

**WOMEN'S ACCESS TO JUSTICE
AND PERSONAL SECURITY IN
NIGERIA:
A SYNTHESIS REPORT**

**For the
SAFETY, SECURITY AND ACCESS TO JUSTICE PROGRAMME**

**of the
DEPARTMENT FOR INTERNATIONAL DEVELOPMENT,
United Kingdom**

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1. Introduction

This synthesis report draws mostly on existing research on women's access to justice, personal security and related women's rights issues. It is intended as a background document to inform programme design and appraisal in the Safety, Security and Access to Justice Programme of the United Kingdom's Department for International Development (DFID).

The report is organised as follows:

1. Introduction
2. Legal Discrimination
This section covers discrimination in formal statutory, customary and religious laws. It will also consider briefly aspects of law as lived realities for women.
3. How Safe Are Women?
Women's personal security in both the public and private domains (i.e. including domestic violence), as well as treatment by the police and other law enforcement agents.
4. Women's Access to Justice?
Here women's access to and experiences in accessing the formal courts and traditional or informal justice systems will be considered
5. Recent Trends and Reform Initiatives
6. Opportunities and Recommendations
7. List of Leading Civil Society Organisations working in the Area
8. Bibliography

In each of the substantive sections the contextual background and literature review will be integrated. Recent civil society and state developments or initiative will also be commented upon.

2. Legal Discrimination

Despite constitutional guarantees of non-discrimination on the grounds of sex, there are several areas of discrimination against women in Nigerian laws. This section covers discrimination in formal statutory, customary and religious laws. It will also consider briefly aspects of law as lived realities for women.

National Laws

Law in Nigeria is recognised as having several distinct sources. These are:

- 1) statutory laws - these include all the decrees passed by military regimes, as well as the statutes of civilian regimes since Independence.
- 2) common law - those things that by long-standing habit have come to be law - usually through being so recognised in a court case.
Unless otherwise repealed or amended, both statutory and common law include the statutes and common law of the United Kingdom up to the time of independence in 1960.
- 3) explicitly religious laws (generally this means Muslim laws) - in Nigeria Muslim laws follow the recommendations of Malik b. Anas (d.796). Since the beginning of colonial rule in the early twentieth century, Muslim laws in Nigeria have covered mostly personal law. However, in 1999 a number of states in the north of Nigeria have either passed, or indicated their intention to pass, Acts which will extend the scope of Muslim laws to other civil issues, as well as to criminal matters.
- 4) various systems of customary laws - these include all the laws of many diverse peoples in Nigeria - not only Igbo or Yoruba, but also, for instance, Itshekiri, Tiv and Igala amongst many others. These also have covered largely personal law but also community-derived property (especially land) during this century.

All of these are enforced and/or infringements punished by a formal court system, which stretches from area, customary and magistrates' courts in the first instance, all the way up to the Supreme Court¹. This formal court system, regardless of the source of law, is paid for, staffed and judgements enforced by the Nigerian state, whether at local state or federal level.

In principle, statutory law takes precedence over all other forms of law. However, there is an area where statutory law is most frequently not followed and that is personal law. In northern Nigeria, Muslim personal law is generally practised in preference to statutory laws - except where a couple have chosen to get married only under the Marriage Act (Cap 220). Muslims very rarely do so. The majority religion in the north is Islam - though this varies from over 90% of the population in Kano and Jigawa states, to 50% in Adamawa state and even lower in Plateau and Benue states. In the southern parts of Nigeria, where Christianity is the dominant religion, marriage under the Act is much more common². However, throughout Nigeria, other than where Muslim law is applied, it is generally the various customary laws that govern personal matters - even where couples have married under the Marriage Act. It is often argued that a marriage under the Act takes precedence over any other subsisting or subsequent form of marriage. However the point is moot, since in practice, there have not been court challenges to (for instance) the division of inherited property by Yoruba or Igbo customary law, even where the deceased married the surviving partner under the Act. Thus in terms of personal laws (marriage, divorce, child custody and guardianship, inheritance etc) it is various customary laws and Muslim law that govern the lives of the huge majority of women, rather than statutory law. Since, as will be outlined below, customary and Muslim personal laws, as currently practised, tend to be even more discriminatory against women than personal law in the statutes, this has important consequences for women's rights and access to justice.

¹ See the Customary Courts Law of 1957, now Cap.31. Also see Decree 25 of 1999 (the 1999 Constitution), Chapter VII.

² Muslims in the south (common only in the south west) do have the option of referring matters to Muslim laws in customary courts (Muslim law being treated as a form of customary law). However, this occurs very rarely, as most Muslims in the south have little trust in the competence of customary courts to administer sharia. Thus when they do go to court, they have Yoruba customary law applied, rather than Muslim laws.

Discrimination against women in Muslim law can be put under two categories. The first is discrimination found in the law itself. As with other forms of law and all monotheistic religions, a male-focused interpretation has dominated Islamic jurisprudence since its inception. In Nigeria, there is no specific interpretation or codification of Muslim Family Law, although several legal texts are recognised, especially those of Ustaz Malik. The presentation here of Muslim law will draw on this, but also on case law in Nigeria. The second category of discrimination against women ascribed to Muslim laws stems from the varying understandings and beliefs about what Islam prescribes for women. Since most family issues never go to court for resolution, it is the often conservative and restrictive everyday beliefs of husbands, brothers, fathers, and cousins, which govern women's lives.

Similar points can be made for customary laws. In addition and somewhat ironically, the construction of "customary" laws laboured under two male-biased perspectives. These were that of the colonial officers who found some codification necessary in order to administer colonial territories, and, that of the usually elderly men whom colonial officers considered to be their prime (and often sole) informants as to the content of "custom."³ In this process, any rights of women and junior men tended to be overlooked. Furthermore, some legal institutions continuing to exist after the context in which they were intended to be a safeguard, have become shackles. One often-quoted example is that of brideprice - given by the groom to the family of the bride. Jadesola Akande asserts that "the institution of bride price in traditional times, was not conceived as a sale of the girl but was a proof of the girl's importance to both families. Her family must be compensated for her loss, and it ensures that the husband's intentions are serious and not just a desire for a frivolous association" (Akande 1993:8). In the contemporary period of market-rule and commercialisation, wives are considered to be their husbands' property if brideprice is paid⁴.

Statutory law, usually considered to be most favourable for women, is often also gender-biased and discriminatory against women. This is most clearly seen in provisions relating to nationality rights, and employment conditions, but also affects family law. As with Muslim and customary laws, this may be through actual discriminatory provisions. But it may also be through the prejudices of the judges and other agents who are responsible for enforcing and administering the judicial and law enforcement systems.

International Covenants

Nigeria is signatory to a number of international covenants and treaties which have provisions improving or protecting women's rights, and thus which should improve women's access to justice. These include first and foremost the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which Nigeria ratified in 1985. Unfortunately, most jurists hold that, unless they are domesticated by specific adoption into Nigerian law, such international treaties do not give rise to legal rights to citizens in Nigeria. Ironically, it is agreed that they do entail international obligations - such as reporting every four years whether or not the obligations listed in CEDAW have been implemented. Thus it is debatable the extent to which Nigerian women can rely on provisions in CEDAW to promote and protect women's rights. However, international

³ See the wide literature on the Invention of Tradition.

⁴ The former chief judge of Imo State quoted from a cartoon in a Nigerian daily to exemplify this point. The wife said "you always remind me how exorbitant my bride price was. Can you prove it? The husband retorted: "as a degree holder in marketing, you think I won't have a receipt for everything I buy?" (Ojiako 1995:2)

documents can be influential (even without domestication) through their standard-setting and persuasive influence in establishing precedents in case law. A number of recent cases in customary law have quoted or mentioned CEDAW specifically in finding for women's rights. The most celebrated of these is of *Mojekwu v. Mojekwu*⁵.

Safeguards for Women's Rights in the Constitution

Discrimination on the grounds of origin, sex, religion, status, ethnic or linguistic association or ties is expressly prohibited (Section 15.2). The basic principle of gender equality is therefore embodied in the fundamental objectives and principles of the Constitution.

Similarly, the Constitution recognises fundamental rights for all citizens of Nigeria. In Chapter IV (Sections 33-46) it identifies these rights and constitutes the measures by which these rights are to be safeguarded. Section 42 provides that no citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall by reason of being such a person be subjected either expressly by, or in the practical application of any law, to any disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion etc are not made subject. Rights to political process, membership of political parties, securing a livelihood, equal pay for equal work and to citizenship by birth are also recognised (Sections 222.1.b, 17.3.a, 17.3.e, and Chapter III, respectively).

In addition, the obligation of the state to protect, preserve and promote Nigerian cultures (Section 21.a) is directed by the obligation to enhance human dignity and must be “consistent with the fundamental objectives as provided in this chapter”. Since the fundamental objectives include no discrimination on the grounds of sex (gender), this should protect women against infringements of their human rights made on the claim of culture or tradition.

