

# THE IMPACT OF THE MAPUTO PROTOCOL IN NIGERIA

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## 1 Introduction

Human rights in Nigeria is as old as the country itself. However, the entrenchment of fundamental human rights in the country in the modern sense could be traced to the 1960 independence Constitution.<sup>1</sup> This was the first Bill of Rights. Since then, the provisions relating to human rights have been included in all subsequent Constitutions in 1963, 1979 and now 1999 (as amended). Civil and political rights are enshrined in chapter four of the 1999 Constitution. Apart from the provisions of fundamental rights (civil and political rights) in these Constitutions, the 1979 and the 1999 Constitutions went further by providing for the Fundamental Objectives and Directive Principles of State Policy<sup>2</sup> which are termed the Economic, Social and Cultural Rights. The essence of the entrenchment of human rights provisions in Nigeria's Constitutions was to ensure the protection of the rights of the citizens as well as guarantee

the social and economic well-being of the people.<sup>3</sup>

Women's rights as a human rights issue is now gradually gaining traction in Nigeria. For a long time, women's rights issues have been treated much like a welfare issue and privileges which the government in its benevolence accords to women.<sup>4</sup> The Constitution at best in section 42 pays lip-service to women's rights by providing for non-discrimination on the basis of sex when in fact, this is far from reality.<sup>5</sup> However, as more international treaties were signed and ratified by the government, the executive arm of government started introducing policy documents that spelt out the rights of women. The judiciary followed suit by issuing judgments especially in

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1 Chapter 3 of the 1960 Constitution spelt out the fundamental rights.

2 This is contained in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999.

3 Federal Republic of Nigeria 'National Action Plan for the Promotion & Protection of Human Rights in Nigeria' 4 and 40.

4 OA Gbadamosi *Reproductive health and rights: African perspectives and legal issues in Nigeria* (2007) 351.

5 Section 42(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'.

intestate succession cases in favour of women thereby overruling the existing patriarchal property and succession rights laws,<sup>6</sup> and recently, the legislature passed the Violence Against Persons (Prohibition) Act in 2015.<sup>7</sup> This Act addresses several issues of violence against women. It could be argued that a gender-based interpretation of the various human rights provisions in chapters II<sup>8</sup> and IV<sup>9</sup> of the Constitution could have an effect on the advancement of women's rights to life, liberty, property, fair trial and privacy.

The Nigerian Constitution laid the foundation for the protection of women's rights in Nigeria. For example, section 42 of the Constitution prohibits discrimination on the basis of ethnic group, place of origin, sex, among others. Several other sections of the Constitution can be used to champion and protect the rights of women against any form of violation. Also, in addition to other policies, the country has a National Gender Policy that deals, among other things, with the empowerment of women against any form of discrimination on the basis of sex. The other relevant laws are the Criminal Code<sup>10</sup> and the Penal Code<sup>11</sup> as applicable in the southern and northern Nigeria respectively, which could be used to protect the rights of women in Nigeria.

6 *Onyibor Anekwe & Anor v Maria Nweke* SC 129/2013, *Lois Chituru Ukeje v Gladys Ada Ukeje* SC.224/2004.

7 The VAPP Act is aimed at eliminating violence in private and public life, prohibit all forms of violence, including physical, sexual, psychological, domestic, harmful traditional practices; discrimination against persons and to provide maximum protection and effective remedies for victims and punishment of offenders.

8 Fundamental Objectives and directive Principles of State Policy.

9 Fundamental Rights.

10 Criminal Code Act, Laws of the Federation of Nigeria 1990.

11 The Penal Code applies to the northern states of Nigeria.

## 2 The ratification and domestication of the Maputo Protocol

Nigeria signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol or the Protocol) on 16 December 2003 and ratified it on 16 December 2004.<sup>12</sup> The instrument of ratification was deposited with the African Union on 18 February 2005.<sup>13</sup> The process of ratification of international treaties is entirely the responsibility of the executive arm of government.<sup>14</sup> The parliament is not involved in the process of ratification. There is no requirement to seek the advice of parliament let alone the consent of parliament before ratification. It should be noted however that in the case of the Maputo Protocol, the Ministry of Women Affairs, the Ministry of Justice and the Ministry of Foreign Affairs (MFA) were involved and took the lead in the process of its ratification. The Federal Ministry of Women Affairs is the focal point responsible for the implementation of the Maputo Protocol and the ministry staff are informed about the provisions of the Maputo Protocol.<sup>15</sup>

12 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women In Africa, adopted in Maputo, Mozambique on 11 July 2003 – entered into force on 25 November 2005, available at 37077-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA.pdf (au.int).

13 African Union 'OAU/AU Treaties, Conventions, Protocols & Charters' available at <http://www.au.int/en/treaties> (accessed 13 March 2021).

14 CE Okeke & MI Anushiem, 'Implementation of treaties in Nigeria: Issues, challenges and the way forward' (2018) 9(2) *African Journals Online* at 226.

