting that such customary laws shall not operate to deprive any person of the beneficial interest in the land or the proceeds of sale. It, however, preserves the restriction or regulation of the right to occupy of the land, in which case, a woman may not be allowed to inherit the land and occupy it, even though she may be entitled to inheriting the beneficial interest therefrom, as has been held in the cases of *Folarin V. Cole* and *Coker V. Coker*.

6. Marriage Act

Parental consent to marriage required for a minor is specified as being the consent of the father, unless *he be dead or of unsound mind or absent from Nigeria*, when the consent of the mother will be acceptable according to section 18.

7. Matrimonial Causes Act

To establish that a marriage has broken down irretrievably on the grounds of violence, parties must prove extreme violence that the parties cannot be reasonably expected to live with as provided in section 15(2)(c), section 16(e) provides that -

(i) the abusive violence must reach the dimension of attempted murder, inflicting grievous harm or intent to commit either or both of them.

(ii) the abusive spouse must actually have been convicted of the offence in question.

As a result of this provision, the court has held that not all violence is intolerable –see *Akinbuwa V. Akinbuwa* and *Otti V. Otti*. This endangers the life of the abused person which in most cases might be the woman.

8. Criminal Code

(i) The provisions of sections 34, 36 and 10, conferring the defence of spousal exemption in respect of offences of conspiracy, stealing and accessory after the fact, have restricted this defence to only spouses of monogamous marriages, thereby leaving the vast majority of Nigerian women, who are in polygamous marriage unprotected and discriminated against.

(ii) Sections 353 and 360, on indecent assaults on males and females provides higher penalties for these offences when they are committed against males than when they are committed against females, thereby giving the impression that such offences, when committed against males, are more severe than when they are committed against females.

9. Penal Code

The provision of section 55(1)(d) sanctions the application of violence by the husband on a wife *for the purpose of correcting his wife*. This amounts to a terrible discriminatory legal sanction of wife battering, *provided it does not amount to infliction of grievous hurt*. This is a clear violation of the right of a woman to the sanctity and dignity of her person provided for in section 34(1)(a) of the *Constitution*.

10. Interpretation Act

Nigerian legal provisions are drafted only in the masculine gender, because section 14 of the *Act* provides that *words importing the masculine gender include the feminine*. This clearly

violates the principles of legislative equality of men and women, thereby violating Article 2(a) of CEDAW.

B. State Laws

1. Political Laws

(i) Even though there are no discriminatory laws against appointments of women to public offices, there are very few women in public offices and these few women are mainly in the South-West states, particularly in the judiciary.

2. Labour Laws

(i) No discriminatory labour laws were found in the states, as the Labour Act is federal legislation.

(ii) Discriminatory practices, however, have been found to exist as follows:

- Refusal of jobs to pregnant women;
- No employment for married women in some financial institutions, and when employed, they are prohibited from becoming pregnant for the first three years of their employment;
- Women in the agricultural sector were paid only one-third (1/3) of the earnings of their male counterparts;
- In most northern states, women are discriminated against in relation to promotion to decision-making positions;
- In the private sector, women are denied receipt of rent supplements, where their husbands receive the rent supplements;
- Children of female employees are not deemed to be dependents of their mothers unless the father has died, is of unsound mind or is out of Nigeria;
- Wives supporting jobless husbands have no deductible allowances on that ground.

3. Property Laws

(i) In some areas, like the North-East Zone, only married women can acquire, hold and dispose of any property.

(iii) In Rivers State in the South-South Zone, only women married monogamously under the Marriage Act can own property on their own.

4. Marriage Laws

Marriage is expected to be between two consenting adults. However, some regions of the country neglect the consent of the girl-child while some others, particularly in the North, support child marriage by marrying off young girls.