Discrimination Against Women and Lack of Protection in the Constitution

However, despite these protections, the Constitution is itself discriminatory, and fails to protect women from discrimination in a number of ways.

Discriminatory Language

Throughout the Constitution uses discriminatory language itself, in that it is written in the masculine gender. Even Chapter VIII Part IV (on the interpretation of the Constitution) has no provision dealing with this. In other words nowhere does the Constitution state clearly that references to the rights of men citizens shall also be enjoyed by women citizens. More importantly, however, male-dominant language reflects the ideological stereotype that women are afterthoughts and not equals citizens in their own right, despite the objective of gender equality in the fundamental principles.

Nationality Rights

In addition, Section 26.2.a on citizenship by registration is discriminatory. Nigerian men can have their non-Nigerian wives acquire citizenship by virtue of the marriage. However, Nigerian women cannot confer citizenship on their non-Nigerian husbands. Section 29.4.b on renunciation of citizenship states that married women (but not married men) shall be deemed to be of “full age” (i.e. as if she were over 18 years of age). Given that too often girls may be married off as young as

⁵ NWLR (pt 512) p.238

twelve years old, the section implies that a child too young to vote shall be treated as mature enough to shed the protection of her citizenship.

Temporary Special Measures for Women's Rights

In addition, Section 42.1.b states that no Nigerian citizens shall be accorded any privileges or advantages under any laws etc where such privileges and advantages are not accorded to other communities, ethnic groups, sex, religions etc. The intention of the drafters is clearly to ensure that equality before the law is afforded to all citizens of Nigeria. However, the provision has been used to resist or challenge any form of temporary special measures or affirmative action (sometimes referred to as positive discrimination) designed to redress inequality whether gender or otherwise. It also ignores the fact that the *status quo* already privileges citizens who are members of certain categories (in this case men) and who therefore already enjoy privileges and the material and ideological resources provided by such.

Gender Not Part of 'Federal Character'

The definition of 'federal character' (which is itself not succinctly set out under Section 318) should have been expressly extended to include gender differences alongside state, ethnic and sectional differences, reflecting the intentions of Section 15 in fundamental objectives. For instance, in Section 233 (concerning the Executive of political parties) the Constitution goes as far as setting out a geographical membership quota by which a political party shall be deemed to reflect the federal character of Nigeria. No similar measures are laid down to ensure that women are adequately represented in the governing bodies of the organs of state which would have gone some way towards reinforcing the protection afforded by the Constitution. The federal character of Nigeria is, after all, 50% female.

Religion and Women's Rights?

While the Constitution is clear that the claim of culture cannot be a defence for gender discrimination, it is ambiguous on the issue of religion (including religious laws) being used to derogate women's rights. Section 38 recognises the right to freedom to practice religion. Sections 42 and 45 do imply that the state can and should take action to protect the infringements of citizens' rights, but there is no specific protection and promotion of women's rights against infringements or restrictions in the name of religion, although there is for culture.

Discrimination Against Women in Family and Personal Laws

Marriage

Under all three categories of marriage (statutory, customary and women), women are discriminated against in marriage and family law, sometimes as wives and sometimes as daughters. For instance, in all three categories, for instance, the husband is assumed to be the head of the family and the provider (and hence able to make decisions and receive benefits for the whole family). In none of the three sources of law is rape within marriage recognised as an offence. Furthermore, wife beating (called "chastisement") is accepted in statutory law (the Penal Code Section 55)⁶ as well as in Muslim and customary laws. Nor is there a minimum age of marriage. Furthermore, in Muslim and customary laws, wives have lesser rights in choice of marriage partner, divorce, or child custody and guardianship. Frequently wives, and sometimes daughters, have lesser rights of inheritance.

⁶ The Penal Code, which sets out criminal law for the north of Nigeria (i.e. all states which used to be part of the erstwhile Northern region) draws on Muslim, customary and English laws.

Muslim laws permit a man to have up to four wives. Pursuant to customary laws, marriages may be unlimitedly polygynous⁷. Women do not have equal rights to have more than one spouse at a time in Muslim or customary laws. Statutory marriages are monogamous thus bigamy is an offence. However, although in Nigeria men are predominantly polygynous (often marrying one woman under civil law and others under customary laws), there has only been one case of bigamy instituted by a woman⁸. Bigamy is rarely prosecuted. Many unions and partnerships are not recognised by law - this makes additional difficulties for the women and children of those unions.

Under customary laws widespread in the south and east of Nigeria, marriages are arranged between the families. That is, parents' consent is a legal requirement (as is the giving of brideprice). This is usually interpreted as daughters' requiring their fathers' consent for a valid marriage. There is a similar provision in Muslim laws in northern Nigeria, where a father may arrange the marriage of his virgin daughter, regardless of her age and without her consent. Men do not have this requirement⁹. Thus mothers have lesser rights over daughters than do fathers, and, women have lesser rights in choice of marriage partner than do men. However, in the case of Haja Kaka and Zama Bukuna in Borno in 1991 {Case no. BOS/SCA/CV/81/91} the marriage was dissolved on the grounds of not seeking the girl's consent.

Seclusion may also be practised, though it is a moot point as to whether this is Muslim law, enforceable by courts in northern Nigeria. Under Muslim laws (though not in practice) it is solely a husband's duty to maintain his wife and any children - lack of such maintenance is a ground for divorce. Wives do not have a reciprocal duty to maintain husbands in Muslim law.

Divorce

Divorce in marriages under the Act is governed by the 1970 Matrimonial Causes Act. Here, divorce can be granted to either party on the grounds that the marriage has broken down irretrievably. The Act provides for payment of maintenance to the wife and divorces are only pronounced through courts and are registered. However, anecdotal evidence suggests that judicial prejudices sometimes require fault in the husband where a wife seeks divorce.

Under Muslim laws, a man can divorce his wife by unilateral repudiation or *talaq* - e.g. by saying "I divorce you three times" in the presence of witnesses - this action is not available to women, except under specific conditions which are largely unknown in Nigeria (and almost never publicised). A woman can divorce her husband by mutual consent or only through the courts. This may be with his consent after paying him 'compensation' - usually by returning the dower he paid to her. Alternatively, if she can establish fault (such as lack of maintenance or excessive violence), she may get a divorce without his consent and without necessarily returning the dower. However, the practice is that women obtain divorces only by paying compensation and the Muslim judicial system has not only not informed women of other options, but, in some lower courts, may actually ignore the law and promote men's control over women (W&L project).

⁷ Leslye Obiora *et al*; What Every Woman in Nigeria Should Know 1-3 (1986) i.e. a man may have more than one wife and, under customary laws, with no maximum specified.

⁸ R v Princewill (1963) 2 ANLR pg. 2

⁹ Although, technically in Muslim laws men also need the consent of a waliyi or guardian to their marriage, this consent is almost never withheld.

Customary law marriages may be dissolved non-judicially, as well as via the courts. At the dissolution of customary law marriage the wife must refund the bride price - even though it was not given to her, but to her family. In effect, a woman who does not have enough money to repay her bride price will not be able to remarry and have children, as it is assumed she is still married to the man she wishes to divorce. Where divorce involves a couple from diverse ethnic groups or tribes, the customary law that applies to the husband is likely to be applied reflecting the notion that the man is the head of the home. Furthermore the wife is likely to be left in the dark as to what customary law is to be applied in a case that involves her (Kehinde 1997).

The irrevocable divorce under customary law and current Muslim laws terminates all rights of spousal maintenance. The woman is entitled to a share of family property in statutory marriages. But under customary and Muslim laws, where a woman leaves a marriage, however longstanding, she has rights only to the property that can be proved to be solely hers.

Widowhood

In many customary laws wives are required to undergo harsh and burdensome rites at widowhood in order to prove that they did not kill their husbands. They are also denied property rights in some areas and periodic ritual seclusion of women is prevalent¹⁰. This is despite constitutional requirements that the dignity of the human person should not be subjected to torture and degrading or inhuman treatment. What the Yoruba refer to as *Ilepa* – that is a widow drinking the water used for washing the corpse of her husband, is practiced also in most eastern parts of Nigeria – especially in some parts of Igbo land. The Emohua people in the south south of Nigeria wash the anus of the husband's corpse and the widow is compelled to drink it. Others of these obnoxious practices include: submerging the widow in a river to prove she did not kill her husband; throwing the widow across the deceased's coffin and also making her sit on the floor in a room by herself. In the north-eastern region, widows are generally excluded from the burial ceremony of the deceased husband, and in where they are allowed to attend, they are made to walk backwards to the burial ground. Many of these practices amount to trial by torture. Most widows acquiesce for fear of being accused of their husband's death. Widowers are not subjected to similar trials.

Administration of Property and Inheritance

The Married Women's Property Act¹¹ confers on women married under the Act the rights to acquire, hold and dispose of property, whether such property was acquired before or during marriage. However, especially regarding inheritance, even where a woman married under the Act (and regardless of whether or not the deceased left a will), it is very frequently the case that the family of the husband or customary law administrators insist on applying customary laws that do not give women rights over property.

