

CHAPTER TEN

CONCLUSION AND RECOMMENDATIONS

*[T]here is neither male nor female,
for ye are all one in Christ Jesus.
Galatians 3:28¹*

10.1 INTRODUCTION

This concluding chapter is divided into three parts. The first part deals with similarities between Nigeria and South Africa. The second part considers the differences in the legal position in Nigeria and South Africa. The third part offers recommendations for improving the status of women in both jurisdictions.

10.2 SIMILARITIES IN THE LEGAL PROTECTION ENHANCING GENDER EQUALITY IN NIGERIA AND SOUTH AFRICA

10.2.1 Historical background

Nigeria and South Africa have colonial histories. Both countries also have a history of oppression - apartheid in South Africa and military dictatorship in Nigeria. Due to historical factors, women in Northern Nigeria also have to contend with strict Islamic law. All these factors affect gender equality in both countries.

¹ *Holy Bible*. King James Version (1611).

10.2.2 Form of government

The political system in both countries is a constitutional democracy. Nigeria operates the presidential system of democracy and South Africa operates the parliamentary system of democracy. South Africa has a recent Constitution, which is progressive in light of lessons from apartheid. Nigeria and South Africa both have written Constitutions. The Constitutions of both countries contain Bills of Rights. South African Constitution is however more detailed and explicit. The equality clause in the South African Constitution is much wider than that of Nigeria. Unfair discrimination is prohibited not only on the basis of sex but also on the basis of gender, marital status, pregnancy, sexual orientation and birth. South African Constitution also contains clear provisions relating to affirmative action in order to redress the imbalances of the past. Women as a disadvantaged group stand to benefit from affirmative action provisions. In South Africa some acts such as the Employment Equity Act and Promotion of Equality and Prevention of Unfair Discrimination Act have been enacted in order to enhance the status of women and other disadvantaged groups.

10.2.3 Institutional framework

Both countries have agencies supporting human rights and democracy. In Nigeria, there are the Human Rights Commission and the National Commission for Women. Chapter nine of the South African Constitution provides for state institutions supporting democracy. These institutions are the Human Rights Commission, the Commission for Gender Equality, Public Protector, Auditor General, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Electoral Commission and Independent Authority to regulate broadcasting. Two of these institutions focus on the rights of women – the Commission for Gender Equality and the Human Rights Commission. The two institutions have played significant roles in enhancing women's rights in South Africa. The Human Rights Commission in Nigeria is presently involved with investigation of human rights abuses during past military

administrations in Nigeria. The National Commission for Women has also helped to to enhance the status of women in Nigeria.

10.2.4 Legal systems

Both countries have multiple legal systems within one country. In both jurisdictions, the received law is more prominent than African customary law. The sources of law in both countries are also similar. The court structures are also similar.

10.2.5 African customary law of intestate succession

African customary law is the law of the majority of the people in both Nigeria and South Africa. African customary law of intestate succession in both jurisdictions are the same. The applicable rule is the rule of primogeniture. Women married under the African customary law in both jurisdictions cannot inherit. Adverse widowhood practices also occur in both jurisdictions. However, the widowhood rites in Nigeria are more severe and more inhuman.

10.2.6 International legal context pertaining to women

Nigeria and South Africa have ratified a number of international human rights instruments aimed at enhancing the equality of women. Both countries have ratified CEDAW, ICCPR, CRC, and the African Charter on Human and Peoples' Rights. The African Charter on Human and Peoples' Rights is directly enforceable in Nigeria, as it has been incorporated into Nigerian law. In spite of the good intentions in ratifying various human rights instruments, implementation of obligations under the various instruments is problematic. Factors such as political, culture and illiteracy affect implementation.

10.2.7 Marriage laws

There are various forms of marriages in the two countries. The various forms of marriages are statutory marriages, customary marriages and religious marriages.² While the different forms of marriages are recognised in Nigeria, customary marriages have not been recognised in South Africa, until recently. The Recognition of Customary Marriages Act, which has just been passed into law, accorded recognition to customary marriages.