5. Law of Evidence

- (i) Some states, like Rivers State, have amended their Criminal Procedure Laws, to enable trials for rape to be conducted *in camera*.
- (ii) Some other states, like Edo and Akwa Ibom, however, still try rape cases in open court.
- (iii) Some states are proposing legislation to enable rape cases to be tried in chambers.
- (iv) The Islamic Law of Evidence implies that evidence of two female witnesses cannot credibly prove a claim without the evidence of a male witness.

6. Exclusion of Principle of Non-discrimination from Legislation

- (i) In the legislation of most northern states, there is express exclusion of the operation of the principle of non-discrimination to legislation passed by the states.
- (ii) In the Southern States, there is evidence of considerable legislative activism towards the recognition of the rights of women and children.

Key Findings 3: Local Government Bye-laws

1. Tax Levies

- (i) Women who are not government workers are generally exempted from payment of taxes on the assumption that a woman does not earn an income. Examples are in the local governments of the South-East and Ibadan local governments in the South-West, where local government levies are generally considered to be gender-sensitive.
- (ii) In Numan Local Government in the North-East Zone, women above 50 years of age and unmarried women are exempted from paying tax.
- (iii) However, for women local government employees, the taxing of women is discriminatory in the sense that they do not receive deductible allowances for their dependent children, and many others, unlike their male counterparts.

4. Indigeneship

- (i) Women (wives) are discriminated against in relation to elective posts or high government or judicial appointments. The woman (a wife) is usually referred back to her home state of origin. This practice was notable in Akwa Ibom, even though the wife is assumed to have lost her nativity at marriage and has become subsumed in her husband's home.

(ii) Lagos State is a shining example of a clear exception to such discriminatory practices, as it appoints both indigenes and non-indigenes to high elective, appointive and judicial posts.

Key findings 4: Cultural Practices and Customary Laws That Promote Women's Rights Marriage

Married women in the **South-West Zone** are accepted as members of their communities. They have even been conferred with traditional chieftaincy titles, usually along with their husbands, in such communities.

Dowry/Bride price

Some communities, particularly in the **South-West**, are now moving away from dowry/bride price on the grounds that their daughters are not commodities for sale.

Succession

The customary laws applicable to the South-West Zone have, by judicial decisions, developed beyond restrictions imposed in other customary laws in the country. The right of female children and wives to succession has been held to be common and equal irrespective of gender. In some other communities in the Northeast, such as the Kilba people of Adamawa State, both male and female children can inherit; Bachama women in Numan Local Government of Adamawa are also entitled to inherit. In the South-West, both men and women inherit in equal shares

Cultural Practices and Customary Laws That Are Inimical to Women

1. Women as Spouses

(i) Women are not accorded the benefits of the membership of their matrimonial families, as they are, at such points, regarded as strangers from some other families, notwithstanding the fact that a woman is deemed to have lost her separate identity and have been subsumed into her husband's home. However, when it comes to carrying duties and responsibilities, women are then regarded very much as members of their husbands' families.

2. Women as Community Members

(i) Married women, who are not members of the communities of their husbands (i.e. indigene married women), are considered not to be members of the communities in question. They remain visitors to the communities, no matter the number of their years of settlement in the area.

(ii) Some other communities believe in the absorption of women into the husbands' communities so much that they then deny their own daughters married into other communities such benefits as elective, high public or judicial appointive posts, in the belief that it is their husbands' communities which should cater for them. In such a situation, the woman may lose both ways if the husband's community believes that she should get such elective or appointive posts from her own home community.

3. Spousal Relationship

Supremacy of husband as head of the family has been found to be the norm in all the communities of Nigeria. Females' influence on their husbands' decisions is usually exerted behind the scenes, in order not to portray their husbands in public as weaklings.

4. Divorce

(i) In some communities, only men can initiate divorce proceedings. A woman who initiates divorce proceedings is considered to be wayward, particularly in communities in Akwa Ibom and Rivers State. The only exceptional circumstance when a woman is permitted to initiate divorce proceedings is when it is obvious that her life is endangered.

