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Gender Equality and Sustainable Development: Evaluating the Effectiveness of Nigerian Laws and Practices to Guarantee the Woman's Human Right

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In light of the prevalence of discriminatory practices and violence against women, gender equality has been internationally recognized as one of the sustainable development goals to be achieved by state parties before the year 2030. However, achieving equality between men and women has been the greatest human right issue in Nigeria. The main aim of this article is to show that women are important in promoting sustainable development. However there are provisions of the Nigerian law which discriminate against a woman. This article argues that sections 221, 353, 357 and 360 of the Criminal Code and sections 55, 282(2) of the Penal Code discriminate against a girl or woman. In addition, although Nigeria is a party to a number of international treaties such as CEDAW, gender discrimination remains a major threat to sustainable development. The limited number of women appointed in the senate shows the extent of marginalization of women in Nigeria. For example, the United Nations rating of Nigeria in human development is low due to the fact that the percentage of seats held by women in parliament is so minimal compared to the men. Therefore the findings of this article are to assist policymakers in enforcing sustainable practices that promote gender equality by among other things, amending the relevant provisions of the criminal code and the penal code which discriminates against a female in Nigeria. Finally, to reconsider bringing back the gender equality bill that was rejected for second reading in 2015 at the floor of the senate.

Keywords: Gender equality, discrimination, sustainable development, human rights

1. INTRODUCTION

Gender equality is key to sustainable development.¹ In 2015, the United Nations General Assembly (UNGA) set out a 2030 Agenda sustainable development goals. Seventeen sustainable development goals were listed in the Agenda. Gender equality is one of the fifth goals expected to be achieved by all countries. The goal obligates state parties to ‘achieve equality and empower women and girls’² In other words attaining gender equality by empowering women and girls is essential to sustainable development.³ The concept of sustainable development was made popular by the Brundtland Commission in 1980. During this year, the United Nations (UN) established the Commission on Environment and Development, named the Brundtland Commission. The commission in its report defined sustainable development as ‘development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs.’⁴ The United Nations divided sustainable development into three pillars which are social, economic and environmental aspects.⁵ Gender equality is important in achieving these three pillars of sustainable development.⁶

¹ UNGA, Transforming our World: The 2030 Agenda for Sustainable Development (UN Doc A/RES/70/1, 21 October 2015) <<https://www.refworld.org/docid/57b6e3e44.html>> accessed 29 November 2019.

² ibid 14.

³ Ibid.

⁴ UN, Report of the World Commission on Environment and Development: Our Common Future (Transmitted to the General Assembly as an Annex to Document A/42/427 - Development and International Cooperation: Environment). <https://sswm.info/sites/default/files/reference_attachments/UN%20WCED%201987%20Brundtland%20Report.pdf> accessed 29 November 2019.

⁵ Ben Purvis, Yong Mao and Darren Robinson, ‘Three Pillars of Sustainability: In Search of Conceptual Origins’ (2018) 14 SCI 681-695.

⁶ Candice Stevens, ‘Are Women the Key to Sustainable Development?’ (2010) SDI <<https://www.bu.edu/pardee/files/2010/04/UNsdkp003-fsingle.pdf>> accessed 29 November 2019. See also Damilola Olawuyi, ‘Gender, Indigeneity and the Search for Environmental Justice in Post-Colonial Africa’, in Carmen Gonzalez, Sara Seck and Sumudu Attapatu (eds) Cambridge Handbook of Environment Justice and Sustainable Development (Cambridge University Press, 2021).

Gender inequality or discrimination against women is a major issue in Nigeria. The prevalence of traditional and cultural practices which discriminate against a woman has a negative effect on development. Harmful cultural practices such as female genital mutilation (FGM), child marriage and forced marriage are particularly demeaning to a society. These practices have a devastating effect on the growth of the girl child. For example, FGM which is female genital cutting and sometimes referred to as female circumcision can destroy the genital organs of a woman. Such cultural practices which affect the health of women in society will have a considerable impact on development as a whole. On account of all the challenges women face as a result of their sex, the United Nations declared gender equality a sustainable development goal. Lack of education has been discovered to be a major cause of gender inequality, which in effect hinders development. The World Bank in its report has stated that most developing countries manifest gender inequality in education, employment and health sector.⁷ More women are denied education, especially in developing countries. This is because families, which cannot send all their children to school, prefer to send the boys rather than the girls to school. The boys are seen as superior to the girls. Statistics presented by the United Nations shows that thirty-one female million children are not in school and seventeen million may never see a school wall. In addition, the statistics further confirmed that '774 million illiterate people in the world are female.'⁸ Especially in developing countries such as Nigeria, some women between the ages of 15-24 have never completed the elementary level of schooling.⁹ Without this elementary school, they cannot possess the skills to work. Proper education creates better employment opportunities. When

⁷ Klasen Stephan, 'Does Gender Inequality Reduce Growth and Development: Evidence from Cross-Country Regressions (1999) 1 <<http://documents.worldbank.org/curated/en/612001468741378860/Does-gender-inequality-reduce-growth-and-development-evidence-from-cross-country-regressions>>accessed 29 November 2019.

⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO), Girls Education- the Facts (Fact Sheet2013) <<https://en.unesco.org/gem-report/sites/gem-report/files/girls-factsheet-en.pdf>> accessed 30 November 2019.

⁹ ibid.

women do not have the required education, they may not know how to enforce their human rights. Educated women most often are able to fight discrimination and cultural beliefs that are violations of their rights as women. In Nigeria children who cannot go to school are married at an early age, thereby putting the unborn child at risk of dying. In other to reduce birth and mortality rates, girl education is an important factor for development. As a result, gender inequality in girl education has shown to have an impact on investments. According to the World Bank estimates South Asia and Sub-Saharan Africa would have recorded an increase in economic growth if there had been a gender balance in their educational system.¹⁰ Similarly, ‘gender inequality in employment in South Asia and Sub-Saharan Africa may have reduced growth by another 0.3%, compared to East Asia.’¹¹

Previous debates have focused more on the discriminatory and harmful practices against women but few researchers have examined the discriminatory provisions of the criminal code and penal code against girls or women. Although the recent debates in Nigeria protest the illegality and unconstitutionality of some discriminatory provisions of the criminal code and the penal code against girls or women,¹² this study shows that even the constitution is not comprehensive enough to guarantee the rights of the woman. This article presents an overview of the current state of the Nigerian legislation with regards to gender equality. Enacting effective legislation and policies to eliminate gender inequality or discrimination are essential tools in sustainable development. However one cannot depend on the legislation alone to eliminate gender inequality, nevertheless legislation provides a solid foundation for achieving gender equality in Nigeria.¹³ Therefore, this article presents the idea that sustainable development can only be attained if there are effective legislation and policies to protect Nigerian woman from gender inequality. In this context, this article tried to

¹⁰ Stephan (n 6) 23.

¹¹ ibid.

¹² ‘Women Group Sues FG Over Discriminatory Provisions of Criminal and Penal Code’ Premium Times (7 November 2019).

¹³ International Labour Organisation(ILO), Ending Child Labour by 2025: A Review of Policies and Programmes (Geneva 2017)

identify key provisions of the criminal code and penal code that are quite discriminatory. Such discriminatory provisions eventually serve as a barrier to sustainable development.

The rest of this article is structured as follows: section two establishes the connection between gender equality and sustainable development. Section three examines the key gaps in Nigeria's legal, political and social sectors that engender various discriminatory practices and hinder development. In addition, it considers some provisions of the Nigerian Legislations that discriminate against the women. Section four provides a number of recommendations that may empower policymakers in protecting the rights of a girl or woman in Nigeria. Section five sets out the conclusions.

2. THE CONCEPT OF GENDER EQUALITY TO SUSTAINABLE DEVELOPMENT IN INTERNATIONAL LAW

Although it has been argued by writers that there is no link between gender equality and development, however, this does not mean that no links in fact exist.¹⁴ The relationship between gender equality and development is based on the basic principle that "no society can develop – economically, politically, or socially when half of its population is marginalized."¹⁵

The growth of any state depends on the concerted efforts of both male and female to bring about change and advancement. No society can exist without the people living in it. Therefore each gender has its own input in the economic development of a state. It has also been argued by some writers that sustainable development is not law-related,

¹⁴ Oriana Bandiera and Ashwini Natraj, 'Does Gender Inequality Hinder Development and Economic Growth? Evidence and Policy Implications,' (2013) Policy Research Working Paper 6369<<https://openknowledge.worldbank.org/handle/10986/13170>>accessed 10 August 2019.

¹⁵ Mary Robinson, Amina Mohammed and Christiana Figueres 'Gender Equality and Earth's Future' (Project Syndicate 9 March 2015)

although it may lead to the development of law.¹⁶ This may be because sustainable development is often related to environmental or economic development. However, sustainable development can influence the contents of government policies such as policies that give equal opportunities to both sexes. The law is, therefore, a necessary tool in achieving sustainable development.