Under most customary laws a married woman is only in charge of her own acquired property and has no rights to inherit property from her husband. This applies, for instance, under Yoruba customary law in the southwest. Often females may not inherit from their father either, as among the Bini of Edo state in the central part of southern Nigeria. The first born son has all rights to property

¹⁰ Voices, International Research on Reproductive Rights Action Group IRRRAG Nigeria pp. 78-83 and pp. 119-120

¹¹ Laws of the Federation of Nigeria 1990 revised (Ed) Cap 218

which he may distribute according to his own discretion amongst his siblings. In some areas the wife herself is considered inheritable property. Amongst the Yoruba this practice is falling into disuse apparently¹², although it may still be seen by some as necessary to ensure they retain custody of their children.

More recently, however, the courts have granted a wife right to inherit property from her deceased husband in Enugu in eastern Nigeria (Igbo customary law). Also in Igbo customary law women have been granted the right to inherit land from their fathers. There is still no legislative backing on this issue.

Under Muslim laws a wife (or wives between them) may inherit only one-eighth of her husband's property if the deceased has children to inherit, or one-quarter where there are no children. However if a wife dies her husband is entitled to half of her property. A wife or daughter can inherit land and houses in Muslim laws, however in practice this may be denied (Ibrahim n.d.). Although a woman may administer her own property, she may not dispose of more than a third of it without family (husband's) consent. Men have no such constraint.

Custody and Guardianship of Minors

The courts may determine custody in divorce cases whether of civil, customary or Muslim marriages, pursuant to the Matrimonial Causes Act. The Act looks at the interest of the child as paramount - and in principle custody may be awarded to either parent, although in practice this may depend on the personal biases of the judge.

Customary laws in the area of child custody have been more favourable to men than to women. According to section 22(1) of the Customary Courts Law, the interest of the children is the priority when deciding which parent should have custody and guardianship of the children. However in practice, (for instance in the Lagos Customary Court), it is often the case that the father is awarded custody of the children mostly those age 7 years old and above. This may be done without consideration of whether the father in question is capable of looking after the children or not (Akande 1993).

In Muslim law a distinction is made between custody (childcare) and guardianship (authority in decisions over the child's life). Fathers generally have guardianship, although a mother has first right to custody of her children until maturity. However, in the practice of (unrecognised) Hausa and Fulani customary law, fathers tend not only to have guardianship, but to also to choose where to award custody after the child is weaned and/or above 2 years of age. In the rare instances where courts have decided on guardianship and custody (mostly in the past ten to fifteen years), mothers have gained both - particularly at higher courts (see BAOBAB Leaflet on child custody). In recent years also, occasionally (and especially if the mother is economically independent) fathers choose not to exercise guardianship and widows may also gain guardianship as well as custody of their children (BAOBAB Women and Law Project).

Marriage Age

¹² Personal communications, BAOBAB Paralegal Training Workshop, Ilorin July 2000

Customary laws provide that individuals can marry when they have attained puberty, assumed to be age 12 for girls. Under Muslim laws there is no minimum age for marriage and again puberty is considered to be the crucial point. Adolescents under 21 can not marry without parental consent under statutory law¹³. Boys are not expected to marry young under customary laws but young girls are frequently married to much older men.

Discrimination Against Women and Shortcomings in Women's Rights in Other Areas of Nigerian Laws

Many provisions in other operating laws in Nigeria are still discriminatory against women - in contradiction to the constitutional provisions on non-discrimination. Legal issues relating to violence against women are dealt with separately below.

Discrimination Against Women on Marital Status

Discrimination against women based on marital status is not prohibited in the Constitution or other Nigerian laws. Non-married pregnant women in the civil service (or private sector) continue to be targets of discrimination, as they are denied maternity leave because of their marital status. On the other hand qualified married women within the active childbearing ages of 25-35 years are often turned down by prospective employers on the excuse that they would soon get pregnant and start asking for maternity. There is no legislation protecting women from this either.

Discrimination in Taxation, Work and Employment

The taxation and revenue laws and policies are discriminatory against married women and/or women with children also. Such women pay higher tax rates than do men in similar circumstances, because they have no automatic allowances for children. Even where the mother is the only or major income-earner in the household, it is difficult to get tax relief and a different and higher standard of proof is required.

Married women, but not married men, are precluded from joining the police (Regulation 122). Women police officers (but not their male counterparts) are required to seek written permission and approval of their prospective spouses before marrying (Regulation 123). Unmarried women police officers who become pregnant will be discharged (Regulation 127), however, an unmarried man police officer who fathers a child will not be discharged. These are clearly discriminatory against women.

Nursing mothers in the public sector and frequently in the private sector also lose part of their annual leave if they require maternity leave. Since having a baby is not a restful holiday this also discriminates against working women.

The regulations of civil service employment frequently discriminate against women. For instance, in the Kano State Civil Service Rule 03303 requires a woman going on a training course of 6 months or less to refund the costs of the course if it is interrupted by her pregnancy. A man on a similar course apparently does not need to reimburse anything.

¹³ Marriage Act s18-20, 48 (proscribing penalties for contravention of these provisions)

Women also face restrictions in economic opportunities due to loan and credit conditions which are not currently illegal, but which are biased in favour of men. No specific laws limit women's access to credit, however several obstacles exist for women who attempt to obtain credit in Nigeria that are attributable to discriminatory customary laws relating to women's right to own property.

Residency Laws

Under the law women as well as men have freedom of movement. In practice, society (through practices attributed to custom and religion) imposes restrictions on women in terms of movement and residence. The Federal Character Commission states that a contestants for political office must come from (as opposed to be resident and pay taxes in) the area - thus discriminating against women candidates who marry, since domicile is usually virilocal.

Occupational Security

There is the 'get pregnant, get sacked' syndrome, particularly prevalent in banks. In a survey carried out by the Constitutional Rights Project¹⁴, 75% of respondents said they would prefer to give jobs to men rather than to women. Job stereotyping by gender is also prevalent.

All of these appear not to be illegal, despite constitutional guarantees of non-discrimination.

3. How Safe Are Women?

Women's Personal Security

Tolerance of violence in Nigeria had not been particularly low in Nigeria during the years of colonial rule and early independence years, but it has become markedly higher during the years of military and authoritarian rule. Where ten years ago a man being beaten in the street with a whip, even by another man in uniform, would have caused concern in on-lookers, until very recently one saw people attempting to pass by such phenomena without being noticed never mind intervening. The tolerance of public violence has coincided with a spate of public physical attacks on women (including the infamous 'acid-bathing') as well as a lack of concern for private violence - despite the efforts of women's rights activists. While human rights activists have turned critical attention on state violence against citizens, they have tended to ignore and neglect civil society violence - especially against women in the private domain. This stance from malestream human rights activists coincides with (and reinforces) the dominant perception in society that a certain level of violence against women is possibly desirable as discipline and certainly inevitable - as viz. defences of wife beating.

As might be expected from the lack of concern about violence, law enforcement agents keep no records of complaints of violence against women, thus making it difficult to establish officially the enormity of the problem. Despite the absence of statistical data and comprehensive research¹⁵, there is sufficient evidence to indicate that both domestic violence and violence against women in general are of appalling proportions.

Civil Society Attacks on Women

Domestic Violence

¹⁴ Akumadu, supra 3

¹⁵ We understand that Project Alert has just succeeded in raising funding for comprehensive Nigeria-wide research on violence against women.

Bianlowu (1992) stated that 67.6% (143) of women in her sample reported that they had ever been physically attacked by their husbands. Her sample is small and this is a very high figure, but it bears out impressionistic data from women's rights organisations which work on gender violence (see *Gender Alert* and *Violence Watch* for instance, and the papers from the 1990 WIN conference on Violence Against Women). Omorodion (1992) reports that between 1980-82, the ministry of social welfare in Benin received 1220 complaints concerning battered wives. It must be borne in mind also that women tend not to report domestic violence at all, and when they do, they prefer informal mechanisms (see below regarding women's access to justice and also Project Alert 1999). Thus, given that there were no shelters for battered women and few options for social welfare departments other than attempts at mediation, this is a high figure. Copelon comments in similar vein that *the abuse of women by their male partners is among the most common and dangerous forms of gender based violence. Its victims exceed those of the most brutal dictatorships* (1994:116).

Sexual Assault and Rape

According to *Tell* magazine in 1996, crime statistics issued by the Nigerian police cite 136,285 cases of rape recorded between 1980-1992. Despite this alarming figure, based on research elsewhere in the world, probably less than one in fifty rapes are reported to the police. Most of the reported rapes come from institutions of higher learning, which both indicates the rampant nature of sexual assault and reflects a higher level of trust in the complaints procedure (from young and largely middle-class women students) than is likely to be found in the general population of women. Sexual assaults, even on children, are very rarely reported.