Causes for Divorce

4.1 Adultery

(i) In most communities, adultery by a woman is despicable and can constitute a cause for divorce, while adultery by a man is not considered to be an offence, but, rather, an expression of his virility.

4.2 Violence

(i) Moderate violence is acceptable in virtually all communities for purposes of correcting the wife.

(ii) Excessive violence is accepted as a cause for divorce in most communities, except in Akwa Ibom and Cross River States.

5. Consent

(i) Consent of female parties to a marriage is today required and mandatory for marriages, excepting in Akwa Ibom and northern part of Cross River State.

(ii) In the North, consent of the female party for the first marriage is required but not mandatory; but for subsequent marriages, it is both required and mandatory.

(iii) Parental consent for customary law marriages is required and mandatory, in view of the concept of union between two families.

6. Inheritance/Succession

(6.1) Inheritance by a Woman as a *Femme Sole*

- (i) Sons are more favoured to inherit their father's property, than females, except in the South-West, where daughters are entitled to inherit beneficial interest in the father's property.
- (ii) In the South-East, a woman is kept back in her father's house to raise son for him that can inherit from his property, that is a woman subject to the custom of *Nrachi Nwanyi*, a custom declared to be repugnant to natural justice, equity and good conscience in *Mojekwu V. Ejikeme* by the Court of Appeal as well as in *Ukeje V. Ukeje and Anekwe V. Nweke* by the Supreme Court in 2014

(6.2) Inheritance by a Married Woman

- (i) A married woman has no right to succeed to her father's landed property.
- (ii) A married woman has the right to succeed to her mother's landed property.

(6.3) Inheritance by a Widow

- (i) Except in the South-West, a widow has no right to inherit her husband's property, especially where there is an heir or heirs, in male children or male siblings of her late husband.
- (ii) Widows, except in the South-West, only have rights of occupation to their rooms in their matrimonial homes, or to use of farmlands to farm to support herself and her children.

7. Single Parenthood

Single mothers are disregarded, and the child is deemed to belong to the mother's family, unless there is acknowledgement of paternity by the father, or if dead, by his family, or dowry is paid on the girl, when the child can then belong to the father's family.

8. Custody of Children

Custody of children is given to their fathers, unless the children are at a very tender age, when custody is awarded to the mother.

9. Control of Community Property and Chieftaincy

Chieftaincy titles are generally male-dominated, although some women belong to the traditional chieftaincy group, which controls community property, together with chiefs, kings, *obis*, *igwes* or *obas*-in-Council. This is also the same position in politics.

10. Women Economic Participation

- (i) Women in the South-West have unfettered access to economic participation.
- (ii) In the South-East, women are not allowed to cultivate yam, although they freely participate in trading, farming and other jobs not within the male domain.
- (iii) In Akwa Ibom and Cross River States, the girl-child is trafficked, or married off for a price.

(10.2) Manufacture/Production

- (i) Women in the South-West are involved in cocoa plantation and breaking stones in quarries.
- (ii) In the South-West and Edo State, rich women get involved with production.
- (iii) In Rivers and Akwa Ibom State, oil dominated.

Key Findings 5: Discriminatory Religious practices

The dominant religions in Nigeria are Christianity and Islam.

Christianity

Christianity is affiliated with the English law. There are, however, some discriminatory practices, some of which are stated below:

Divorce

Divorce is disapproved of in Christian marriages, except for adultery. In the Catholic Church, the marriage can only then be annulled.

Single Parenthood

The church disapproves of single parenthood except occasioned by death of the spouse. In most cases, single mothers remain the most stigmatised.

Chieftaincy

Chieftaincy is traditional and alien to Christianity, which employs a different order for recognition, e.g. knighthood. However, some churches are recognizing and even adopting it, e.g. the African Church and the Anglican Communion in the South-West, which now confer their own chieftaincy titles on their deserving members. Even here men predominate.