The international community have in recent times recognised the importance of women in sustainable development. Women empowerment is the key to sustainable development. In other words protecting the human right of the girl child and women will in effect promote sustainable development.¹⁷ Furthermore, researchers have identified gender equality as a prerequisite to sustainable development. In a study on gender equality as a prerequisite for sustainable development, the writer identified the need to view gender equality as a path towards reaching sustainability.¹⁸ Melissa Leach in her book on Gender and Sustainable Development argued that there can be no sustainable development without the inclusion of women capabilities.¹⁹ The role of women particularly in the society enhance development. This is because women are producers, consumers and caretakers of the family. In Africa women are the major producers of food. They are involved in farming activities which is a way to provide food for their household. They ensure that their families are well catered for. Many communities depend on the handiwork of a woman. In essence women are essential to the survival of any society. Therefore if women play such essential roles in the community, marginalizing them through gender discrimination and inequality will in effect lead to

¹⁶ Virginie Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23(2) EJIL<<https://academic.oup.com/ejil/article/23/2/377/487236>> accessed 10 August 2019.

¹⁷ UN, Goal 5: Achieve Gender Equality and Empower all Women and Girls <<https://www.un.org/sustainabledevelopment/gender-equality/>> accessed 29 November 2019.

¹⁸ Gerd Johnsson-Latham, 'A Study on Gender Equality as a Prerequisite for Sustainable Development' (Report to the Environment Advisory Council, Sweden 2007:2) 68.

¹⁹ Melissa Leach, *Gender Equality and Sustainable Development*, (1st edn, NY: Research and Data Section of UN Women 2014) 136.

unsustainability. It is no wonder the international community have included gender equality as one of the sustainable development goals and places gender equality side by side with empowerment of all women and girls. The United Nations has described linking gender equality and sustainable development as moral and ethical.²⁰ Therefore the current research focus points to a synergy between gender equality and sustainable development.²¹ As a result, this article will consider factors that seem to break that synergy, thereby leading to unsustainability. As the factors that prevent sustainable development and gender equality seem to be interrelated.²²

According to the Brundtland Commission, sustainable development is a development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs.²³ It is a process that promotes growth in every sector of a state. It is ‘a tool enabling people to reach the highest level of their ability, through granting freedom of action, i.e., freedom of economic, social and family actions, etc.’²⁴ It provides a sustainable environment.²⁵

The Rome Statute of the International Criminal Court has defined gender as ‘two sexes, male and female, within the context of society’.²⁶ While the United Nations Entity for Gender Equality and the Empowerment of Women defines gender equality as ‘equal rights, responsibilities and opportunities of women and men and girls and

²⁰ UN-Women, World Survey on the Role of Women in Development: Gender Equality and Sustainable Development (UN, New York, 2014) 7, 12.

²¹ Ibid.

²² ibid 11.

²³ Report of the World Commission on Environment and Development (n 4).

²⁴ Society for International Development Israel Branch (SID Israel), What Is Development (11 March 2018) <<https://www.sid-israel.org/en/Development-Issues/What-is-Development>> accessed 10 August 2019.

²⁵ Damilola Olawuyi, *Principles of Nigerian Environmental Law* (Afe Babalola University Press, 2015) 72-77.

²⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) art 7(3); Adolphe Jane and Robert Fastiggi, ‘Gender (in International Law)’ <<https://icofl.org/fact/gender-in-international-law-2/>> accessed 10 August 2019.

boys.²⁷ Gender Equality, therefore, involves equal rights and opportunities for both men and women. It means that ‘women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections.’²⁸ Furthermore, the rule of equality is well outlined in the Universal Declaration of Human Rights where Article 1 state: ‘All human beings are born free and equal in dignity and rights.’²⁹ Also, the preamble to the United Nations Charter reaffirmed its faith in the ‘fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.’ In essence, the fundamental principle of international law is the equality of both men and women. As a result of this gender equality is a need necessary for the empowerment of the woman. Sustainable development depends on the promotion of gender equality and the eradication of gender discrimination towards women. Women are the building block of the society and thus no development can exist in an imbalanced society. Promoting gender equality will eventually enhance development.

3. THE GENDER EQUALITY STATUS OF WOMEN IN NIGERIA

Gender inequality also referred to as gender discrimination can be described as any circumstances where certain rights and privileges are accorded a person or denied a person on the basis of sex which may have as a binding force of law or be a practice judicially noticed.³⁰ The practice of making use of the gender of a person as a determinant factor before conferring a benefit on someone is discriminatory. Discrimination can take various forms. That is it can be found in different sectors, for example, the educational

²⁷ United Nations Entity for Gender Equality and the Empowerment of Women, Concepts and Definitions (2004)<<https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>> accessed 10 August 2019.