Acid-Baths

In the past decade or so there has been a new phenomenon in violence against women in Nigeria - what has been termed 'acid-bathing', where men throw acid on women. The attackers are mostly male partners (boyfriends, husbands) in relationships that the victims are trying to leave. A high proportion of the victims die in excruciating pain as a result. Others are permanently maimed (see issues of *Violence Watch* in particular, as well as reports in daily newspapers).

Female Genital Mutilation

Female genital mutilation, in various forms, is widespread in Nigeria (Mandara 1995, Osakue et al. 1995). It ranges from amputation of the prepuce of the clitoris ('*sunna* circumcision') to full infibulation. It also includes scarification of the genitals and cuts to the wall of the vagina (*yankan gishiri*) for 'treatment' of ailments such as hysteria and frigidity. It may be inflicted on children - either at birth (Hausa) or later (Yoruba), or on adult women during pregnancy and before childbirth (eastern Nigeria). Traditional birth attendants or barbers usually carry out cutting. There is apparently the beginning of a move towards asking formally trained doctors and nurses to undertake it. It may also be self-inflicted or carried out by traditional birth attendants in the case of *yankan gishiri*.

Public Harassment and Street Attacks

Women have also been harassed on the streets by men who disapprove of women's being in the public domain, and/or of the way in which the women are dressed. This is often believed to be restricted to northern Nigeria, because of the influence of Islam. It is clear that in northern Nigeria, especially in the states that have been passing extension of Sharia acts, this sort of harassment has been on the increase. In Zamfara in late 1999 and early 2000, both Christian and Muslim women

were attacked verbally and physically. In other states, like Kano, women have been threatened over their mode of dress. However, it is also common in such southern cities as Lagos and Port Harcourt that women are harassed for wearing trousers, or 'lace' or skirts that some men consider too short. Security men stating that women in trousers were not allowed have also refused women entry to public buildings in the federal capital territory.

It is also well known that women suffer from sexual attacks during any of the (frequent) street demonstrations, disturbances and riots that occur. Under cover of the general disturbance, women's security is at even greater risk than that of men. During the Ife-Modakeke riots, for instance, women were raped, assaulted, and their houses attacked. Similar reports come from disturbance like the Kaduna religious clashes As refugees and internally displaced people, women with their children also bear the brunt of violence and its aftermath (see Okoye 2000). These attacks may be by civilians (in student demonstrations often fellow students, in street disturbances frequently attributed to area boys) or by members of the very security forces responsible for ensuring order and safety.

The State, Its Agents and Violence Against Women

The state bears a double responsibility for violence against women - both as direct agents of such violence, and, indirectly as failing to guarantee women's right to security and protect women from violence. In many of the phenomena described above, the state clearly fails to protect women from violence - sometimes by refusing to recognise the potential for violence or its seriousness (such as not even warning male partners against future violence), sometimes through omissions in the law (see below). However, even after violent acts have been committed which are against the law, state agents frequently fail to deal with such acts - hence further failing even the possibility of future deterrence and protection (see below in women's access to justice).

Worse yet, the state and state agents may themselves carry out illegal acts of violence against women. There are gross violations of women's rights - including to personal security - from personal attacks to unfair arrest and treatment to lack of access to justice from arrest to through detention and trial to imprisonment (see below on access to justice). The security agents - notoriously the mobile police (known popularly as the 'kill and go'), as well as the army and regular police - kill or beat women (and men) up and attack women sexually, and wrongfully detain them under the guise of restoring law and order. The Delta region has suffered particularly from this (MOSOP briefings, Manby 1999 - a Human Rights Watch report) - as viz. the happenings in Choba in August 1999 (personal communications with the Federation of Ogoni Women's Associations). On smaller scales, such violence it is not uncommon elsewhere, especially in Lagos. It also occurs when security agents are called in to quell student campus demonstrations.

The Nigerian police force and other security agencies are notorious for abusing their powers of arrest. Many of their victims including women who suffer irregular and illegal arrest and detention. For example an ex-prisoner, Miriam said that she was arrested and detained because she refused the advances of a police officer. In another case, a woman and her daughter were arrested, because the daughter was going out with a man accused of armed robbery (Ehonwa 1993, a CLO report). Women are not infrequently arrested or detained because they are related to wanted persons - wife, mother etc. This includes people wanted simply for criticising the government (particularly during the years when democratic political activity was banned).

Inadequate Legal Protection from Violence Against Women and Girls

Not only is violence against women widespread but it is not inconsequential to note that there are many areas in which there is no legal protection against such violence. The main areas of omission are outlined below.

Domestic Violence

The law on domestic violence is clearly inadequate - especially with regard to partner abuse. Currently domestic violence is classified under common assault. This tends to downplay the importance and seriousness of violence committed in the family. Furthermore, according to Section 55 of the Penal Code, wife beating is permitted in so far as it does not amount to grievous hurt". "Grievous hurt" as defined by Section 241 of the Penal Code includes emasculation; permanent loss of sight, hearing or speech; facial disfigurement; deprivation of any member or joint, bone fracture or tooth dislocation, or hurt which causes the sufferer to be in severe bodily pain and unable to follow ordinary pursuits. Thus, as long as any of the above-mentioned injuries are not inflicted¹⁶, a man who beats his wife is exercising a legal right. Similarly, in Igbo Customary Law, a husband has the right to chastise his wife for "failing to perform her duties", "laziness", "wastefulness" and "destructiveness". Similarly in Muslim Personal Law (Sharia) a husband has the right to admonish his wife, although (in principle) he may not use any instrument longer than his finger or make a mark on her body. Thus while the law protects strangers from being assaulted by a man, it does not protect that man's wife.

Rape and Sexual Abuse

By defining rape as vaginal penetration, no matter how slight, Nigerian law does not protect those who are sexually abused with instruments other than a penis. Things like hands, knives, bottles or sticks have been used in some cases. In situations like these, or in the case of anal rape, the attacker may be found guilty of indecent assault, or indecent treatment, but this has a much lower punishment than rape (2 to 3 years' imprisonment only).

The burden of proof of lack of consent in rape allegations is with the prosecution. This means that the victim herself has to prove she did not consent. This is often difficult to do, especially as these offences frequently take place where there are no witnesses. Furthermore, the alleged rapist is allowed to bring information about the woman's past life in order to argue that she was not a virgin. Thus often women or girls are forced to live through their own rape twice without having the rapist punished.

Rape is yet another area in criminal law where women are discriminated against based on marital status. Section 357 of the Criminal Code, applicable in the south, gives room for the exclusion of married women from protection from rape on the grounds that she consented to the marriage. At best, a husband who forces his wife to have sex may be found guilty of assault, wounding, or grievous harm depending on the degree and effect of the force he used on his wife, and could be sentenced to imprisonment for up to 2, 3, or 7 years, respectively. But this is usually limited to situations where the couple have separated (i.e. they are not co-habiting).

¹⁶ Since women frequently refuse hospitalisation, despite pain and injury, in order to look after their children, the requirement of twenty days unable to work rather adds insult to injury for battered women.

The Sharia generally forbids marital rape. However the husband may withdraw maintenance to his wife if she refuses him sexual intercourse. Rape of a wife is generally not recognised as an offence by customary laws in Nigeria and is not penalised even where the wife is wounded in the course of the husband forcing sex on her. Thus, forced sexual intercourse within marriage is not recognised as an offence under any of the systems of law in Nigeria.

Section 353 of the Criminal Code makes an indecent assault on males punishable by 3 years imprisonment; Section 360 which creates a similar offence of indecent assault on females, treats it as mere misdemeanour punishable with a maximum of 2 years imprisonment. This contradicts the principle that all persons should be equally protected from harm.

One of the widowhood practices that gives rise to a great cause for concern is the aspect that affects the widow's reproductive health as well as her reproductive rights. There is, as is practiced in some parts of in the south east of Nigeria, an ordeal that is essentially widow rape. The widow after about 12 days from the burial of her husband, is escorted at midnight, by an *aja ani* (priest) or *nwa nri* to a place where he is expected to perform some kind of 'cleansing ritual' for her. This so-called 'cleansing ritual' involves the *aja ani* having sexual intercourse with the widow, with or without her consent. In another instance, the widow is expected to go through the process of *ichi iyi ili* which means fetching water from ten streams. In this case, the widow is also compelled to have sexual intercourse with ten different men.

Sexual Harassment

There is no legal protection from this, although extreme forms of sexual harassment may amount to assault.

Child Sexual Abuse

Child sexual abuse is implicitly condoned in Nigerian law, because although individuals are not statutorily recognised as adults until they are 18, protection from sexual abuse stops before adulthood. Children are protected only until they are 14 years old, according to the Penal Code (Northern Nigeria). Under the Criminal Code (Southern Nigeria) sexual abuse of children between the ages of 13-16 is known as defilement and may be punished, but not as severely as for rape. In Lagos state sexual abuse of a child under 11 years old is a felony with a punishment of life imprisonment. However sexual abuse of a girl child between the ages of 11-13 years is merely a misdemeanour or indecent treatment, with a punishment of 2 years imprisonment. Boys are protected a little longer, but to the age of 14 years only in east and west Nigeria and in Bendel. Furthermore, prosecution must be started within two months of the offence and there is no conviction on uncorroborated evidence. Section 221 of the Criminal Code on defilement of girls under 16 years of age does not allow corroboration of the victim's evidence.