10.3 DIFFERENCES IN THE LEGAL PROTECTION ENHANCING GENDER EQUALITY IN NIGERIA AND SOUTH AFRICA

In spite of the few similarities enumerated above, several differences exist in the legal protection enhancing gender equality in Nigeria and South Africa. Some of the differences are now considered.

10.3.1 Constitutional provision of equality

The South African Constitution's provision on equality is more explicit and wider in scope than that of Nigeria. In South Africa unfair discrimination is not only prohibited on the basis of sex, but also on the basis of gender, pregnancy, marital status, ethnic or social origin, sexual orientation, age, disability, religion, conscience, belief, culture and language. The equality clause of the South African Constitution also applies horizontally, between natural persons. The South African Constitution also provides for affirmative action designed to protect or advance persons or categories of persons

² See the case of *Amod v Multilateral Motor Vehicle Accident Fund* 1999 (4) SA 1319 (SCA) where Islamic marriage is recognised as a form of marriage in South Africa.

disadvantaged by unfair discrimination. The wider protection afforded under the South African Constitution is due to a recent past characterised by inequality.

The equality clause under the Nigerian Constitution is not as wide as that of the South African Constitution. The Nigerian Constitution does not prohibit discrimination on the basis of gender, pregnancy, marital status and sexual orientation. Affirmative action policies are also not included in the equality clause. The fundamental human rights provisions of the Nigerian Constitution also do not apply horizontally.

10.3.2 Hierarchy of rights

The Nigerian Constitution divides human rights into fundamental objectives and fundamental rights. Fundamental objectives are not justiciable and are provided for under Chapter II of the Constitution. These objectives include socio-economic and cultural objectives. Chapter IV provides for fundamental human rights that are fully justiciable. The Nigerian position affords better protection to civil and political rights than socio-economic rights. This is in conflict with the widely agreed upon consensus that all human rights are interdependent, interrelated and indivisible.

The South African Constitution provides for civil and political rights and socio-economic rights in one Chapter. While some of the rights are fully justiciable, the state is only required to provide progressive realisation within its available resources to ensure the realisation of some socio-economic rights such as housing and health.³

The South African position is preferred. Socio-economic rights are equally as important as civil and political rights. Socio-economic rights are particularly important for women, as they make up a disproportionate percentage of poor people in both Nigeria and South Africa.

³ See Chapter 5 above.

10.3.3 Children's rights

The Nigerian Constitution does not provide for children's rights. Both Nigeria and South Africa have ratified the UN Convention on the Rights of the Child (CRC). South Africa Constitution also provides for children's rights. This is important, as most of the discrimination against women start from childhood. South Africa has also ratified the African Charter on the Rights and Welfare of the Child. This is a very important Charter at the regional level. It provides for additional rights for the African child over and above the UN CRC. Nigeria is yet to ratify the African Charter on the Rights and Welfare of the Child. The Nigerian Constitution also does not provide for children's rights.

10.3.4 Reproductive rights

The Nigerian Constitution does not provide for reproductive rights. The South African Constitution provides for the right of a person to bodily and psychological integrity, which includes the rights to make decisions concerning reproduction, and to security in and control over his or her body.

Family planning is widely understood to include the right to abortion. Abortion is illegal in Nigeria, except in the limited cases of saving a woman's life. The vast majority of people who want abortion still resort to illegal abortions, thereby endangering their lives. Abortion is recognised by statute in South Africa. This is commendable as persons requiring abortion are able to obtain safe abortions. South Africa also provides free medical and dental care services for all pregnant women. These free services are not available in Nigeria.

Female genital mutilation is still practised in Nigeria, while the practice is almost extinct in South Africa. Education is the key to the eradication of FGM. Some states in Nigeria are legislating against FGM. This is commendable but legislation must be combined with education. People should be educated on the hazards of FGM. Legislation alone is not enough as this can easily drive the practice underground.