15 Nigeria: Initial Country Report on implementation of AU Solemn Declaration on Gender Equality in Africa (2004-2006).

There are no known reasons for the ratification of the Protocol. It may be right to conclude that, the ratification was driven by a desire to signal commitment to women's rights and comradeship with the comity of nations. Furthermore, section 12 of the Constitution of the Federal Republic of Nigeria 1999 embodies the principle of dualism. This implies that, before international treaties can be binding in the domestic setting, they must be domesticated by an act of the National Assembly of Nigeria.

### **3 Legislative reforms or adoption**

The Maputo Protocol has influenced legislative outcomes in Nigeria to a certain extent either directly or indirectly. An example is the effort of the government of Nigeria to deal with harmful cultural practices negatively affecting women and children in the country through legislative measures, some of which are listed below:

- Prohibition of child marriage and child betrothal under sections 21 and 22 of the Child's Right Act (CRA);
- Prohibition of Child Trafficking by Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015;
- Anambra State Gender and Equal Opportunities Law 2007;
- Cross River State Law to Prohibit Girl-Child Marriages and Female Genital Circumcision or Genital Mutilation 2009;
- Ekiti State Gender-Based Violence (Prohibition) Law 2011;
- Imo State Gender and Equal Opportunities Law 7 of 2007;
- Lagos State Protection Against Domestic Violence Law 2007;
- Lagos State Protection of People Living with HIV and Affected by AIDS Law 2007;

- Rivers State Dehumanizing and Harmful Traditional Practices Law of 2003; and
- Edo State Law on female genital mutilation (FGM) 2000 bans the practice of FGM.

Some states of the Federation have also adopted bills prohibiting FGM. Some of them are the Osun State Female Circumcision and Genital Mutilation Prohibition Law 2004 and the Ekiti State Female Circumcision (Prohibition) Law 2002.

Worthy of mention is the Violence Against Persons (Prohibition) Act (VAPP) 2015, a federal legislation with the sole aim of eliminating violence in private and public life, prohibiting all forms of violence including physical, sexual, psychological, domestic violence, eradicating harmful traditional practices, preventing discrimination against persons, and to provide maximum protection and effective remedies for victims and punishment of offenders. Most states in Nigeria have passed laws with similar provisions with the VAPP Act, some of which are listed below:

- Edo State Law for Monitoring of Maternal Mortality and Other Matters Connected Thereto 2001;
- Anambra State Gender and Equal Opportunities Law 2007;
- Anambra State Malpractices against Widows and Widowers (Prohibition) Law No 2005;
- Anambra State Women's Reproductive Rights, Anambra State, 2005;
- Bauchi State Withdrawal of Girls from Schools for Marriage (Prohibition Law 17 of 1985);

- Bayelsa State Female Genital (Prohibition) Law, 2000;
- Child Rights Laws passed in 14 more states plus the Federal Capital Territory after the last country's report (a total of 23 states out of 36 have passed the Child's Rights Law);
- Cross River State Law to Prohibit Girl-Child Marriages and Female Genital Circumcision or Genital Mutilation in, 2009;
- Cross Rivers State Law to Prohibit Domestic Violence against Women and Maltreatment 10 of 2004;
- Edo State Female Circumcision and Genital Mutilation (Prohibition) Law 4 of 1999;
- Edo State Inhuman Treatment of Widows (Prohibition) Law 2004;
- Edo State Law for Monitoring of Maternal Mortality in Edo State and Other Matters Connected Thereto 2001;
- Ekiti State Gender-Based Violence (Prohibition) Law 2011;
- Enugu State HIV/AIDS Anti-Discrimination and Protection Law 2007;
- Enugu State Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law 3 of 2001;
- Imo State Gender and Equal Opportunities Law 7 of 2007;
- Imo State Widows (Protection) Law 2003;
- Lagos State Administration of Criminal Justice Law, 2011;
- Lagos State Law to Provide Rules on Criminal Conduct, Regulate Public Order and for Connected Purposes, 2011;
- Lagos State Protection Against Domestic Violence Law 2007;
- Lagos State Protection of People Living with HIV and Affected by AIDS Law 2007;

### 3.1 National Action Plan (NAP) for the Implementation of the United Nations Security Council Resolution 1325 and Related Resolutions in Nigeria

This became necessary for the inclusion of women in peacebuilding and peace-keeping processes as well as conflict resolution and management. The idea of involving women in these processes emanated out of a deep consideration of the heavy price women have paid in the violent conflicts that have ravaged some parts of the country for years.<sup>16</sup> Many women have been victims of sexual violence, sexually-transmitted diseases such as: human immunodeficiency virus and acquired immunodeficiency syndrome (HIV-AIDS), unplanned pregnancies, physical abuse, and have been victims in violent conflicts.<sup>17</sup> The security of women and girls during armed conflicts is very important. Apart from the involvement of women and girls mentioned above, NAP is committed to ensuring their security during post-conflict situations as well as serving as an operational tool to keep post conflict victims, especially women and children, informed about government support and response to their plight. In addition, NAP plays a very significant role in helping peacekeeping forces to observe high ethical standards and behavioural conducts towards women during conflicts.