Sexual Abuse resulting From the Marriage of a Child

The Marriage Act refers to marriageable age, but there is no precise definition of marriageable age. Thus it falls back on customary or Muslim laws and often 'marriageable age' is defined as the age of puberty and assumed to be 12 years for girls and 14 years for boys, rather than actual legal adulthood (which is statutorily eighteen years of age). Under the Penal Code, in northern Nigeria, children under the age of 14 cannot consent to sexual acts, while in the south the sexual intercourse with a girl under 13 is a crime. Notwithstanding these provisions, girls are not infrequently married

from the age of 12. There is no protection from sexual abuse resulting from the marriage of a child: she is deemed to be adult in that regard from the moment of her marriage (but not as regards voting or other adult privileges).

In Eastern Nigeria, law sets 'marriageable age' at 16 years of age. However the punishment is limited to a N200 fine or 6 months imprisonment. Furthermore, although the marriage may be deemed invalid, it will still prevent a prosecution for defilement.

Maltreatment of Widows

This is condoned, indeed required, in many customary laws in Nigeria, especially in the southeast as has been mentioned earlier

Female Genital Mutilation

It is questionable whether the law gives protection against female genital mutilation. Under the Criminal Code surgical operations are permissible, provided that the operation is performed in good faith and with reasonable care and skill, for the benefit of the person on whom the operation is performed. The Penal Code has a similar provision. However, the question of what is for the benefit of the person operated on is left open.

However, one welcome development in the new (1999) law in Edo State, banning all traditional practices harmful to women's and children's health - specifically including genital mutilation.

Emotional or Psychological Abuse

There is no legal protection from emotional or psychological abuse.

4. Women's Access to Justice?

Access to justice requires, amongst other things: awareness of legal and duties and accessibility to the justice administration mechanisms and institutions that have the power to remedy injustice. Most women have neither awareness of their legal rights, nor, easy access to means of remedying injustice. For instance, the majority of the women interviewed in Kwara State stated that they are not aware of the laws protecting women's rights either in Muslim laws or in customary laws (BAOBAB Women and Law Project).

Informal Justice Mechanisms

Most women do not resort to the formal law enforcement and justice administration systems for resolution of any issues and problems. Given that the most frequent response to any woman's complaint is that she should have patience, and that this is a strong part of the socialisation of girls in all Nigerian cultures, perhaps the most common response to injustice is to accept it with resignation. This is particularly the case since so often injustices are within the family and/or blamed on the victim who is then castigated as shameless (in bringing the matter to public attention) or greedy (if it involves property).

Where women do raise complaints, in the first (and often last) instance, this is likely to be at the informal levels of family councils, with relatives and sometimes close family friends. The next plane

in this informal system would be to raise it with the clan, district or villagehead for resolution and mediation, or even with chiefs and emirs or their councils (depending on the status of the woman and dispute). Alternatively, they may be raised with priests or imams.

These are the culturally approved avenues available to women. They are moreover familiar avenues, both in terms of personnel, and in terms of knowledge of the likely sorts of results they may get. For many women it is a case of 'better the devil, you know...' despite the fact that those results are frequently resolved in male dominated ways. As was indicated above, customary and Muslim laws tend to make frequent distinctions between women's and men's rights, with women's being lesser. Nonetheless, they may be more beneficial to women than the everyday practices - such as village heads enforcing (on occasion) the right of women in Muslim law to inherit land. Unfortunately, villageheads (or others) may also do the reverse and (for instance) persuade women that they should not be greedy and give up rights in land to brothers or other male relatives who will 'look after it for them'.

For most women, especially rural women, there is little familiarity with or trust in either the formal law enforcement agents or the judicial system. But anecdotal impressions and the little research data there are do not demonstrate that women should put their trust in the formal systems - if anything, it is the reverse, as is discussed below.

Formal Law Enforcement and Justice Administration

The Police

When women do initiate complaints to the formal mechanism of the police, they tend to be brushed off and ignored. Despite its pervasiveness "*intimate violence remains on the margin - it is still considered different, less severe, and less deserving of international [or national] condemnation and sanction that officially inflicted violence* (Copelon 1994:116 - our insertion). This is certainly true of Nigeria. It is well known that the Nigerian police (like others elsewhere) do not take reports of domestic violence seriously. They often advise the women to be patient. They may refuse to register her complaint. They may lose copies of the complaint or not fill in crucial details if it does get registered. Even when complaints are registered the police will rarely prosecute, usually saying it is domestic, it will blow over (or worse - defending men's 'disciplining' of their wives, or stating that she deserved it). They may also state (wrongly) that medical reports from private clinics and hospitals are inadmissible as evidence. This is the more upsetting as staff in government medical facilities often refuse to provide reports because they do not want to have to be witnesses in court.

In most of the many cases reported of acid-baths, there has been clear foot dragging by the police. There are rarely prosecutions, much less successful ones, even when the attacker does not deny his actions. One example is the case of Ego Osadebe, who died in hospital on 23 November 1998; three weeks after her husband poured acid on her. The delay in prosecuting her husband (allegedly kept in preventive custody rather than detention) caused a protest march by concerned women and women's organisations to the Criminal Investigation Department, Panty in Lagos. The Lagos State Anti-Robbery Squad (?) disrupted the demonstration asking why the protest over the death of a woman who wanted to run away with her husband's wealth (personal experiences and *Violence Watch* 1:1).

Not only do the police not register and pursue women's complaints of domestic violence through law enforcement mechanisms, they do not even refer them elsewhere for aid. In Omorodion's study (1992), around half the cases of battered women came directly from the woman herself. Neighbours and friends brought the others in. Referrals by the police and similar agencies were an insignificant 4.1%.

The police are also notorious for preying on commercial sex workers, most of whom are women. Commercial sex workers are frequently harassed by the police and are forced to pay them a portion of their earnings, as well as providing sexual services free.

The Court Systems

Before the advent of the British colonial rule in Nigeria, most of the (customary) legal and judicial systems were aimed, in principle, at reconciling disputants in a conflict and maintaining peace and harmony. In the Northern part of Nigeria there was already a form of Muslim judicial system (sharia) in place, which was partly feudalistic in nature, but which also, in principle, was concerned with a harmony to Allah's will. Both customary and sharia law resolution and enforcement tended, except at the highest levels, to take place rather informally. In contrast, the British system had an adversarial style, concerned with establishing and enforcing the rights of the individual including against the state and was formal. The British colonial administration removed most criminal and civil matters from the ambit of customary laws and Muslim law. It also imparted something of the adversarial, as well as the formal bureaucratic styles to all courts. For the lower levels, as well as the higher, much of the proceedings and reports also take place in a language foreign to most women (and men), English - and legalese at that. The courts are unfamiliar and intimidating places for most women, who cannot follow the language, do not know the procedures, and have little idea of their rights or how to exercise them. Although these factors affect the determination of civil cases, they are most severe and glaring in criminal matters.

Constitutionally, every person who is charged with a criminal offence is entitled to defend themselves in person or by legal practitioners of their own choice. However, this choice is most often neither explained nor offered. Thus clearly neither women nor men have been getting a fair trial. For example, an ex-inmate from Kaduna prison who gave her name as Grace Rimbak told the CLO that she went to prison only because she had no lawyer. Another ex-inmate said that they did not tell her that she had the right to a lawyer and so she went to court, was found guilty and they just took her to the yard (prison). A welfare officer who spoke regarding the absence of legal representation attributed the course of the problem to the high cost of hiring lawyers (Ehonwa 1993). In addition, Ehonwa found that some prison wardens were ignorant of the fact that prisoners have the right to legal representation.

Legal aid ought to be available for all criminal offences, but many legal aid schemes are not working. When they are, the lawyers available have often just graduated from the Law School and have no experience. Legal aid schemes have very limited scope for civil cases. Moreover, even when aware of the availability of such services, women tend to be discouraged from taking advantage of such services. This is rooted in cultural dictates that a woman should "hold together and not destroy". Women have been led to believe that litigation of a family matter will cause the break up of the

family and that it is their duty to preserve the family. This is another reason that women are inhibited from using the courts.

Experience has also shown that women wishing to rely on their constitutional rights are subjected to long waits while the case is moving from one level of court to the other. The amount of time, money, and energy expended in claiming these rights is a major barrier to women's access to justice. Most women are not ready to go through these frustrating processes and so would rather not start litigation for fear of losing the case even after spending so much time and money.

Women's (realistic) disinclination to try to use the courts, in conjunction with a restrictive interpretation of the doctrine of *locus standi* (legal standing), pose another obstacle to establishing good case-law precedent for women's rights issues. Nigerian courts require that only the person directly affected by the action of another can seek for redress. Thus even where there are organisations that are willing to fight such cases, the principle of legal standing must be satisfied.