10.3.5 Women and politics

The Constitutions of both countries provide for the political rights of women. Under the Nigerian Constitution political rights are provided for as part of the right to peaceful assembly and association, combined with the right to join trade union or any other association. Under the South African Constitution, however, political rights are provided for as separate rights. Political right in South Africa includes the right to make political choices, to join political parties, to vote and be voted for. The right to free, fair and regular elections is provided for.

There are more women in politics in South Africa. The participation of women in politics in Nigeria is not visible. Although only the African National Congress (ANC) reserved 30 per cent of political posts for women, other South African Political parties also have substantial number of women on their party lists.

10.3.6 Law relating to violence against women

Violence against women exists in both jurisdictions. In South Africa laws have been enacted to criminalise various forms of violence against women, thereby attempting to overcome the public/private dichotomy in law. Domestic violence is now a specified crime in South Africa. Marital rape has also been criminalised by way of legislation. The cautionary rule has been abolished as a general rule in rape cases in South Africa. All these legal provisions enhance the realisation of gender equality.

In Nigeria, women are still violated by their partners without being punished. There are no law specifically dealing with violence against women in Nigeria. The general law of assault applies when violence is committed against women by their partners. Section 55 of the Penal Code permits husbands to reasonably chastise their wives. Marital rape is also not criminalised in Nigeria, and corroboration is still required in rape cases.

10.3.7 Social security

Poverty and unemployment is high in both jurisdictions. South Africa has a limited social security system – old age pension, disability allowance and child welfare are paid in South Africa. Nigeria has no social security system. The government in Nigeria is not committed to improving the welfare of its citizenry, in particular women. The attitude of the Nigerian government is that all citizens must fend for themselves, even though this is not possible, given the harsh economic conditions prevailing in the country.

It is suggested that the Nigerian government should take the welfare of its citizens more seriously by providing for social security systems. In both jurisdictions, unemployment grants are not paid. South Africa has a limited unemployment scheme under the Unemployment Insurance Act. Strictly speaking, this is not an unemployment scheme because it is contributory. This fund is payable only to women who have just delivered babies and have contributed to the fund.

10.3.8 HIV and AIDS

The incidence of HIV and AIDS has reached epidemic proportions in Africa. It is estimated that 10 per cent of the total population in South Africa have HIV/AIDS. The attitude of the South African government to HIV/AIDS is not encouraging. Instead of looking for means of combating the disease, the government has been involved in causal debates, emphasising that HIV is not the only cause of AIDS in spite of the fact that HIV is universally accepted as the cause of AIDS.

The incidence of HIV/AIDS in Nigeria is very low compared to South Africa. This could be as a result of the fact that it is under-reported. Presently, the Nigerian government has not demonstrated an intention to curtail the spread of the disease

The South African example of discussing sex, HIV, AIDS and other sexually transmitted diseases should be emulated. People, especially adolescents, should be encouraged to

talk about sex. Nigeria is a very conservative society (in particular the Muslim population) and prefers to pretend that the youth are not promiscuous. The truth is that they are. Nigeria has the highest incidence of teenage pregnancy in the world.⁴ The government owes a duty to its youth. Youth should be educated on practising safe sex. The “ABC” currently being promoted in South Africa is to be commended and should be emulated by Nigerian youths. “ABC” stands for Abstain, Be faithful (if you cannot abstain) and Condomise (use a condom) if you must have sex.

Women should be educated to practice safe sex by demanding that husbands (especially those in polygamous relationships) wear condoms.

In terms of law, South African women are better protected than their Nigerian counterparts. Domestic violence is criminalised, marital rape is an offence, and the “cautionary rule” in rape cases has been abolished as a general rule. However, despite the myriad of laws, South African women still suffer significant levels of violence and aggression from men. The South Africa situation seems to demonstrate the impotency of law where it is not combined with the right social changes. Law must be combined with education and social orientation in order for it to be effective. The future generation can also benefit from the way we socialise our children. Male children should not be socialised in such a way as to make them feel superior to female children.