16 Women's International League for Peace and Freedom, 'Women, Peace and Security in Nigeria' Joint Shadow Report, CEDAW Committee 67th Session (Submitted for the Committee's review of Nigeria's combined 7th and 8th Periodic Reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women) June 2017.

17 Women, Peace and Security (Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000)), documented by the United Nations, (2002), available at [WomenP&S.pdf](http://WomenP&S.pdf) ([refworld.org](http://refworld.org)).

### 3.2 The National Gender Policy (NGP) 2007

The Nigerian National Gender Policy was adopted officially in 2006 by the Federal Executive Council. This course of action was taken with the intent and purpose of solving the problem of women disempowerment, feminine poverty, gender inequality, and underdevelopment in the country.<sup>18</sup> The goal of the NGP, is to eradicate poverty, achieve equality of the gender, and encourage inclusiveness in the process of governance and development.<sup>19</sup>

The NGP contains strategic frameworks towards enhancing the access of rural women to information, capacity-building, skills development among others.<sup>20</sup> These strategies are premised on a dual agenda principle. That is, gender equity and equality that would produce an effective and efficient system at national and organisational levels. Considering the cross-cutting nature of gender issues, seven strategies have been mapped out for the realisation of the NGP agenda. The expected outcomes include but are not limited to mainstreaming gender concerns across sectors and at all levels, increased gender knowledge and a positive gender culture which includes the involvement of men, gender responsive policy and budget efficiency across sectors, as well as reliable sex disaggregated data and indicators.<sup>21</sup>

In addition to the above strategies, the Federal Ministry of Women Affairs

developed frameworks and indicators that would ensure that the implementation process is result-yielding. Some of these indicators are:<sup>22</sup>

- (i) Monitoring inputs, the resources used to provide a service;
- (ii) Monitoring outputs, the level of source provided;
- (iii) Evaluating the impacts, the benefits women gain from the service in terms of better livelihoods and welfare;
- (iv) Ensuring public participation in budget monitoring, public consultations, communication and benchmarking.

The government of Nigeria has also made significant progress in creating useful policies towards the implementation of the provisions of the Maputo Protocol regarding the elimination of cultural practices that affect women and children. This is in fulfilment of the mandate of the government of Nigeria to eliminate harmful cultural practices as spelt out in article 5 of the Maputo Protocol. These include the National Strategy to End Child Marriage in Nigeria 2016-2021.

From the above steps taken by the Nigerian government to honour the spirit of the Maputo Protocol, one can safely conclude that the nation's policies have to some extent reflected the provisions of the Maputo Protocol and the general comments of the African Commission concerning women. However, much still needs to be done by the Nigerian government in addressing the problems and rights specific to women. The government needs to ensure the full implementation of

18 EI Amadi 'Implementation of Nigeria's National Gender Policy, revisiting the affirmative action' (2017) 5(5) *International Journal of Political Science and Development* at 146 and 147.

19 Amadi (n 18) 148.

20 Amadi (n 18).

21 The Nigerian National Gender Policy 2007.

22 Nigeria's 6th Periodic Country Report: – 2015 – 2016 on the implementation of the African Charter on Human and Peoples' Rights in Nigeria, 64.

women's rights to sexual and reproductive health by promoting access to sexual and reproductive health and rights and the effective legal and policy framework for the actualisation of the general comments. Worthy of mention is the issue of abortion which is illegal in Nigeria except in a situation where the abortion is performed to save the life of the woman. In Nigerian jurisprudence, even if the foetus will die immediately after birth, terminating such a pregnancy will still amount to a crime.<sup>23</sup> The Penal and Criminal Codes are silent on the state of health of the foetus as a ground for abortion. They only focus on saving the life of the woman, as a legal ground for abortion even if the state of impairment of the foetus can pose a risk to the woman's physical, mental and even, emotional health.<sup>24</sup> The World Health Organisation has defined health as 'a state of complete physical, mental and social well-being and not only the absence of disease and infirmity'.<sup>25</sup>

The Maputo Protocol is the first treaty to recognise women's right to a legal abortion.<sup>26</sup> By the provisions of paragraph 40 of General Comment 2<sup>27</sup> of the Maputo Protocol, being forced to carry a pregnancy of a deformed child,

will amount to cruel and inhuman treatment. This can result in the mental suffering of the woman.<sup>28</sup> It could also lead to her death in the event that she chooses to go the clandestine way of terminating the pregnancy upon being denied a legal abortion.<sup>29</sup> Under article 14(2)(c) of the Maputo Protocol, state parties are called upon to take all appropriate measures to:

... protect the reproductive rights of women by authorizing a medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus

If the provisions of the Penal and Criminal codes are read alongside General Comment 2 of the African Commission, it goes without saying that, in a situation where a woman risks her mental health by raising a child with mental disabilities, bringing such a pregnancy to term will pose a serious risk to her life. Ironically, the Criminal and Penal Codes protect risk to the life of the woman but in practice, this is not the case since her physical, mental and emotional health, are not taken into consideration since the law forbids her to undergo a legal and safe abortion.