Most staff and virtually all judges are male. Women lawyers can serve in the judicial system and are seen mainly in lower courts. Women are however not seen in religious and customary courts as magistrates or as lawyers (although, in fact, most cases involving women as plaintiffs or defendants are to be found in religious and customary courts). In the higher levels of the judiciary there are very few women. In each of the states in Nigeria there are 3-15 High Court judges, a token number of 0-4 number of females are amongst them. There is no woman judge in the Supreme Court¹⁷. In relation to the treatment of women in court, it is a truism that judges' attitudes, biases and background affect the type of judgement received. Socio-cultural norms determine the weight of the testimony of a woman, i.e. women are seen as gossips and their testimony may therefore be devalued or their claims discounted.

More specifically, sharia courts hold that, except in certain issues (like childbirth) the testimony of a woman is worth only half the testimony of a man. To meet the standard of proof discharged by the testimony of one man, sharia requires two women to testify. This evidential rule works to the disadvantage of women when there is a dispute in the home and nobody is there to testify against the man. This practice has continued despite constitutional provisions, which guarantee the same legal capacity to all Nigerians regardless of gender, and forbids discrimination¹⁸. In addition, the adoption of the Zamfara State Penal Code (2000) has instituted different standards of proof for women and men in the offence of *zina* (immorality). As evidenced in the case of Bariya, an unmarried girl or woman who has the misfortune to get pregnant will be convicted therewith and sentenced to 80 lashes. However, in the absence of (other?) witnesses, any man she names as her partner may well get off scot-free¹⁹.

¹⁷ Effah *et al* "Unequal Rights: Discriminatory Laws and Practices Against Women in Nigeria" Constitutional Rights Project (CRP) publication

¹⁸ Section 42 (1) and (2) of the Nigerian Constitution 1999

¹⁹ The case was determined in Tsafe Sharia High Court, Zamfara State. Court officials refused to allow BAOBAB access to the records, but were willing to discuss the case. Bariya (aged 13 or so) is pregnant and named three young men as the possible fathers. Because there were not four male witnesses to testify that 'a hair could not pass between their bodies', all three were let free. They did not have to swear to their innocence on the Quran. It appears that no other evidence was called for. Bariya is to be whipped forty days after the birth of her child.

Similarly, under the customary court system and laws, women are subjected to the same disabilities as infants, slaves and aliens. That is they are as chattels of the same order as land, livestock, farm implements and are considered a man's property. What this means is that women are not regarded equal with men before the customary courts whose decisions are based on customary laws. The effect of this is illustrated in the Court of Appeal decision of *Akinubi v. Akinubi* (1997). In this case a woman sought to be appointed co-administrator over her deceased husband's property in conjunction with her brother-in-law. The property was governed under customary law. The husband's family rejected the woman's request. The court held that in Yoruba land, that is the western part of the Nigeria, widows whose husbands die intestate should be regarded as part of the husband's estate to be administered or inherited by the husband's family. This is an area in which discriminatory laws and practices have continued to deny women their right to access justice.

Women whose lives are governed by sharia and customary laws face many problems in accessing justice in Nigeria, where there are different laws governing a woman's life. The practical application of these laws on women varies from loose or conservative interpretations to the rejection of constitutional provisions by some judges, where such an interpretation would give women greater rights. Many lower court judges (where most women's cases are found) seem to be wholly unaware of constitutional provisions of non-discrimination and their implications or women's and human rights issues. Many lower court judges also appear to be ignorant of the provisions of CEDAW.

The under-funding of the judicial system has helped in the creation of backlogs and delays. Furthermore, the judges of the higher courts are generally not carrying out their responsibility of over-sight of the lower court judgements. Unless a case looks like being politically volatile or the litigants possess sufficient knowledge, stubbornness and resources to appeal, lower court judgements seem to be ignored - even when they are clearly wrong in law or fact. There are many reports of judges at the lower courts demanding money for favorable judgements, and also of demanding sexual services from women (Women and Law project).

Thus it would seem likely that women are often treated differently from men in the courts. Impressionistic evidence and anecdotal data agree. Unfortunately, due to the lack of desegregated data, statistics are not available to compare judgements, damages or sentences for men or women. Nor do we know of any other research on this in Nigeria.

Detention and Prisons²⁰

Existing figures for 1984-1986 show that awaiting trial persons among female prisoners outnumber convicts as they do among male prisoners. Of the women in Kaduna prison thirty-four or 56.67% were awaiting trial. Twenty-nine (67.44%) of the forty-three of the Oko prison were awaiting trial. At Jos prison the figures were nineteen out of twenty women, at Agodi prison eight of twenty-one. The equivalent figures for Kirikiri women's prison were ninety-eight (40.83%) of two hundred and forty. This was consistent with figures from 1984-1986. A good number of women stay in prison awaiting trial for up to five months in violation of their rights to speedy and fair trial. Others stay as long as two to three years.

²⁰ Most of this section on prisons and detention is summarised from Ehonwa 1993

Joy Nwakpa, a lawyer, took up two cases in Kaduna prison. The first was of Agnes Aluko who was in prison custody for over three years and another case of Joy Asaka who spent three or four years without trial. The latter's case was discharged. Bunmi Wemimo (held for robbery), and, Adijatu Usmaila and Rose Udofia (both charged with murder) had been in detention since 1987 while their cases were pending before various magistrates courts. They were part of a group of seven detainees on whose behalf the Constitutional Rights Project sought and won the court's leave in March 1992 to enforce their fundamental human rights to personal liberty.

As with men's prisons, the conditions of women's prisons leave much to be desired - food, sanitary conditions, rehabilitation programmes, cells, exercise spaces are all poor. There are also reports of women in prison being beaten, and subjected to unauthorised punishments.

There are frequent allegations of torture of men suspects to gain confessions, but there are no studies of the treatment of women in police custody. In at least one case, however, women were chained while in custody (Asma'u Joda - personal communication. She and others are currently suing the police for violation of their rights).

5. Recent Trends and Reform Initiatives

It is becoming increasingly difficult to simply talk of customary or Muslim law as distinct entities from statutory law, because many of the issues regarded as relating to customary and Muslim laws are now increasingly being legislated upon and are therefore also statutory. In the following discussion this should be borne in mind.

Customary Laws

There is a positive trend in addressing the discrimination against women in customary laws. This has occurred through new statutory laws - particularly since the return to civilian rule in 1999. For instance, the new law in Edo State on harmful traditional practices has sentences of a N1, 000 fine or imprisonment not less than six months or both for female genital mutilation. Similarly, there is a new Cross-River state law against female circumcision and also a statutory minimum age of marriage of 18 years. The punishments here are a N10, 000 fine, with three years imprisonment without option of fine on a second offence. Edo State also has a new law prohibiting the inhuman treatment of widows on pain of a N2, 000 fine or imprisonment not less than 6 months, or both, notwithstanding the consent of the widow. Similar initiatives exist in other states. The Enugu State House of Assembly currently has before it two bills on women's equal rights to inheritance, and the eradication of harmful traditional practices and elimination of all forms of violence against women.

For some years now, there has also been case law where customary law has not been enforced (and therefore changed) on the grounds that it was against the principles of natural justice in discriminating against women and therefore violating women's rights. In these cases both constitutional provisions and CEDAW have been cited.

However, this is not a homogenous process. In Benue state the Anti-Female Circumcision Bill has been deferred. In the National Assembly, the bill against female circumcision (and others relating to women's rights) has been treated with some derision. Similarly some case law (for instance Atinuke vs. Atinuke cited earlier) continues to validate customary law discrimination against women.

Muslim Laws

There are three trends in the development of Muslim laws. The first, and a longer, quiet process has been the increasing legal enforcement of women's rights in case law. The second and third are contradictory developments occasioned by the spate of local states passing, or indicating the intention to pass, acts to extend the ambit of sharia law from personal laws to other civil matters and to criminal law.

Case law in sharia courts (at Sharia court of appeal levels, but sometimes also at the lower courts) has been supporting women's rights in the last decade at last. In *Fatimatu Hussein and Mahum*²¹, Fatimatu Hussein was granted a divorce because of beatings from Hussein. Although the beatings were severe, they did not amount to grievous bodily hurt in terms of the Penal Code's section 241. In Haja Kaka's case, cited above, her marriage was dissolved because her consent had not been sought, despite the common argument that fathers have an unqualified right to arrange the first marriages of young daughters in Maliki law. Several cases in the area courts in Yola have dissolved forced and early marriages, at least one specifically in order to permit the girl to continue with school (BAOBAB Outreach Team Yola / Centre for Women and Adolescent Empowerment Outreach Reports 1998 and 1999). Some recent Sharia court cases have found that the *khul'u* payment in divorce²² should not be more than the original value of the *mahr*²³ at marriage. For example, in *Babajo vs. Hassana*, the Sharia Appeal Court found that the maximum Hassana should pay her husband was the amount of the *mahr* she had received, which in this case was N100. The courts have also granted custody to mothers even after re-marriage to another man (usually held to terminate a divorced mother's custody). Similarly they have upheld women's claims to inherit real property (i.e. land), even where the original division took place many years before the claim was made (BAOBAB Legal Literacy leaflets and Women and Law Project).