Custody of Children

Since neither divorce nor separation is accepted by the Church, it does not concern itself with rules for custody.

Islam

Just as there are discriminatory practices in Christianity, Islam also has certain discriminatory practices against women. They include the following:

Marriage

One man can marry up to four wives, but this is not the same for women. Adultery committed by women is a ground for divorce but the husband is excused.

Violence

Islam permits a man to minimally chastise his wife by beating her.

Succession

Succession is well regulated in favour of sons over and above wives and daughters.

Widowhood

A widow is expected to keep a chaste period of 4 months and 10 days, in order to preserve her mourning period and to clear all doubts about possible pregnancy for her late husband.

Chieftaincy

Chieftaincy is not an Islamic institution. Islam does not concern itself with it.

Single Parenthood outside Matrimony

As this constitutes evidence of fornication, it will attract punishment of death for such single mother.

Recommendations

1. Closing gender gaps – Ensure that the out-of-school children are re-enrolled in school and particularly monitor their progress, the girl child in particular, from enrolment to completion of school.
2. Ensure that the school curriculum includes practical gender equality courses. This must include reforming gender roles, ensuring that careers are not gender-specific, and having mutual respect for both genders.
3. Grassroots education of locals on rights and voices – jingles and role-play in traditional media, village-to-village sensitization, etc.
4. Section 42(3) should be repealed from the *Constitution* and section 26(2) of the *Constitution* should be amended to read a *person who is or has been married to a citizen of Nigeria*. This will confer equal rights on both male and female foreign spouses of citizens of Nigerians to be able to acquire Nigerian citizenship by registration.
5. The *Affirmative Action* Policy of 35% should be supported by legislation, with a time frame for the achievement of the target.

6. As regards tax deductions, women, in accordance with the provisions of the law, should be allowed to enjoy allowable deductions for their dependent children without having to prove the dependency of the children upon them specifically, and the children should be distributed between the husband and the wife equally for this purpose. Single mothers should no longer be required to produce any marriage certificate before they can claim the allowable deductions for their children.

7. A woman should be entitled to be accompanied to her place of employment by her family, including her husband and dependent children. Accordingly, sections 34(1) and (44) of the *Labour Act* should be amended to give effect to this. As regards findings (ii) and (iii), women should not be prohibited from being engaged in night work or underground manual work in mines, as it tends to restrict employment opportunities for them. Rather, women should be employed in all fields of employment. However, appropriate protection should be provided for them in terms of equipment and facilities. Accordingly, sections 55 and 56 of the *Labour Act* should be so amended.

8. Eighteen years should be widely legislated as the minimum age for marriage in Nigeria.

9. The *Labour Act* should be duly amended and proposed under *federal laws*, and should be strictly enforced, particularly maternity leave.
 - (i) All discriminatory practices against women should be abolished, with legislative sanctions, for such practices as:
 - Refusal of jobs to pregnant women
 - Imposition of no-pregnancy conditions for married women
 - (ii) An equal pay for equal work policy must be established for both males and females, especially in the private sector, such as sports and entertainment industry.
 - (iv) Rent subsidies should be paid to both husband and wife, since each employee, who should be an individual employee entitled to his or her own conditions of service.
 - (iii) Children of female employees should be regarded as dependent children of their mothers for purposes of deductible allowances, in accordance with the rule of apportionment for joint parental maintenance of the children.
 - (vi) Wives should be given deductible allowances for the maintenance of their jobless husbands.

Conclusion

It has been established that women and girls are considered as second class when compared to their counterparts. While this essay has highlighted the major discriminatory practices against the female gender, it is not exhaustive, as there are several others not mentioned. Therefore, to achieve the goal of equal rights for everyone, the well-being of everybody, boy, girl, woman, and man should be taken into consideration when formulating any policy or legislation. Generally, anything that is harmful to another person must be disregarded.