#### 4 Court judgments

The Maputo Protocol has notably influenced judicial decisions against Nigeria especially regarding the protection of women from all forms of discrimination. On 12 October 2017, the Economic Community of West African States (ECOWAS) Court of Justice (ECOWAS Court) in the case of *Dorothy Njemanze and 3 others v The Federal Repub-*

23 Sec 309 of the Criminal Code Act, Cap C38 LFN 2004.

24 The World Health Organization (WHO) defined 'health' as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

25 Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

26 Article 14(2)(c) of the Maputo Protocol, 2005.

27 General Comment 2 of art 14(2)(c) of the Maputo Protocol, 2005.

28 As above, para 38.

29 As above

lic of Nigeria,<sup>30</sup> a landmark judgement on the Maputo Protocol, relied on the Maputo Protocol and other instruments while making its pronouncement. This is the first time the ECOWAS court pronounced itself on the Maputo Protocol. In this case, the plaintiffs, Dorothy Njemanze, Edu Okoro, Justina Etim and Amarachi Jessyforth were arrested by officials of the Abuja Environmental Protection Board (AEPB) and other government agencies like the police and the military at various times between January 2011 and March 2013. They were accused of engaging in prostitution since they were found outside around midnight. The plaintiffs suffered cruel, violent, inhumane and degrading treatment by these officials. The court found that the arrest was unlawful and violated several rights of the plaintiffs such as their right to liberty, dignity, freedom from cruel, inhumane and degrading treatment and GBV. In fact, the court established a case of multiple violations of rights under articles 2,<sup>31</sup> 3,<sup>32</sup> 4,<sup>33</sup> 5,<sup>34</sup> 8,<sup>35</sup> and 25<sup>36</sup> of the Maputo Protocol. The first, third and fourth plaintiffs were each awarded damages in the sum of six million naira (approximately 14,500 USD) and the claim of the second plaintiff was dismissed for being statute barred under the protocol that created the ECOWAS Court.

Another interesting decision is the case of *Mary Sunday v Nigeria* in 2018.<sup>37</sup> In this case, the ECOWAS Court referred to the provisions of the Maputo Protocol to adjudicate on the allegations of violence and access to justice. The case was filed by two human rights organisations<sup>38</sup> on behalf of Mary Sunday, who was the plaintiff in this case. The plaintiff apparently suffered physical injuries as well as psychological and emotional trauma due to the attack on her by her fiancé who allegedly poured hot oil on her during a dispute. The plaintiff could not obtain justice from the state justice system, but her matter was lodged with the ECOWAS Court. The plaintiff relied on articles 2, 8, 13, 14 and 25 of the Maputo Protocol as the grounds on which her claim was based. The court awarded a sum of 15 million naira (approximately 36 300 USD) in damages against the Nigerian government for the violation of the right of the plaintiff to effective remedy, which is a right protected by the Maputo Protocol.<sup>39</sup> The court found the Nigerian government guilty on three grounds: the violation of the plaintiff's right to be heard within a reasonable time, right to access justice and the right to be informed of the procedure or process in which she is a party, while making particular reference to article 25 of the Maputo Protocol.<sup>40</sup>

30 *Dorothy Njemanze and 3 others v The Federal Republic of Nigeria*, Court of Justice of the ECOWAS, ECW/CCJ/JUD/08/17.

31 Article 2 of the Maputo Protocol on the Elimination of Discrimination Against Women.

32 Article 3 of the Maputo Protocol on the Right to Dignity.

33 Article 4 of the Maputo Protocol on the Rights to Life, Integrity and Security of the Person.

34 Article 5 of the Maputo Protocol on the Elimination of Harmful Practices.

35 Article 8 of the Maputo Protocol on the Access to Justice and Equal Protection before the Law.

36 Article 25 of the Maputo Protocol on the Right to effective remedy.

37 *Mary Sunday v Federal Republic of Nigeria*, ECW/CCJ/APP/26/15 (2018).

38 Women Advocates and Documentation Centre and IHRDA.

39 Article 25 'States Parties shall undertake to: a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated; b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

40 Article 25 of the Maputo Protocol protects the right to effective remedy.

Aside from decided cases that directly alleged violation of the provisions of the Maputo Protocol, the judicial system in Nigeria is graced with a plethora of judicial decisions both at the lower and higher courts that have incorporated the essence of the provisions of the Maputo Protocol. Such provisions of the Protocol include the elimination of discrimination against women,<sup>41</sup> the right to dignity,<sup>42</sup> the elimination of harmful practices,<sup>43</sup> marriage,<sup>44</sup> separation, divorce and annulment of marriage,<sup>45</sup> access to justice and equal protection before the law,<sup>46</sup> and the right to inheritance.<sup>47</sup> Some of these decisions have dealt with obnoxious customary practices that have encouraged violation of women for ages. However, the actual provisions of the Maputo Protocol have not necessarily been evoked in the domestic courts, only principles and rights established by the instrument.