A dramatic turn was taken with the announcement, first of Zamfara state and then of others, that sharia law was to be introduced. This statement is in part an exaggeration made for political purposes, since sharia law was already governing the personal lives of millions of people in Nigeria. But the manner of this Islamisation by the state has given rise to concern about the possibility of violating and restricting women's rights. There is a whole complex of interlocking reasons for this.

The common saying that 'Islam is a way of life' (as if Christianity or Hinduism were not for committed Christians or Hindus, for instance), helps to obscure the distinction between religious injunctions and society's laws. Religious injunctions can be left to Allah to punish, since Sunni Islam does not have a Church hierarchy. But the laws of a society, which may be based on religious beliefs, are only those rules which society enforces and punishes infringements of through mechanisms such as courts and police (see Imam 2000). However, because of this blurring frequently, especially where Islamisation is a state political initiative, vigilantes take the matters into their own hands and enforce their own ideas of what religious injunctions mean, as opposed to what

²¹ Sharia Court of Appeal, Borno - Case BOS/SCA/CB/93

²² This is a form of court-appointed divorce in which the wife need not give any reason for wishing for a divorce, but simply pays her husband a sum in compensation for her loss. Often husbands have requested very large amounts in order to prevent the divorce or be vindictive.

²³ This is the payment or gift that a groom gives to the bride at marriage. A marriage is not valid in Muslim law without the *mahr*.

the law says. And often the state is unable or unwilling to restrain them (as in Zamfara - in contrast to Kano state, where vigilantes have been warned not to take the law into their own hands²⁴).

Secondly, the ideas of such vigilantes, as is common with fundamentalist groups, are focussed on restrictive and controlling notions of how 'their' women should behave, demonising all other ways of being²⁵. The lack of clarity and precision with which most states have announced 'sharianisation', with no bills detailing the actual content of what these laws would be, has further contributed to the power of the vigilantes and conservative groups to enforce the medieval stereotypes of Muslim womanhood. Thus dress codes are being enforced on women. Women are being threatened with job losses. Women's freedom of movement is being challenged. There are fears that of more discrimination against women, compulsory early marriage, problems with transportation, health, political participation, and so on.

Buttressing and giving further substances to these fears are some of the actions of the Zamfara state government which, as the first state to declare sharia, has assumed great ideological significance. For instance, currently in Gusau there is a byelaw that prohibits Muslim women from taking motorcycle hires (*okada* or *achapa* in popular parlance). Women may take taxis and buses freely, but since there are also now designated *hijab* (women-only) taxis and buses, the implications are clear that women should not ride public transport in the company of men. Another example was the reported statement of the Chair of Talata Mafara local government in Zamfara State that all women who were not married should get married within three months, and non-married women would be sacked from jobs in the civil service. Women agreeing to marry would be provided with money. Therein were the implications that all non-married women were promiscuous at best, and prostitutes at worst. More recently the case of Bariya, referred to earlier, has raised the spectre of morality laws being applied not only heavy-handedly, but also particularly to the detriment of women. These initiatives do bring threats to women's rights and their access to justice.

However, at the same time, there are a few developments in Zamfara which are more positive for women. There is currently a draft bill that would make it obligatory for Muslim men to provide housing and maintenance for their divorced wives until such time as they re-marry²⁶, for instance. There is also greater insistence on the importance of education for girls and women. There are groups and individuals who are arguing that this is an opportunity to purge current Muslim laws of its misogyny (usually expressed as misunderstanding and backward traditions), and hence begin to recognise and enforce women's rights.

Other Issues and Initiatives

Several states have passed laws against prostitution - in part aimed at public morality, and in part claimed as protecting women (Kano and Kaduna states). In Edo there is now a law against trafficking in women, with a one million naira fine and/or 7-14 years imprisonment.

²⁴ Nonetheless, women in Kano continue to be harassed by vigilantes - over music at social ceremonies, over dress codes, over marital status, and over working outside the home. Many women are resisting this and refusing to conform to their demands, despite threats.

²⁵ There is a whole literature on fundamentalisms (religious and political) but see Imam 1991 for a quick outline on women and fundamentalisms and Imam 1997 regarding the Muslim religious right and sexuality.

²⁶ Interview with Governor Sani Yerima of Zamfara State, Gusau, November 23, 2000

Kebbi, Bauchi and Jigawa states have laws against girls hawking, which are supposed to encourage girls' education and protect them from sexual harassment. However, in the absence of free and compulsory education - with meals provided - it is a moot point as to whether these laws aid or further marginalise the girls whose interests they are supposed to protect.

A bill on integrating married women to their husbands' state (to permit wives to claim both their own and husband's state of origin) is currently at the National Assembly. This is aimed at the current discrimination against women in political possibilities and jobs when because of marriage they do not live in their 'states of origin'.

The Federal Ministry for Women and Social Development has adopted a National Policy on Women that follows fairly closely the contours of the Beijing Platform for Action. Unfortunately, so far it seems to have very little by way of concrete initiatives, specific targets or funding and administrative/legislative backing behind it. A new monitoring committee, which includes civil society and NGO representation as well as government, is about to be inaugurated, which is supposed to monitor and support the implementation of Nigeria's international treaty obligations regarding women's rights.

Initiatives of Civil Society Organisations

Recognition of the initiatives of NGOs and other civil society organisations is important. Many of the recent and current executive and legislative reforms are based on the pre-existing work of NGOs. It is most frequently civil society (and in particular the NGOs for women's rights and interests in this context) who criticise existing injustices and therefore raise the issues, stimulate the debates, do or provoke the research and draft the initial policies. This is acknowledged by a number of the sponsors of bills (see, for instance, the interview with Representative Janet Adeyemi²⁷).

Legislative Advocacy

Current initiatives from civil society organisations include a bill against domestic violence drafted by CIRDOC (Civil Research and Resources Documentation Centre) and being campaigned for by women's rights NGOs in 6 states within the east of Nigeria. This draft bill is now before the state houses of assembly in Enugu, Anambra and Ebonyi states.

LEDAP (Legal Defence and Assistance Project) has also produced a draft bill on Domestic Violence.

IHLRG (the International Human Rights Law Group) is working with a focus group of NGOs working on legislative advocacy and gender rights is one of the issues they are taking up, with a view to achieving co-ordinated efforts.

BAOBAB for Women's Human Rights and HURI-Laws (the Human Rights Law Service) are planning to co-operate on a domestic violence project with three components: public interest litigation to establish precedents in case law; legislative advocacy for better legislation at state and

²⁷ **Legislative Mandate** March 2000 2:1 pp. 35-38

federal levels; and, social advocacy against violence against women to ensure that legal protections will be both passed and made use of

Judicial System

Several NGOs have been working with the judicial system and/or the National Human Rights Commission to undertake training in human rights law for judges and magistrates (in particular CLO and LEDAP). There is also an initiative from the Red Cross on this. BAOBAB has been proposing, with LEDAP, to integrate training on human rights concerns with gender-awareness and women's legal rights.

The Police

A number of NGOs, in particular CLEEN, have been trying to work with the police, to improve their human rights knowledge and practice. BAOBAB and GADA have been focussing on gender sensitisation and response to domestic violence. USAID are interested in supporting this.

Social Advocacy

Most women's rights NGOs have projects and work in this area.

6. Opportunities and Recommendations

Opportunities

Nigeria's transition from military and authoritarian rule is still relatively recent. The willingness to acknowledge a need for re-orientation and training in preparation for a participatory democracy which respects human rights is still strong - the police at high levels have several times acknowledged their need for this, for instance. This willingness is the major opportunity at present.

In particular, this is the moment to ensure that, in addition to women specific projects, all training and other programmes are gender aware and take account of women's needs, interests and situations as well as men's. Integrating gender awareness to all training and materials is crucial. Given the patriarchal nature of Nigerian cultures virtually all the authority figures and mediators in dispute resolution are male (from family head to religious authority to chief or emir to magistrate and chief justice). Like all of us, they will have been steeped in male-dominant ideology from the earliest moments of socialisation, and (unlike 50% of us) also enjoying male-privilege (if no other) all their lives. For most people it takes both willingness to be open-minded and specific gender-awareness training and gender analysis to appreciate all the androcentric biases in law and in society.

The second opportunity to seize is to widen the narrow chink of potential for constructing Muslim laws in Nigeria so that women's rights are recognised and respected. If the religious right and vigilantes succeed in dominating the debate and defining the terms of discourse, that will directly narrow the rights of the over fifteen million women and girls who are Muslim. But it will also have a knock-on effect on the rights' struggle and access to justice of non-Muslim women. However, this is a task that needs to be delicately done. It must be clear that the motivators of those in the forefront and the ownership of the moves to open up the debate are Muslim, otherwise it will simply be discredited and make things more difficult. At the same time, it must not be seen as only the affair of

Muslims or the political arena will become even more fractured and divided.