In terms of law, not much has been done to improve the equality of women in Nigeria. Domestic violence is still being treated as a private affair (reinforcing the private and public divide in law), marital rape is unknown to Nigerian law and the “cautionary rule” is still being invoked in rape cases in Nigeria. Despite this apparent lacuna in the law, women in Nigeria are safer than their South African counterparts. This may be because violence against women is under-reported and because abuse of women by their partners is still treated as a domestic affair. The low level of violence may also be attributed to the fact that most Nigerian men feel that it is their duty to protect women.

⁴ See Chapter 5 above.

The system of apartheid deprived black people in South Africa from a voice in the governance of the country. Since 1994, South Africa is experiencing a new constitutional democracy. South Africa is like a phoenix bird that has risen from its ashes. The injustices of the past have given way to a constitutional democracy. South Africa has a unique opportunity to build a new and enviable society, learning from the past history of oppression and inequality. The country has been able to take the best from all over the world and adapt it to suit its purposes. The equality provision, for example, is modeled after the Canadian equality clause. But the South African Constitution also has some innovations not seen anywhere else in the world, such as the distinction between sex and gender, and the prohibition of unfair discrimination on the basis of pregnancy, marital status and sexual orientation.

After several years of military dictatorship and misrule, Nigeria is now experiencing a constitutional democracy. There is a need for constitutional democracy in Nigeria especially now in its history where ethnic and religious skirmishes are the order of the day.

10.4 RECOMMENDATIONS

Having considered law and practices in Nigeria and South Africa, the following recommendations are made. The recommendations are divided into three: those directed at both countries, those directed separately at Nigeria and those directed at South Africa.

10.4.1 Recommendation to both countries

10.4.1.1 The role of the judiciary

More women should be appointed to the judiciary in Nigeria and South Africa. In both jurisdictions there are not enough women in the judiciary, especially on the highest level. In Nigeria, mundane factors such as the marital status of women are considered before

appointment can be made in the judiciary. Unmarried women and divorced women are usually not appointed as judges in Nigeria. Some states of the federation are attempting to change this unwritten law by appointing single women and divorced women as judges.

Law can only be effective as an instrument of social change if laws can be interpreted to remove injustices. Active participation of women in the judiciary is needed in both jurisdictions to improve the status of women and to enhance gender equality.

10.4.1.2 *HIV and AIDS*

Nigeria and South Africa should put mechanisms, including legal provisions, in place to combat the high incidence of HIV and AIDS in both countries. The continent of Africa has the highest rate of HIV and AIDS in the world. People should be educated on causes of HIV and AIDS. HIV and AIDS drugs should be provided freely for poor people and pregnant women to reduce mother to child infection. For other people the price of HIV and AIDS drugs should be subsidised.

10.4.1.3 *Customary law*

Customary law should be further investigated in both countries to make it more amenable to women's rights. Customary law affects the family and thus the lives of women. The challenge is to map out a strategy for understanding the nature, extent and causes of women's inequality with men and to investigate the structures in which custom operates and analyse the concepts underlying family law as they affect women's rights. The family is an area in which women's lives are most directly controlled, and discrimination within the family usually spills over into other aspects of women's individual and collective lives.

Customary law is an area of law that is crying out for reform. This is an area where law can be used as an instrument of change. To change customary law and develop it in a

way that is favourable to women, there is a need to have more women in the judiciary. With the dominance of males on the bench, judgments have been delivered and laws interpreted solely from male perspectives working to the detriment of women.⁵ The judiciary in both Nigeria and South Africa are still controlled by men. In Nigeria, there is not a single woman in the Supreme Court, which is the highest Court in the land for constitutional and other matters. In South Africa, there are only two women (out of eleven justices) in the Constitutional Court, which is the highest court in constitutional matter. Women should not expect men to change the law. It should be noted that ensconced privilege have never yielded its place voluntarily in any society.

Nigeria and South Africa should have more women lawyers especially those specialising in human rights. Lawyers play a crucial role in national governance and social engineering.⁶ Women's role as lawyers is particularly important since, as women, they play a nurturing role in the society. Women outnumber men in the continent of Africa and women usually find it easier to confide in female lawyers especially in cases of domestic violence, the need for more female lawyers can therefore not be over-emphasised.