In *Shodipo v Shodipo*,<sup>48</sup> the Court refused to recognise the contribution of a woman to her marriage of 43 years. A lump sum of 200,000 naira, an equivalent of 1,800 USD, was awarded to her instead of a 50-50 equitable distribution of the property acquired in her marriage, upon divorce. The judicial bent has however been strengthened by judicial pronouncements that frown at customary practices that restrict a woman's freedom on grounds of her gender declaring such as unreasonable, repugnant to natural justice and good conscience.

In *Asika v Atuanya*,<sup>49</sup> the Court of Appeal struck out a case in which the custom tended to demean a woman on grounds of her gender. The court declared such a customary practice as unconstitutional.

On 11 April 2014, in the case of *Lois Chituru Ukeje v Gladys Ada Ukeje*,<sup>50</sup> the Supreme Court per Justice Olabode Rhodes Vivour declared that the circumstances surrounding the birth of a female child notwithstanding, she is entitled to a portion of inheritance from her father's estate. In the Igbo customary law, a female child is not entitled to partake in such inheritance. This customary practice violates the non-discrimination provision of the Constitution of the Federal Republic of Nigeria and was therefore declared null and void.<sup>51</sup>

Similarly, in the case of *Onyibor Anekwe & Anor v Maria Nweke*, a woman (widow) was denied access to her late husband's property and her daughter denied access to any inheritance from her late father's estate. The Supreme Court found this customary law of male primogeniture,<sup>52</sup> a culture among the Akwa people in Nigeria, to be repugnant to natural justice, equity and good conscience. This is the customary practice where the right of succession belongs to the eldest son. The court also found any customary practice that denies women especially widows, their inheritance, repugnant to natural justice, equity and good conscience. In the cases above, the supreme court described such

41 Article 2 of the Maputo Protocol.

42 Article 3 of the Maputo Protocol.

43 Article 5 of the Maputo Protocol.

44 Article 6 of the Maputo Protocol.

45 Article 7 of the Maputo Protocol.

46 Article 8 of the Maputo Protocol.

47 Article 21 of the Maputo Protocol.

48 *Shodipo v Shopido* WRN 98 (1990).

49 *Asika v Atuanya* 17 NWLR (Pt 1117) (2008) at 484.

50 *Lois Chituru Ukeje v Gladys Ada Ukeje* SC.224/2004.

51 Sec 42(1)(2) of the Constitution of the Federal Republic of Nigeria.

52 *Onyibor Anekwe & Anor v Maria Nweke* SC. 129/2013.



practices as barbaric, worrying and flesh skinning and further concluded that such should be punitively dealt with.

In *Dr Priye Iyalla-Amadi v Director-General of the Nigeria Immigration Service and Nigerian Immigration Service (NIS)*,<sup>53</sup> Dr Priye Iyalla-Amadi applied for a new passport after the loss of her passport. The immigration officer that attended to her gave her a list of documents to attach to her application. Among these documents was a letter of consent from her husband before an international passport can be issued. The Federal High Court that handled the matter declared such an act as unconstitutional, an age-old oddity and a violation of section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 on the right to freedom from discrimination.

Regulation 124 of the Police Act (Cap 19) prohibited a female from marrying a man of her choice except with the approval of the Commissioner of Police in the command where she is serving. The woman police officer is required to apply in writing and submit her intending fiancé's personal details for investigation for criminal records in order to get an approval.<sup>54</sup> Permission would only be granted on two grounds: if the woman police officer has served in the force for at least three years and secondly, if the fiancé is of good character. The lawsuit was filed by the Women Empowerment and Legal Aid Initiative (WELA),<sup>55</sup> a non-governmental organisation who challenged the constitution-

ality of that provision of the Police Act. The Federal High Court declared this as unconstitutional and illegal and held that, that regulation was null and void as it contravened section 42 of the 1999 Constitution and article 2 of the African Charter on Human and Peoples' Rights prohibiting discrimination on the basis of sex.<sup>56</sup>

## 5 Awareness and use by civil society

Civil societies, women focused non-governmental organisations and gender-concerned activists, formed a National Coalition on Affirmative Action (NCAA) in Nigeria to lobby for the domestication and implementation of the Maputo Protocol in Nigeria. Other efforts made by civil societies include, the passage of the Gender and Equal Opportunities Bill, 2010/2011 and the Violence Against Women Bill into law. They have constant engagements with the National Assembly lawmakers regarding passage of bills. The National Coalition on Affirmative Action is made up of 150 non-governmental organisations (NGOs) working towards the entrenchment of affirmative action policies in the laws of Nigeria.

Several NGOs have been actively involved in activities that promote public education activities, legal assistance services, capacity building and human rights counselling services for

53 Reported in *THISDAY LAWYER* June 23, 2009.

54 Regulation 124 of the Police Act Amendment Bill, 2019.

55 WELA as an NGO offers free legal services to the less privilege in the society, specialises in the empowerment of women and defence of women's rights. WELA is non-governmental organisation that specialises in the defence of Women's right, challenges any

laws that are not favourable to women and children or any law that tends to be biased against women.