Specific Recommendations

Regarding Discrimination in Laws

Statutory and Common Law (and Administrative Regulations and Practices)

- Support for a commission to identify the myriad laws, administrative regulations, policies and practices that discriminate against women, and to draft non-discriminatory alternatives. There have been initiatives like this before, but both times the drafts have not made it into public debate, nor into legislation. This may be related to the fact that both were government initiatives - perhaps it would be useful for this to be a civil society moderated initiative, with government representation.
- Support for the campaigns for the domestication of CEDAW and similar other treaties. This will enable legal claims in court to be made for women's rights. There is already an NGO coalition on CEDAW (co-ordinated by BAOBAB). There is also a new National Consultative and Coordinating Committee for the Advancement of Women (NCCCAW) just inaugurated (Monday December 4) by the Federal Ministry of Women's Affairs, which has the implementation of Nigeria's treaty obligation regarding women as its *raison d'être*.
- Support for strategic interest litigation on women's rights issues. Several NGOs are working on this - BAOBAB and Huri-Laws have a joint project; Shelter Rights Initiative and Constitutional Rights Project also
- Support for initiatives on protecting women's rights in Muslim laws
Such initiatives could include:
the activities of the NGO Coalition for the Protection of Women's Rights;
BAOBAB's bridge-building meetings of Muslim and non-Muslim women's rights activists;
round-tables and public debates with scholars, theologians, lawyers and women's rights activists from all over the Muslim world;
publishing collections of Quranic verses, hadith, and laws supporting women's rights;
encouraging feminist constructions of Muslim laws.
Making available to people information about different Muslim laws from different countries to establishing that these laws are historical constructions. Also developing the possibility of citing progressive case-law from other countries.
Pushing for more women in committees established to define and construct state sharia laws and monitor sharia implementation
- Examine at the federal level, the issue of where appeals from the lower Sharia courts will be heard

Regarding Women's Personal Security

- Support for the campaigners for domestic violence and related legislation. These already include the Centre for Resources Development and Documentation (CIRDDOC), the Women's Action Collective (WACOL), BAOBAB, the group of NGOs working with the International Human Rights Law Group.
- Support for strategic interest litigation on violence against women. The Huri-Laws-BAOBAB planned joint project also covers this.
- Support for advocacy against violence and to encourage women to report violence and use

provisions for their safety

Many women's NGOs work on this - in particular Project Alert focuses on violence against women. It is also part of the BAOBAB-Huri-Laws project.

- Establishment of drop-in centres, shelters and safe houses for women
So far as we know, there are no shelters and safe houses in Nigeria. A number of NGOs (in particular WACOL) have been working on *ad hoc* places of safety, with a view to developing full shelters, as well as drop in centres (the Centre for Women and Adolescent Empowerment in Yola also).
- Training for the judiciary and the police force
They, like most of Nigerian society, tend to hold the view that some violence is desirable otherwise wives get insolent. This is reflected in the way that they treat complaints. Training is needed to counter this view and develop alternatives.
- Establishment of protocols for the administration of complaints of violence against women
In this way even where gender awareness training has not resulted in changes in hearts and minds, there will at least be a set procedure against which treatment of complaints can be monitored and measured.
- Develop monitoring mechanisms and record-keeping for complaints
- Training for professionals and volunteers in counselling skills
- this includes both police and civil society.
- Special units in police stations to deal with gender-based violence and sexual assaults, with specialised training for staff therein
to enable complainants make complaints without suffering 'secondary victimisation' to make working in such units something of a cachet, (specialised training should be rewarded in pay terms)
- Special centres for medical examinations for survivors of abuse and assault,
to enable complainants make complaints without suffering 'secondary victimisation'
- 'Hard' data about the nature, extent and consequences of violence against women is needed. In the short term, the need for this information can be partially filled through: a victim survey; and, an annotated bibliography and review essay of the existing scattered data in many NGOs and universities, as well as UN and other institutions.
- Work towards introducing a special offences Act for offences involving violence against women and sexual assaults.

Regarding Access to Justice

- Support for women's legal literacy in both urban and rural areas
unless women know their legal rights, and have some idea about the mechanisms for enforcement and redress, they will not be able to exercise them in the face of opposition

Informal Mechanisms for Access to Justice

- Training for the religious leaders (imams, mallams and religious scholars), village heads and other 'traditional leaders', who are the authorities in the informal justice mechanisms.
This is particularly important since most women's disputes are settled via informal mechanisms and do not come to the formal justice system at all.
Possibilities will range from: one-on-one discussions with higher level chiefs and other leaders (via, for example, convincing them to chair a meeting or otherwise lend support - they would be unlikely to come to a specific training otherwise) to organising meetings for

lower-level leaders and chiefs. Such meetings need to be carefully balanced in their composition and planning, otherwise they can end up reinforcing gender stereotypes and lack of rights, rather than raising questions about them.

- Pushing for women to be nominated as 'Red Cap' Chiefs in the decision making cadre under the traditional system of southern Nigeria
- Working with the already established women's organisations and groups to empower women. For instance, the 'Umuada' and other such women's groups in most southeast traditional settings, are often the instruments through which many of the abuses of widows' human rights are carried out.

Formal Mechanisms of Law Enforcement and Judicial Administration

- Training for the police on gender awareness and issues, and human rights
These should be integrated and be a fundamental principle of training, so that they begin to form part of the taken for granted assumptions about police work. BAOBAB, GADA and NOPRIN have begun discussing this.
- Support for the improvement of the technical and other infrastructure of the police system - including reviewing previous plans and acquisitions
- Site courts near detention centres
this negates the need for transport, and should enable many cases to be treated faster
- Overhaul the state legal aid schemes (for instance the Federal Ministry of Women's Affairs claims it has a legal aid department for all women in need of legal advice).
- Training for the Judiciary from first instance sharia, customary and magistrates courts up. Most cases involving women are at these levels, so training here is crucial. This training to include gender awareness and women's rights issues. Training for customary court judges and for sharia court judges (alkali or area courts) will need to be substantively specific for each group, in addition to the general rights training.
- Support for the improvement of the technical and other infrastructure of the judicial system - including reviewing previous plans and acquisitions
For instance, it is rumoured that during the governorship of Brigadier-General Marwa stenography equipment for the courts in Lagos had been acquired, which is still not being used.
- Develop mechanisms and information about where and how to complain about irregularities in police work or other law and judicial administration. Publicity about the resolution of significant cases would also be important. Frequently it is not that people do not know that rights have been infringed, rather they do not know what to do about it - or do not trust that making complaints will be beneficial, rather than making matters worse for them.

7. List of Leading Civil Society Organisations working in the Area

BAOBAB for Women's Human Rights
232A Muri Okunola Street
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01 262-6267
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Civil Resources Development & Documentation Center (CIRRDOC)
Fourth Dimension Complex
16 Fifth Avenue, City Layout Enugu
042-459969
Nwankwov@infoweb.abs.net

Constitutional Rights Project (CRP)
5 Abiona Close, off Falolu Close, Ogunlana Drive, Surulere, Lagos
P.O. Box 4447 Surulere, Lagos
01 584-3041
01 584-8498
01-584-8571
crplagos@crp.org.ng

Gender and Development Action (GADA)
14 Adebola street, Surulere, Lagos
01 584-0371
gada@linkserve.com.ng
nkoyo_toyo@yahoo.com

The Human Rights Law Science (HURI LAWS)
Maritime Complex, 34 Creek Raod, Apapa, Lagos
01 587-6706
01 587-6876
huri-laws@alpha.linkserve.com

Legal Defence & Assistance Project (LEDAP)
3rd floor, Lamlat House, 270 Ikorodu Road, Anthony Village, Obanikoro Lagos,
P. O. Box 3319 Festac, Lagos
01 493-5680-1
01 470-9856
01 493-5681
ledap@hyperia.com

Legal Research, Resource and Development Center
(LRRDC)
386 Murtala Mohammed Way, Yaba, Lagos

P. O Box 75242, Victoria Island
01 288-0694, 862097, 610450
lrrdc@alpha.linkserve.com

Project Alert
1 Afolabi Aina Street, Off Allen Avenue, Ikeja, Lagos
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Ikeja, Lagos
01 493-5339
Prokert@prokert.org

Women's Health Organisation of Nigeria (WHON)
LOFOM House
21, Mobolaji Bank Anthony Way, Maryland, Lagos
PMB 21178
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01 493-7937
01 493-7937
whon@infoweb.abs.net

Women's Action Coalition (WACOL)
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New Haven,
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wacol@alpha.linkserve.com

Women's Rights Advancement and Protection Alternative (WRAPA)
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Prisoners' Rehabilitation and Welfare Centre (PRAWA)
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Centre for Law Enforcement Education (CLEEN)
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