10.4.1.4 Customary rule of intestate succession

Customary rule of intestate succession in Nigeria and South Africa should be reformed. Women in Nigeria and black women in South Africa suffer significant level of discrimination under African customary rule of intestate succession. The customary rule of intestate succession in Nigeria and South Africa is similar. Women in Nigeria and black women in South Africa cannot inherit under customary law (with the exception of the limited rights of daughters to inherit in Yoruba speaking areas and Efik speaking areas of Nigeria).

⁵ Minkah-Premo *op.cit.* 6.

⁶ Minkah-Premo (2000) 1.

Customary law should be interpreted and developed in such a way that human rights of women are promoted and encouraged. The judiciary in both jurisdictions owes a duty to women to develop law, especially customary law, for example by removing all the obnoxious rules and practices inherent in customary law such as the customary law of intestate succession.

Patriarchy and its related practice of primogeniture constitute major impediments to the full integration of women into the economy. Patriarchy gives men ascendancy in inheritance, authority and decision making in and outside the home. The structure which prop up patriarchy (inheritance through the male, high value of male children, strict adherence to division of labour along gender lines) should be softened and discouraged to ensure equity, social justice and equality.

10.4.1.5 *Law relating to violence against women*

Women in both jurisdictions should be educated about their constitutional rights and should be encouraged not to stay in abusive relationships and to seek help when they are being abused. Law enforcement officers should be educated to respect the rights of women and to act promptly in cases of abuse against women.

10.4.1.6 *Political rights of women*

Despite historical, cultural and political differences between Nigeria and South Africa and their electoral processes, the following are being recommended:

There should be an active, broad-based organized women's movement that reflects the economic, social and family needs of women. In Nigeria, such women organizations should make programmatic demands including constitutional and legislative guarantees of equal rights for women, setting specific numerical goals and timetables for women's inclusion in ministerial and political offices.

Women should be organized within political parties to promote a substantive response to women's issues and to win guarantees of equal numbers of women and men in party leadership posts and policy-making bodies. Women in Nigeria should start by seeking at least 30 per cent quotas for women. All political parties should reserve at least 30 per cent of their elective posts for women. At least 30 per cent of political offices should also go to women.

Women should use their positions and numerical strength to campaign for specific party commitments to the nomination, election and appointment of women to national office, parliaments, cabinets, courts, provincial and national legislatures, commissions, advisory groups, etc.

Political parties and women's organizations should seek out potential women candidates for political office and provide them with training in political and leadership skills, funding and campaign assistance.

In Nigeria, the Ministry of Women's Affairs should gather data, monitor implementation of programmes and legislation affecting women, initiate new programs and act as advocates on behalf of women and their needs. The Commission for Gender Equality and Office on the Status of Women in the Presidency are performing these functions in South Africa. These organizations have helped to improve the status of women.

Finally, women must demonstrate their political power at the polls. In Nigeria and South Africa, women constitute almost 50 per cent of the electorate. This political strength should be utilized wisely to ensure that more women are elected into elective offices.

10.4.1.7 *The role of the media in human rights education*

The media should play a major role in enhancing the status of women and ensuring equality between men and women. Up to the present the media has been responsible for portraying women as objects of pleasure and desire. If women are to be equal to men, the media should reverse its present role of objectifying women. There must be social change through public awareness. The public should be sensitised on the equal status of women with men and the best medium to do this is the media. The media should take the gauntlet and be in the forefront of campaigns for women's rights and for equality between men and women.

10.4.1.8 *Commitment to human rights instruments ratified*

Nigeria and South Africa should show more commitment to international human rights instruments ratified. Both countries have ratified a number of human rights instruments both internationally and regionally. Ratifying conventions is a significant step, but is just the beginning. Domestic laws should be brought in line with conventions ratified. For example, Nigeria and South Africa ratified CEDAW without any reservation. This means that both countries must bring their domestic laws in line with provisions of the Convention. Obligations under Conventions should also be fulfilled. Once any instrument is ratified, mechanisms for enforcement should be put in place to monitor progress made and difficulties encountered.