56 Make Every Woman Count 'NIGERIA: Court Voids Law Barring Female Policemen From Marriage' available at <http://www.mewc.org/index.php/gender-issues/human-rights-of-women/3589-nigeria-court-voids-law-barring-female-policemen-from-marriage>.

women and girls who have been victims and survivors of GBV.<sup>57</sup>

Some of these NGOs are:

- Action Health Incorporated, Lagos – a non-profit organisation dedicated to promoting young people’s health and development to ensure their successful transition to healthy and productive adulthood.
- AHIP, Kano – this is an NGO which focuses on areas such as health, social and economic issues related to young people and women. It is one of the pioneering organisations on youth development in the northern part of Nigeria, it has successfully partnered with international and national development agencies, government at national, state and local levels, and also traditional community-based organisations and other stakeholders to establish functional in and out of school youth programs, including sexuality education and comprehensive youth centres/services.
- BAOBAB for Women’s Human Rights, Lagos – a non-profit, non-governmental women’s human rights organisation, which focuses on women’s legal rights issues under the three systems of law – customary, statutory and religious laws – in Nigeria
- GHARF Enugu – the mission of this NGO is to empower women and adolescents economically and with correct information on sexuality and reproductive health issues and rights through education, research documentation, service provision and income generation activities.
- Girls’ Power Initiative (GPI), Calabar: a non-profit feminist youth development organisation and pioneer

of sexual and reproductive health and rights education within Nigeria.

- WACOL, Enugu – WACOL is a democratic society free from violence and abuse, where human rights of all, in particular women and young people, are recognised in law and practice.
- WHARC, Benin – The Women Health and Action Research Centre is a Nigerian non-profit and charitable organisation based in Benin City, Edo State to promote reproductive health through research and advocacy.
- WOCON, Lagos – this is the foremost centre which focuses on gender, health and human rights, and combines strong commitment to service and advocacy with human rights education in Nigeria and the sub-Saharan region of Africa.
- WRAPA, Abuja – Women’s Rights Advancement and Protection Alternative.

There is however no specific record of their knowledge and engagement with the Maputo Protocol.

## 6 Awareness and use by practicing lawyers

The Maputo Protocol is not well known among practising lawyers. The feedbacks from the oral and written interviews conducted in the course of this project shows very limited knowledge of the Maputo Protocol. In fact, some lawyers were not aware of its existence. This limits the usefulness of the Maputo Protocol as a tool for redress and justice for women in the law courts.

## 7 Academic writing and law school education

The curriculum of the Nigerian Law School does not accommodate the provisions of the Maputo Protocol. However, the Maputo Protocol has been a part of the Human Rights Law as pres-

57 A Statement on Women’s Human Rights in Nigeria at the 62 Ordinary Session of the African Commission on Human and Peoples’ Rights (African Commission) (25 April - 9 May 2018), available at <https://alliancesforafrica.org/a-statement-on-womens-human-rights-in-nigeria-at-the-62-ordinary-session-of-the-african-commission-on-human-and-peoples-rights-achpr/> (accessed 14 March 2021).

ently being taught in Nigerian universities. Nevertheless, the curriculum is not detailed enough since Human Rights Law in Nigerian universities is an elective course for students of Law and not a compulsory course. In addition, such elective courses focus generally on human rights protection and not specifically on the protection of women. Academics, particularly in the field of human rights law, more often refer to Maputo Protocol in their academic writing that deals with the protection of women. The views generally expressed relates to the vital role the Maputo Protocol could play in promoting gender parity, sexual and reproductive health and rights and freedom from discrimination against women in Africa if the Protocol is effectively implemented by states parties following the adoption and ratification. Consequently, the level of awareness of the Maputo Protocol among lawyers and the law society is generally low despite the fact that few of them are aware of the Maputo Protocol and its place in protecting the rights of women. Owing to the low level of awareness of the Protocol among lawyers, the Protocol is hardly cited in their arguments before the court of law.

## **8 National human rights institutions**

The Nigerian Human Rights Commission serves in the capacity of an extra-judicial mechanism for the promotion and the enjoyment of human rights. It was established by an enabling legislation, the National Human Rights Commission (NHRC) Act 1995, amended by the NHRC Act 2010, in response to the resolution of the United National General Assembly which mandates all member states to see to the establishment of a national human rights

commission for the protection, promotion and enforcement of human rights. Among the NHRC's enlightenment programs are, public enlightenment activities, research and dialogues in order to raise awareness on issues that relate to the protection of human rights.<sup>58</sup> In the process, the NHRC has been able to raise awareness on the Maputo Protocol. The NHRC has 'women and gender' as one of its thematic areas. It also has an advocacy group on 'violence against women'. Worthy of note is the role NHRC played in the coordination of the National Action Plan on the Promotion and Protection of Human Rights in Nigeria with heavy reliance on the Maputo Protocol.

## **9 State reporting**

Article 26 of the Maputo Protocol, mandates state parties to submit a report on

measures, legislative or otherwise, taken to ensure the protection of all the rights and freedoms recognised and guaranteed under the African Charter and the rights protected in the Protocol as well as the progress made towards the enjoyment of these rights on a two-yearly basis.