²⁸ Roger Lemoyne, ‘Promoting Gender Equality: An Equity-Focused Approach to Programming’ 1 <https://www.unicef.org/gender/files/Overarching_2Pager_Web.pdf> accessed 10 November 2019.

²⁹ United Nations Entity for Gender Equality (n 27).

³⁰ Black’s Law Dictionary 8th Edition.

sector, employment sector, marital sector, religious sector etc. Discrimination on the basis of sex is a serious issue even in the international community which seeks to prevent any form of discrimination. Gender discrimination is against the principles of human rights. Achieving equality between man and women and eliminating all forms of discrimination especially against women, is at the very heart of international human rights.³¹

The history of gender equality in Nigeria can be traced to its patriarchal system. Nigeria is a society highly dominated by men. The traditional system in Nigeria relegates women to the background. The Nigerian courts have constantly declared customary law practices that discriminate against women for instance in custody issues, inheritance rights etc as repugnant to natural justice, equity and good conscience.³² However, despite the prohibition of discriminative inheritance practices, women are still not regarded as equal to men in Nigeria. It is necessary to examine some of the discriminatory practices that challenge the rights of a woman in Nigeria.

3.1 Gender discriminatory practices under Customary Law

Nigeria is governed by a tripartite legal system. It still maintained this system despite the introduction of the common law. In 2004, the United Nations stated in one of its meetings that a tripartite system of government hinders progress in attaining gender equality in Nigeria.³³ As a result, common law does not apply to customary and Islamic laws. Nigeria, therefore, practices a three-tier system of marriage law. Gender discriminatory practices are very common under customary law in Nigeria. Traditional cultural

³¹ UN Office of the High Commissioner for Human Rights (OHCHR) Women's Rights are Human Rights (UN Doc HR/PUB/14/2 2014) <<https://www.refworld.org/docid/5566cf14.html>> accessed 11 August 2019; <<https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>accessed 10 August 2019.

³² Timothy v Oforka (2008) All FWLR (Pt.413) 1370, 1381 – 1382; Ukeje v Ukeje (2014) 11 NWLR (pt. 1418) 384 at 408.

³³ UN, Tripartite Legal System Hinders Progress Towards Gender Equality in Nigeria (637th and 638th United Nations Committee Meeting Coverage and Press Release WOM/1427, 20 January 2004)

practices and beliefs in Nigeria reflect gender bias against women for instance in custody battles. This is particularly true, despite the principle of law which states that in cases of custody, the welfare of the child should be taken into consideration. However, cultural practices seem to have overridden judicial pronouncement. The practice in most system of customary law in Nigeria acknowledges the father as possessing the absolute right to the custody of a child, whether legitimate or illegitimate. However customary law recognizes that such absolute right will not be considered where it affects the general wellbeing of the child.³⁴ Therefore the courts have stated in *Okwueze v. Okwueze* that 'The only proper manner in which the custody of a child under customary law can be determined is by specifically taking evidence to establish what is in the best interest and welfare of the child.'³⁵ Similarly, the position of the law has often cited by Nigerian courts, have been clearly stated by E. I Nwogugu in his book on Family law:

Under most Customary law systems in Nigeria, the belief is that the father has absolute right to the custody of his legitimate or legitimated child. Upon his death the male head of the father's family is vested with the right although the day to day care of the children may be the responsibility of the mother. However, customary law also recognizes that the father's absolute right will not be enforced where it is not solely in favour of the interest and welfare of the Child. For instance, where the child is of tender age, customary law requires that it should be left under the care of the mother. In such a case the father's right is merely in abeyance, and may be exercised when the child could safely be separated from the mother.

In other words, the general practice by the customary courts in cases of ancillary relief is to, first of all, consider the

³⁴ *Okwueze v. Okwueze* (1989) NWLR (Pt.109) 321, per Uwais JSC 12 paras A-C.

³⁵ *ibid* 14 paras A-B.

wellbeing of the child. The child welfare principle has now become the standard in awarding custody to either parent. Despite the efforts by the courts to award custody based on the welfare principle, the practice of transferring custodial rights to the father remains in Nigeria. This practice is even found among parents of statutory marriage. It is not uncommon for relatives of the husbands to demand the custody of a child where the husband is deceased. A woman who does not know her right will readily conform to their demands and give up the child in the name of customs. This gender discrimination in custody issues is so much imbibed in our system that Margaret C. Onokah, in the book she wrote on Family Law adequately describes the situation:

Under customary law, a father has exclusive custodial right over the children of his marriage; the right extends beyond custody, to ‘ownership’ of the children. Thus his right has been described as capable of transmission to his family members. The general principle of Customary Law is that the mother’s lineage has no right to the child. The tendency is for the father to have exclusive custodial right of a father over the children of customary marriage. This rule of customary law hinged on the fact that most Nigerian communities are patrilineal by reason of which children belong to their father’s lineage

An attempt was made by the legislature to introduce a Gender and Equal Opportunities Bill in 2015. This bill would have banned harmful and inhumane cultural practices against women. It would have awarded automatic guardianship and custody to the mother at the death of her husband. Unfortunately, this bill never came to reality. Gender discrimination in custody matters still continues to be entrenched in our culture and even the judicial system has not been able to curb it. There is a need for parental awareness with regards to equal rights that are available to both parents in custody matters. A lot of women have created problems for themselves by accepting this patrilineal system and often times give up custody of their children. It is high time women are aware of their custodial right which is also equal to that of the man.

With regards to discriminatory practices in female inheritance, by virtue of Section 42(1) and (2) of the Nigerian constitution, the courts have declared any custom that prohibits a female from inheriting his late father's property as null and void. This position of law has been settled in the following cases Ukeje v. Ukeje³⁶, EmodiRtd& 2 Ors v. Nnaemeka FidelisEmodi³⁷, Mojekwu v. Mojekwu³⁸; Motoh v. Motoh.³⁹The provisions of the said section provide thus:

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

It can be argued that the above provision does not specifically address discriminatory customary practices against women. The accepted international policy measures obligate state parties to make 'laws and regulations, implement policies and change practices to eliminate

³⁶ Ukeje(n 19).

³⁷ CA/E/227/2014 unreported decision delivered on 17th April, 2015.

³⁸ (1997) 7 NWLR (pt. 512) 283.

³⁹ (2010) LPELR - 8643 CA.

discrimination against women⁴⁰ Such policy will require new legislation that deals specifically with harmful discriminatory practices against women. Unfortunately, the effort by the Nigerian government to introduce new legislation to promote gender equality failed in 2016 when a bill of Gender and Equal Opportunities was rejected by the senate. This clearly reflects the patriarchal cultural beliefs inherent in Nigerian men. Furthermore, the constitution does not address harmful practices against women such as Female genital mutilations, child marriage etc. Although the Jonathan administration in 2015 enacted a Federal law banning Female Genital Mutilations (FGM). According to reports only 13 countries out of 36 have outlawed FGM.⁴¹ Other laws are yet to adopt the federal law banning FGM. However, the general problem is always the issue of implementations of these laws. Despite the Federal law banning FGM cross border, FGM remains an avenue for practising FGM.

Child marriage is another concept which is widely practised mostly in the Northwest and Northeast part of Nigeria. Child marriage is a reflection of gender inequality. Girls are given away in marriage at an early age because girls are considered inferior to the boys. The minimum age for marriage under the Marriage Act is 21 years while the Child Rights Act 2003 places the minimum legal age of marriage at 18 years. In spite of existing laws, it is very common in Nigeria to see children married before the age of 15. According to UNICEF Nigeria has recorded a high number of child marriages over the years. Presently Nigeria ranks 11th highest prevalence in child marriage globally.⁴² Child marriage is particularly prevalent in the rural areas, because of the level of poverty present in those areas.

⁴⁰ International Women Development Agency,CEDAW at A Glance <<https://iwda.org.au/assets/files/CEDAW-at-a-Glance.pdf>> accessed 10 August 2019.

⁴¹ Emma Batha, 'Nigeria Urged to Fix Legal Mess Around Female Genital Mutilation' (Reuters ,London, 15 June 2018) <<https://www.reuters.com/article/us-nigeria-fgm-lawmaking/nigeria-urged-to-fix-legal-mess-around-female-genital-mutilation-idUSKBN1JB02Q>> accessed 10 August 2019.

⁴² Girls Not Bride, a global partnership of more than 1200 civil society organisations committed to ending child marriage and enabling girls to fulfill their potential <<https://www.girlsnotbrides.org/child-marriage/nigeria/>> accessed 10 August 2019.

Research by the World Bank in 2017 ‘estimates that child marriage costs Nigeria USD7.6 billion in lost earnings and productivity every year.’ This is definitely not good for a country that desires sustainable development. On the final analysis, the above practices prove that Nigerian woman is yet to achieve gender equality.