Nigeria and South Africa should ratify the Optional Protocol to CEDAW to afford better protection for women in both countries. Both countries should stimulate domestic debate on the proposed Protocol to the African Charter on the Rights of Women.

10.4.1.9 *Legal aid*

Women lawyers in Nigeria and South Africa should plough back into the society by representing needy women at low costs and also by providing free legal advice. Legal aid funding is low and can therefore not cater for all cases, but it is suggested that legal aid should be provided for civil matters in which most women need assistance. Presently, much of legal aid fund is committed to criminal cases. It is true that most criminals are men.

Women lawyers should also represent the interests of African women at international level. For example, for a long time, Western female lawyers have sought to represent issues relating to African women and have championed the cause to condemn many African practices at international human rights fora. Western female lawyers are responsible for the focus of the international community against harmful traditional practices in Africa such as FGM.

The role of law in effecting changes in any society cannot be over-emphasised. Law can only be effective as an instrument of social change if there is continuous interaction between practitioners of law and the society. People, especially, women should be educated on legislations affecting them. Many NGOs should concentrate on issues relating to the socio-economic rights of women. Women constitute the larger part of poor people.

10.4.1.10 *The need for interaction between Nigeria and South Africa*

As major role players in Africa, Nigeria and South Africa should collaborate with each other. Many practices adversely affecting women occur in both jurisdictions. The writer observed that while South Africa has relied much on jurisprudence from Canada, Unites States of America, Australia and India, the country has not placed much reliance on

jurisprudence from other African countries. Presently much of Nigerian jurisprudence is from England. Both countries can benefit from collaborating with one another.

10.4.1.11 *Access to credit facilities*

Nigeria and South Africa should enact laws that ensure that women have access to credit facilities. Institutional credit sources should be strengthened to create revolving loan for women. All obstacles restricting access to funds should be removed. Governments in both countries should set up banks and financial institutions to provide credit facilities for women at low interest, without stringent requirements of collaterals. Women should also not be required to obtain their husband's consent before such loans could be given.

10.4.1.12 *Social orientation*

People in Nigeria and South Africa should be re-orientated to accept equality, complementarity of roles and respect for family values. Government and NGOs should promote programmes and measure to eliminate harmful practices, images, stereotypes, attitudes and prejudices against women through appropriate changes in socialisation patterns and gender equality enlightenment through the mass media, popular culture, formal and informal education.

10.4.2 *Recommendations to Nigeria*

10.4.2.1 *Equality clause of the Nigerian Constitution*

The equality clause of the Nigerian Constitution should be amended to give better protection to Nigerian women. Discrimination should not only be prohibited on the basis

of sex, it should also be prohibited on the basis of gender, pregnancy, marital status, age and sexual orientation.

Some states in Nigeria still discriminate on the basis of sex and marital status. Zamfara state (one of the states in Northern Nigeria) has called on all unmarried women working in the state to get married within three months or resign their appointments. This ultimatum is discriminatory. It is only directed at unmarried women in the state, and this ultimatum is not extended to unmarried men. Some states in Nigeria also deny unmarried pregnant women paid maternity leave. This is clearly discriminatory and the affected states must change their laws to conform with accepted international human rights norms.

Affirmative action provision should be provided for in the Nigerian Constitution in order to address past discrimination against women. Such a provision should lead to legislation dealing in detail with affirmative action in different spheres, such as employment, politics and education.

10.4.2.2 Political rights of women

Participation of women in politics in Nigeria should be enhanced. Politically, women in Nigeria are still being relegated to the background. Women's participation in politics is almost invisible. There are only two women in a 109 Senate and there are only 12 women out of 366 members in the House of Representative. There are no female governors, and women constitute about twelve per cent of the Ministers. There are only six women ministers out of a total number of 50 with only two of them of cabinet ministerial rank the remaining four are Minister of State (junior ministers). Participation of women in politics in Nigeria has been reduced to mere tokenism. The government in Nigeria has been described as a government of men for men.⁷

⁷ See Chapter 7 above.