This periodic report must be submitted accordance with article 62 of the African Charter.<sup>59</sup> The reporting process is coordinated by the Ministry of Justice. Nigeria has submitted six periodic reports to the African Commission, under the African Charter and can therefore be said to have fulfilled its

58 Sec 5(a) of the National Human Rights Commission (Amendment) Act 2010.

59 In order to provide guidance to State Parties in Reporting under article 62 of the African Charter and article 26 of the Maputo Protocol, and to promote best practices in the State Reporting Process, the Commission has adopted a number of Guidelines on State Reporting.

reporting obligation under the African Charter. The reports were submitted in this sequence: 1990, 2003, 2008, 2011, 2014 and 2017 respectively. Nigeria has also submitted 2 reports on its effort at promoting the rights protected by the Maputo Protocol, first in the state report covering 2011 to 2014, and then in the state reporting covering 2015-2016 which was considered at the 62nd Ordinary Session of the African Commission in Mauritania.<sup>60</sup>

## 10 Communications involving Nigeria

There are so far no communications before the African Commission against the government of Nigeria on violations of the provisions of the Maputo Protocol. This is in spite of the high rate of reports on violations of the rights of women in Nigeria. This is suggestive of the non-awareness of the provisions of the Maputo Protocol by a large number of the population.

## 11 Special mechanisms and promotional visits of the African Commission

The African Commission's first promotional visit to Nigeria took place in 1997. The mission was undertaken by Prof EVO Dankwa, the then Vice-Chairman of the African Commission, Mr Atsu-Koffi Amega, a member of the African Commission and Dr Essombe Edimo Joseph, a legal officer at the

Secretariat of the African Commission.<sup>61</sup> One of the focuses of the visit was to present to the African Commission the human rights situation in Nigeria. In addition, in 2001, the Special Rapporteur on the Rights of Women in Africa conducted a promotional visit to Nigeria.<sup>62</sup> The delegation team members were:

- (a) Mrs Julienne Ondzie-Gnelenga, the then Special Rapporteur of Women's Rights in Africa and also member of the African Commission;
- (b) Mrs Annie Rashida-Mulumba, legal officer at the African Commission's Secretariat; and
- (c) Mrs Charlotte M Ndayisaba, the personal assistant to the Special Rapporteur.

Among other recommendations, she encouraged the federal government of Nigeria to:<sup>63</sup>

take all steps necessary to protect women from violence in all its forms, traditional beliefs and customs such as female genital mutilation, burying wives alive with their late husbands, despoilment of widows, among other traditions; help women to be aware of their fundamental rights especially regarding their reproductive rights thereby reducing the rate of maternal mortality and infant mortality; and take appropriate measures to ensure that the

60 African Commission on Human and Peoples Rights 'Federal Republic of Nigeria: 6th Periodic Report, 2015 - 2016' 62nd Ordinary Session, submitted on May 2018, African Commission on Human and Peoples' Rights States. (achpr.org) (accessed 15 March 2022).

61 African Commission on Human and Peoples' Rights 'Nigeria: Promotional Mission, 1997, 7 to 14 March' available at <https://www.achpr.org/states/missionreport?id=15> (accessed 15 March 2022).

62 African Commission on Human and Peoples' Rights 'Nigeria: Mission on Rights of Women, 2001', from 20 February to 2 March, available at <https://www.achpr.org/states/missionreport?id=11> (accessed 15 March 2022).

63 The 1995 Beijing Platform for Action flagged 12 key areas where urgent action was needed to ensure greater equality and opportunities for women and men, girls and boys. It also laid out concrete ways for countries to bring about change. UN Women works with governments and partners to ensure such change is real for women and girls around the world.

commitments made by the government of Nigeria during the Mid-Term Review of the implementation of the Beijing Platform are strictly adhered to.

It should be noted that two sessions of the African Commission have been held in Nigeria. The first one was held in 1991 before the ratification and adoption of the Maputo Protocol and the second in 2008, after the adoption of the Maputo Protocol.<sup>64</sup> These sessions did play a role in creating visibility about the Maputo Protocol in Nigeria.

## 12 Factors that may impede or enhance the impact of the African Charter

The government of Nigeria has made remarkable achievements towards granting maximum protection to women in distress situations in response to article 24 of the Maputo Protocol on the protection of women in distress.<sup>65</sup> Some of these women have suffered physical, psychological and sexual abuse and need to undergo rehabilitation and counselling to get them back on track.<sup>66</sup> In order to meet their needs, there are many individual and government owned shelters.

There are also provisions for hotlines and helpline services to

enhance immediate responses to incidence of violence against women.

Despite these efforts, certain factors impede the impact of the Maputo Protocol in Nigeria:

### (a) *Lack of awareness*

Majority of the people especially legal practitioners and judges have little or no knowledge of the Maputo Protocol, its provisions and its significance in protecting women rights in Nigeria. Undergraduate and law school students are not exposed to the provisions of the Protocol. At best, it is taught as a topic under human rights law and even then, as an elective course.