3.2 Gender Inequality in Nigeria’s Political system

In other to establish a balanced society, women should have equal representation as men in policymaking. According to the Rio Declaration on Environment and Development, 1992 full participation of women is necessary for achieving sustainable development.⁴³ However, in Nigeria, women are not well represented in the legislative process. Women represent less than 10 percent of political positions.⁴⁴ Political marginalization of women had existed since independence. In the first republic (1960- 1966), only two females out of 91 senators were elected to federal parliament.⁴⁵ Over the years few women continue to be appointed in the legislative arm of government. In fact, during the second republic (1979- 1983), no female was represented in the House of Assembly.⁴⁶ Gender discrimination in politics still exists to date. Presently in the National Assembly women occupy 7 out of 109 seats while in the House of Representative, women occupy 22 out of 360 seats. Similarly, in the ministerial appointment of 2019, seven women out of forty-three were appointed by the Buhari Administration. Sadly many considered this to be an improvement from the last appointment of cabinet members. Apparently, the United Nations Development Programme Human Development Reports ranks Nigeria low in human development because the gender Inequality index report

⁴³ The Rio Declaration on Environment and Development (United Nations Conference on Environment and Development 1992) principle 20.

⁴⁴ Godiya Allana, ‘Patriarchy and Gender Inequality in Nigeria: The Way Forward’ (2013) 9(17) ESJ 115.

⁴⁵ Bolanle Oluwakemi Eniola, ‘Gender Parity in Parliament: A Panacea for the Promotion and Protection of Women’s Rights in Nigeria’ (Frontiers in Sociology, 6 December 2018) <<https://www.frontiersin.org/articles/10.3389/fsoc.2018.00034/full>> accessed 10 August 2019.

⁴⁶ ibid.

shows a 5.8 percent share of seats in parliament held by women.⁴⁷This is quite alarming for a country that wants to experience sustainable development.

International treaties permit women to hold and be elected to public office. Article 7 of CEDAW provides that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Similarly, the participation of women in politics is also enshrined in Article 9(1) of the Protocol to the African Charter on Human and People's Rights on the rights of women in Africa. It provides that 'state parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that women participate without any discrimination in all elections.'

Nigeria is a signatory to these conventions and yet the gender imbalance in the Nigerian political life has not improved over the years. It has been argued by writers that international instruments are not domesticated or where they are domesticated they are not implemented in Nigeria due to the reason that women are not well represented in parliament.⁴⁸ Majority of the policymakers in Nigeria are

⁴⁷ United Nations Development Programme Human Development Reports (UNDP) Table 5: Gender Inequality Index <<http://hdr.undp.org/en/composite/GII>> accessed 30 November 2019.

⁴⁸ Gender Parity in Parliament (n 32).

men, who have developed the patriarchal mindset. As long as women are not equally involved in politics as men, the rights of the woman will always be at risk. Furthermore more it has been observed by some writers that the Bill for Gender Equality and Opportunity may have been rejected by the Nigerian Senate for the second reading in 2015 because women are not well represented in the senate.⁴⁹ The purpose of the law was to implement CEDAW and Protocol to the African Charter on Human and People's Rights on the Rights of women in Africa as well as the fundamental rights provided for in the constitution.⁵⁰ The law would have reserved at least 35% seat for women in political positions. Apparently, this did not go down well with the majority of the senators who voted the bill out on the basis of religion.⁵¹ This clearly shows the discrimination against women in policymaking in Nigeria. Equal participation of both men and women in politics is a necessary tool in achieving sustainable development

3.3 Legal barriers to gender equality in Nigeria

The provisions of the Nigerian law do not guarantee the rights of a woman. The penal code allows the use of force by the husband on the wife for the purpose of correction. Section 55(1d) of the penal code provides that 'Nothing is an offence which does not amount to grievous hurt upon a person and which is done by a husband for the purpose of correcting his wife such husband and wife being subject to any customary law in which the correction is recognized as lawful.' From this provision, beating a wife does not amount to grievous hurt. In other words, a man, who beats his wife for the purpose of correction, does so within the ambit of the law. This section clearly encourages domestic violence, which is the violation of the right of a woman, not to be subjected to torture or any inhumane or degrading

⁴⁹ ibid.

⁵⁰ Gender and Equal Opportunities Bill, (2016) <<http://www.placng.org/new/upload/GenderAndEqualOpportunitiesBill2016.pdf>> accessed 10 August 2019

⁵¹ Yomi Kazeem, 'Nigerian Lawmakers Voted Down a Women Equality Bill Citing the Bible and Sharia Law', (Quartz Africa , 15 March 2016).)