Affirmative action is urgently needed in Nigeria to increase the participation of women in politics. Nigeria's politics is money politics. Women are not as economically empowered as men are to make their presence to be felt in politics. The Constitution of Nigeria should be amended to expand the equality clause and to provide for affirmative action measures to improve the participation of women in politics. At least 30 per cent of all political and ministerial posts should be reserved for women.

10.4.2.3 *Children's rights*

Nigeria should ratify the African Charter on the Rights and Welfare of the Child. The Charter, amongst other things, prohibits child marriages, which is very common in Nigeria especially in the Muslim North. It is recommended that child marriages should be outlawed. Children's rights should be made a constitutional issue in Nigeria to afford better protection to children. Special attention should be given to the girl-child. This is important as discriminatory practices against women starts from childhood.

10.4.2.4 *Customary law*

Customary law should be taught as a subject in Law Faculties in Nigeria. Presently, customary law is taught as part of the Nigerian Legal system and also as part of jurisprudence. Customary law is the law of the majority of the people and should therefore be taught more extensively. Focus on customary law is important as customary law governs the lives of the majority of women. Customary law is more developed in South Africa.

10.4.2.5 *Women and religion*

States in Nigeria (especially those in Northern Nigeria) should not be allowed to pass laws that undermine women's human rights. Nigeria has ratified CEDAW without any reservation and must do everything to improve the status of women. Women in Northern

Nigeria in addition to the myriads of problems faced generally by all Nigerian women have to contend with Shari'a (strict Islamic law).

Nigeria is a secular state. However the secularity of the Nigerian nation is now in doubt with many states in the North adopting Shari'a (strict Islamic laws). Women and Islam are strange bedfellows. Many women have been killed in the name of religion.⁸

Islamic law punishment should not be allowed in Nigeria. Recently, a teenage pregnant woman in Northern Nigeria was sentenced to 180 strokes of cane for indulging in pre marital sex. The punishment is to be carried out 40 days after confinement. This punishment apart from being inhuman and degrading is also unconstitutional in Nigeria. The Nigerian Constitution provides that:

A person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

In view of the clear and unambiguous provision of the Constitution, Islamic punishment is unconstitutional in Nigeria. It should be noted that no punishment has been prescribed for the man who impregnated the teenager.

10.4.2.6 Reproductive rights

Abortion should be legalised in Nigeria. Access to reproductive health care should be improved in order to reduce the high incidence of maternal mortality in Nigeria, which is one of the highest in the world. Attempts have been made in the past to make the

⁸ See the *Time Magazine* of May 14, 2000 where it was reported that 850 Pakistani women are killed by husbands, brothers, fathers or other relatives in the past two years for allegedly bringing dishonour on the family. Honour killings are also common in Saudi Arabia, Jordan, Iran and Iraq.

National Assembly legalise abortion. In 1981 the Nigerian Society for Gynaecology and Obstetrics sponsored a Termination of Pregnancy Bill, but the Bill was never passed by the National Assembly. In 1991 the federal ministry of health also proposed a reform of the abortions laws, but these reforms never saw the light of the day.

10.4.2.7 *HIV and AIDS*

Nigeria should have a comprehensive and clear HIV and AIDS policy. Nigeria should not wait until the disease has reached an epidemic proportion before acting. Sex education should be taught in schools and the media has a role to enlighten the public on the causes and symptoms of the disease and how it could be prevented.

10.4.2.8 *Law relating to violence*

Nigeria should change its laws to make it more gender sensitive and to provide better protection for women so that men who violate their women can be punished. A Domestic Violence Act such as the one in South Africa should be enacted. Domestic violence should be made a crime, the offence of rape should be made to be gender neutral, marital rape should be criminalised and the “cautionary rule” in rape cases should be abolished. Section 55 of the Penal Code which allows husbands to chastise their wives, should be repealed.