### (b) *Constitutional barriers*

Section 12 of the Nigerian Constitution creates a dualist approach to international law. According to this section, provisions of international treaties do not have effect in Nigeria unless they have been domesticated. While several legal arguments have been advanced to circumvent the effect of this provision, it is obvious that this provision is one of the reasons why judges and lawyers do not include provisions of the Maputo Protocol in their briefs/arguments. Lawyers usually rely on authoritative sources of law rather than laws that have merely persuasive effect.

### (c) *Political barriers*

There is a general lack of political will by the political class. Since the implementation of treaty provisions is not required to secure voters' support, leaders show little or no commitment to it.

64 The African commission on Human and Peoples' Rights (Final Communiqué), Abuja, Federal Republic of Nigeria, 24 November 2008, African Commission on Human and Peoples' Rights Sessions (achpr.org).

65 Article 24 of the Maputo Protocol.

66 Canada: Immigration and Refugee Board of Canada, Nigeria: Services and shelters available to abused women, including location funding, and length of existence; government interest and involvement in the issue of abuse of women, 16 June 2000, NGA34541.E, available at <https://www.refworld.org/docid/3ae6ad7040.html> (accessed 15 March 2022).

**(d) Structural barriers**

Nigeria is a federal state.<sup>67</sup> This creates barriers for implementation of treaty provisions as some states are reluctant to domesticate provisions of the Maputo Protocol even when the Federal Government has done so. For example, despite the enactment of the Violence Against Persons Act (VAPP) by the Federal Government, several states of the Federation are yet to respond with a similar legislative instrument thus making the VAPP to have only limited effect.

**(e) Non-domestication**

Non-domestication is another barrier to the implementation of the Maputo Protocol. It reduces the extent to which lawyers can rely on provisions of the Maputo Protocol in courts and affects the willingness of judges to cite or rely on the Protocol in their judgments. A whole-sale domestication will greatly enhance the chances of the Maputo Protocol in Nigeria. However, it is noteworthy that recent legislative victories such as the VAPP has enhanced the impact and influence of the Maputo Protocol in Nigeria.

The following factors may enhance the impact of the Maputo Protocol in Nigeria:

**(a) Role of civil society / advocacy groups**

NGOs have played a crucial role in promoting awareness and the use of the Maputo Protocol through lawsuits, conferences, seminars and workshops with different stakeholders including

legislators, policy makers, academics and judges. The intervention of these NGOs cannot be underrated as it is the most fundamental pillar of the influence of the Maputo Protocol in Nigeria. In fact, the day-to-day activities of NGOs are aimed at giving life to the rights enshrined in the Maputo Protocol. NGOs are a great link that have enhanced the impact of the Maputo Protocol in Nigeria.

**(b) African Human Rights Moot Court Competition**

The yearly African Human Rights Moot Court Competition has helped with creating awareness about the Maputo Protocol. Students attending institutions involved in such moot competition have a better advantage. However, many institutions are not involved in this academic exercise. A way forward may be to have a system where the African Moot Court competition franchise is implemented in each country with the finals comprising the finalist school per country, holding rotationally. This will provide a major awareness drive needed nationally for young lawyers and law students, judges and Magistrates. If funding is available, this two-layered moot court competition (first at country level; then at the continental level) should be implemented.

**(c) The role of the media**

The media plays a very limited but crucial role in creating awareness about the Maputo Protocol through their interviews with experts and audience – participatory programmes. While an average Nigerian is not likely to know about the Maputo Protocol from the media, he/she is likely to know more about women's rights issues from the

67 Section 12 of the Constitution of the Federal Republic of Nigeria 1999.

media. Therefore, the role of the media should not be underrated. Women rights issues should be mainstreamed into their contents. Social media has also created significant awareness about women's rights issues but specific social media movements on actual provisions of the Maputo Protocol are rare. One of the challenges with human rights influence or impact analysis is the thinking that treaties will have direct word for word impact at the domestic level. This is rarely the case. In most cases, treaty provisions provide support for ideas, and the media standing on the authority of the treaties, lend greater credence to the cause of the treaty mostly without referencing the treaty.

gender interest, some of which are not addressed in the much-celebrated Nigerian National Gender Policy.

### **13 Conclusion**

The Maputo Protocol has been impactful in Nigeria to some extent. Its level of influence can be explained under three headings: whether the level of influence of the Maputo Protocol has remained static, is regressing or whether it is progressing. While the level of influence is certainly not in a fast lane, there is no doubt that it is progressing. Again, human rights treaty provisions do not operate in isolation. At least some legislators at national and state level are now aware there is a treaty called the Maputo Protocol. The efforts of wives of governors across the 36 states of the Federation have also bolstered the influence of the Maputo Protocol. Several of them are campaigning vigorously against rape, defilement and sexual harassment. From time to time in their campaign, they refer to the Maputo Protocol. While the impact of the Maputo Protocol in Nigeria is revolutionary, it is trite that lots needs to be done. The government of Nigeria must look deeper into issues that promote