punishment.⁵² In addition, no violence against a person is justifiable, however light. Similarly, the criminal code discriminates against a woman in respect of punishments for unlawful assault. Section 353 of the Nigerian criminal code provides for a sentence of three years for anyone who unlawfully assaults a male while the sentence for anyone who assaults a woman or girl is placed at two years under section 360 of the criminal code. These provisions of the criminal code are discriminatory against a woman. Likewise, the right of a woman to say no to sexual intercourse within the confines of marriage is not recognised under the criminal code. Marital rape is therefore not regarded as an offence in Nigeria. According to Section 282(2) of the penal code, ‘Sexual intercourse by a man with his own wife is not rape if she has attained puberty.’ Also, sections 357 of the criminal code states that ‘Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.’ However, the new law, Violence Against Persons(VAP) (Prohibition) Act enacted in 2015 which has been applauded has a law which addresses all forms of violence in Nigeria does not mention marital rape as an offence. Furthermore, a man cannot be convicted for the offence of rape of a girl under the age of sixteen years old on the uncorroborated evidence of a witness under section 221 of the criminal code. This provision of the law often makes it difficult to secure a conviction against the said perpetrators of the Act. The incidence of rape is on the rise everyday because the perpetrators go unpunished. Minors are more victims of rape in Nigeria. Sustainable development cannot be attained in a country that encourages violence against a woman both in law and practice.

⁵² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 5 ; UNGA Res 2200A (XXI) (1948); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR);

From the above, it is believed that some of the provisions of the Nigerian Law do not meet international standards. The Convention on the Elimination of all forms of discrimination against women (CEDAW) is the most comprehensive international legal instruments on gender equality to which Nigeria is a party. And Article 2(a) of the convention provides that state parties are ‘To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.’ The provisions of the criminal code and penal code discussed above do not embody the principles of equality and inadequate to protect the rights of the woman.

Furthermore, international law obligates state parties to make laws and policies that protect the rights of women. According to the International Commission of Jurists,⁵³ this obligation includes: (1) Eradicating Inequalities and discriminations which manifests in laws, policies, legislations and cultural practices.(2) Protection of women who suffer from discriminations in the hands of ‘public authorities, the judiciary, organisations, enterprises or private individuals’ (3) Addressing discrimination and inequality such as biological, socially and culturally differences between women and men; ‘gender-based stereotypes, roles and norms; underrepresentation of women in key sectors and professions; and the unequal distribution of resources and power amongst men and women.’⁵⁴ To ensure compliance of these international obligations, one major step required of state parties is to domestic the international treaties. However it is not enough to domesticate or enact laws on gender equality, but it is necessary to also oversee its implementation. Laws that guarantee the women’s right should be ‘effective’ and ‘Fit for purpose’⁵⁵ In other words provisions that address the rights of a woman must be comprehensive and adequate to guarantee equality and

⁵³ ICJ, International Human Rights Law and Gender Equality and Non-discrimination Legislation: Requirements and Good Practices (ICJ Briefing Paper , 2014).

⁵⁴ *ibid* 4.

⁵⁵ ICJ Briefing Paper (n 54) 5.

freedom from discrimination. However, the Nigerian constitution even lacks a definition of discrimination and does not encompass full and appropriate provisions that ensure equality. The international standard definition of discrimination required of all state parties is those contained in Article 1 of CEDAW which states that: 'Discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' Equality provisions 'must extend beyond guaranteeing equality in law and before the law and should also guarantee equality in practice.'⁵⁶ But the situation in Nigeria is such that gender equality is not enforced in practice. The right to freedom from discrimination enshrined in the constitution is not comprehensive enough to protect the rights of the woman. While the issue of implementation of the laws has always constituted a major problem in Nigeria

Nigeria is a party to a number of international treaties applicable to women. They include the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), Optional Protocol on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of the Child (CRC), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) etc. However, despite the fact that all these international treaties have been domesticated in Nigeria gender discrimination remains a major problem in Nigeria. In addition, CEDAW provides that 'States parties must ensure that, through constitutional amendments.... the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status.'⁵⁷ There has been a

⁵⁶ ibid; CEDAW (adopted on 18 December 1979, entered into force 3 September 1981) art 2(a).

⁵⁷ UN Committee for the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (UN Doc CEDAW/C/GC/28,

consistent clamour over the years for the amendment of the constitution; this, therefore, calls for another major reason for a re-call for amendment.