10.4.2.9 *The role of sub-regional organisations*

The Economic Community of West African States (ECOWAS) should adopt laws aimed at enhancing the status of women in the sub-region. The community should emulate the Southern African Development Community (SADC) by incorporating human rights of women into its programmes. SADC has adopted a Declaration on Gender and Development. SADC had also adopted the Prevention and Eradication of Violence

Against Women and Children. These two instruments are aimed at improving the status of women and children in SADC states. ECOWAS is presently preoccupied with war within the sub-region. Women's rights should also be pursued. Many women are victims of wars and internal conflicts and their plights should also be addressed.

10.4.2.10 Harmful traditional practices against women

Nigeria should ensure that all harmful practices against women are removed. Discriminatory practices still abound in Nigeria. There are several traditional ceremonies in which women are not allowed to participate. Mention has been made of the Oro and Egungun festivals where women are forbidden from coming out on the pain of death. These festivals and others should be outlawed. It is true that people have the right to practice their culture, but such right should not infringe on the right of others. Widowhood rites in most Nigerian communities are inhuman and violate several norms of human rights. People should be educated on the adverse effects of this practice.

Culture as a way of life of the people, embodies the attitudes, values, beliefs and life styles of the people. Culture is dynamic and should therefore reflect current needs of the people for a meaningful and sustainable development.

Nigeria has ratified CEDAW and other human rights instruments and has a duty to bring its laws in line with all international instruments ratified. Before human rights instruments are ratified, such instrument should be studied in order to ascertain whether the country could meet its obligations under such instruments. Human rights instruments should not be ratified unless the government is prepared to honour all its obligations under them.

10.4.2.11 *Reporting obligations under international human rights instruments*

Nigeria should ensure that it fulfills reporting obligations under all international human rights instruments ratified. Nigeria has not been fulfilling its reporting obligations under a number of international instruments. This position must be improved. Once an instrument is ratified, mechanisms for its enforcement should be put in place. The implementation of the instrument should be monitored and progress made and problems encountered should be noted.

10.4.3 *Recommendations to South Africa*

This study has shown that South Africa has better legal protection for women than Nigeria. The equality provision of the South African Constitution offers better protection to women in South Africa. However, certain issues relating to equality of women still need to be addressed. The following is therefore recommended:

10.4.3.1 *Marriage laws*

South Africa should harmonise all its marriage laws. Prior to November 2000 customary marriages are treated as somewhat inferior to civil marriages. The Recognition of Customary Marriage Act has brought customary marriages in line with civil marriages. Harmonisation of marriage is important to ensure equal protection to all married women irrespective of the type of marriage entered into.

10.4.3.2 *Marital power*

South Africa should abolish Section 11(3)(b) of the Black Administration Act, which recognizes the perpetual minority of women. Section 11(3)(b) Black Administration Act provides that African women married under the customary law (except those living

permanently in what was Natal) are deemed to be minors subject to the guardianship of their husbands. The abolition of marital power from all civil law marriages, therefore has not freed women married under African customary law from their unequal and subordinate status.

10.4.3.3 *Law relating to violence against women*

South Africa should look into ways of reducing the incidence of violence against women. South Africa has the highest incidence of rape in the world. Several laws have been enacted aimed at reducing the incidence of violence against women, but violence still persists in South Africa. People convicted of rape and other forms of violence against women should be given more severe sentences to serve as deterrent.

10.4.3.4 *HIV and AIDS*

South Africa should act decisively to combat the high incidence of HIV/AIDS. Government should provide AZT or nevirapine free to pregnant mothers to reduce mother to child transmission. Efforts should be geared towards providing HIV/AIDS drugs at affordable prices. People should be educated on the causes of HIV and AIDS and how to prevent infections. Women should be educated on the advantages of practising safe sex.

10.4.3.5 *Maternity benefits*

Women in South Africa should be provided maternity leave with full benefits. Presently, maternity leave of four months is offered, but most employers do not pay salaries and allowances during maternity leave. Presently, women have to contribute to Unemployment Insurance Fund for a certain number of months before they could be able

to claim any money under the scheme. Under the Unemployment Insurance Fund women are paid only 45 per cent of their monthly salary for the duration of the maternity leave.