4. MINDING THE GAPS: RECOMMENDATIONS

Gender equality is an accelerator of sustainable development. The aim of this study has been to establish with facts that the Nigerian legislation appears inadequate to guarantee equality in law and practice which may have a negative effect on development. Some of the provisions of the criminal code and penal code are discriminatory against the woman. In addition, this study shows that in spite of the number of international treaties ratified by the government, gender equality seems impracticable in Nigeria. Furthermore, the patrilineal system is so much entrenched in the Nigerian society, where men are majorly in control and women are largely excluded. This is further exhibited by the limited number of women appointed as members of the senate. A state where half of its citizens are marginalized cannot in any way experience growth or development. Therefore, gender equality must be considered a priority otherwise; the Nigeria society will remain marginalized. For this reason, the United Nations has made gender equality one of the sustainable goals to be achieved by 2030. The following recommendations are outlined for policymakers in Nigeria:

A. Promote practices that ensure gender equality and sustainable development

Nigeria government should ensure that both men and women enjoy ‘economic, social and cultural rights on the basis of equality.’⁵⁸ Sustainable development means both men and women have access to education and basic necessities of

para 31, 16 December 2010) <<https://www.refworld.org/docid/4d467ea72.html>> accessed 11 August 2019.

⁵⁸ UN Committee for Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (UN Doc E/C.12/2005/4 art 3 para 21, 11 August 2005) <<https://www.refworld.org/docid/43f3067ae.html>> accessed 10 August 2019.

life. Therefore the issue of child marriages should be taken seriously and prohibited in the northern parts of Nigeria. There should be legal sanctions for not only the men who engage in such practices but also parents who give their children away to be married at an early age. In addition, men and women should enjoy equal participation in decision making. More women should be elected to political positions in order to create a balanced society.

B. Abolishing existing laws and practices discriminating against women

In order to ensure gender equality in Nigeria, existing legislations, traditional and cultural practices that are discriminatory should be abolished.⁵⁹ Therefore the provisions of Sections 221,353, 357 and 360 of the Criminal Code and Section 55, 282(2) of the Penal Code Act which has been identified as discriminatory provisions should be removed. Also, the provisions of Section 55 of the penal code which encourages wife beating should be removed, while marital rape should be regarded as an offence under sections 282(2) of the penal code and section 357 of the criminal code. Furthermore, the punishment for unlawful assault should be equal for both men and women under Section 353 and 360 of the criminal code. Lastly, the uncorroborated evidence of a witness should not be the basis for dismissing a rape case under sections 221 of the criminal code. There are other ways to prove that a girl has been raped. For example forensic medical evidence. Lastly, Legislations on gender equality should exhibit a comprehensive prohibition of all forms of discrimination against women.⁶⁰ The above provisions of the law do not offer a comprehensive prohibition of discrimination against women.

⁵⁹ UN Committee for the Elimination of Discrimination against Women, General Recommendation on Women's Access to Justice (CEDAW, UN Doc CEDAW/C/GC/33, 23 July 2015) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf> accessed 30 November 2019.

⁶⁰ ICJ Briefing Paper (n 54) 6.

C. Strategic implementation and monitoring mechanism of gender equality laws.

Achieving gender equality does not stop at enacting gender equality laws. These laws must be put into effect through effective implementation and monitoring procedures. Policies should establish agencies and bodies that would be responsible for implementation of gender equality laws. In addition there should also exist a process for monitoring such implementation.⁶¹This could be possible by establishing a body responsible solely for ensuring compliance with gender equality legislation.

D. Appropriate remedies for victims of discrimination.

Remedies should provide reparations such as: ‘monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.’⁶²Furthermore, there should be appropriate sanctions for discriminatory practices against women and breach of gender equality laws. If there are no sanctions put in place laws and policies will not serve as a deterrent to others. Gender equality laws have been undermined in Nigeria because there are no effective sanctions. And even where there are sanctions, they are not enforced.⁶³

E. Advocating education on gender equality as a basis for sustainable development

There is a need to educate people on the importance of gender equality to sustainable development. A lot of women in Nigeria are ignorant of their right. Therefore, Training and workshops should be conducted especially in the rural areas in other to create more awareness on the woman rights with respect to property, custody, family health etc. Nigerian

⁶¹ ICJ Briefing Paper (n 54) 7.

⁶² UN General Recommendation No. 28 (n44) para32.

⁶³ ibid para 17 & 37(b)

government should reckon with the peculiar challenges women experience in the rural areas and therefore place more attention in fighting discrimination in those areas.

5. CONCLUSION

This article considered the importance of gender equality to sustainable development. It highlighted gender issues that are inimical to sustainable development in Nigeria. Sustainable development has been defined under international law development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Gender issues such as harmful and discriminatory practices which demonstrates gender inequality in no way meet the needs of the people. Furthermore this article has highlighted weaknesses in the Nigeria legislation that serves as legal barriers to gender equality. Thus Sections 221, 353, 357 and 360 of the Criminal Code and Section 55, 282(2) of the Penal Code Act are discriminatory provisions which fail to guarantee the human rights of a woman and therefore by no means promote sustainable development.