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## PROTECTION OF THE RIGHTS OF SINGLE MOTHERS IN NIGERIA

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### Abstract

*This paper addresses the subject of the protection of the rights of single mothers using Nigeria as the template. The paper argues that myriads of factors account for single motherhood and that the specific protection of the rights of single mothers in Nigeria, is critical to a balanced national development. The Paper concludes that in addition to making specific laws and policies to protect single mothers, Nigeria needs a real social, religious and cultural paradigm shift and that the single mothers themselves have various roles to play in this regard.*

### 1. Introduction

The questions, challenges and issues that arise in relation to the status, rights, obligations and protections available to a single mother call for a careful examination or re-examination of the subject of single motherhood. Women's rights are generally protected under existing domestic, regional and international Treaties, Conventions, Agreements and Protocols. The Universal Declaration of Human Rights (UDHR);<sup>1</sup> the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);<sup>2</sup> the African Charter

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<sup>1</sup> Article 7 of the UDHR provides that 'all are equal before the law and are entitled without any discrimination to equal protection of the law.

<sup>2</sup> Articles 1, 2 and 3 of CEDAW provide for equal political, economic, social, cultural and civil rights for women regardless of their marital status. States Parties are enjoined

on Human and Peoples' Rights (ACHPR);<sup>3</sup> the landmark Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),<sup>4</sup> among other international legal documents, all protect and promote the rights of women. In Nigeria, the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended)<sup>5</sup> and other relevant laws<sup>6</sup> prohibit all forms of discrimination against women, including single mothers.<sup>7</sup>

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to enact national legislation banning all forms of discrimination. See also Articles 4, and 15 of CEDAW.

<sup>3</sup> Article 2 of the Charter provides thus; 'the rights and freedoms enshrined in the Charter shall be enjoyed by all, irrespective of race, ethnic group, color, sex, language, national and social origin, economic status, birth or other status.' See also Articles 14-17 of ACHPR.

<sup>4</sup> Article 3 states thus; '1.) Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights. 2.) Every woman shall have the right to respect as a person and to the free development of her personality. 3.) States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women. 4.) States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.'

<sup>5</sup> In the Constitution, Fundamental rights are guaranteed under Chapter IV of the 1999 Nigerian Constitution. Sections 33-44 list out the different kinds of rights that every citizen should rightfully enjoy devoid of all forms of discrimination. Specifically, Section 42 which lays the foundation for the equality of all persons, provides that; 'a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not be discriminated against by reason only that he is such a person.'

<sup>6</sup> These include the Child's Right Act (CRA) of 2003 and the recent 2015 Violence against Persons (Prohibition) Act (VAPP) for the protection of the rights of girls and women. Sections 2-9 of the VAPP Act comprehensively deal with the offence of rape and assault, prohibits harmful traditional practices, among others.

<sup>7</sup> In particular, the Maputo Protocol sets standards and provides broad protection for women's sexual and reproductive rights. It clearly affirms the right of women to make decisions regarding their bodies and reproductive life even if that decision entails the choice of single motherhood - 'The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights', *Heath Centre for reproductive Rights Briefing Paper*, <[https://reproductiverights.org/sites/default/files/documents/pub\\_bp\\_africa.pdf](https://reproductiverights.org/sites/default/files/documents/pub_bp_africa.pdf)> accessed 30 March 2021.

Regrettably, despite the plethora of legislation on women's rights, many societies still practice various forms of discrimination against single mothers and their children.<sup>8</sup> In societies where only married mothers are respected, single mothers often feel socially isolated and perhaps humiliated.<sup>9</sup> Chiglashvili posits that 'the status of being single sounds like a verdict.'<sup>10</sup> Singles are often denied advantages and benefits that are available to individuals who are not single based solely on their non-single relationship status.<sup>11</sup>

The bias that single-mother families are a misfortune largely remains.<sup>12</sup> De Paulo and Morris posit that a widespread form of bias slipped under our cultural radar, makes single people easy targets of 'singlism.'<sup>13</sup> There appears to be a lack of empathy for single mothers who continue to face discrimination within the family, community and society at large. The Nigerian culture which perpetrates discrimination against single mothers signifies the precarious situation which mothers in this category find themselves, and raises some concerns about their human rights protection.<sup>14</sup> Regrettably, there is a total

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<sup>8</sup> L L Hancock, 'How Women Experience and Respond to Singlism: Stereotyping and Discrimination of Singles', (2017), *Walden Dissertation and Doctoral Studies Collection*, 3.

<sup>9</sup> R N Rimal and M K Lapinski, 'A Re-explication of Social Norms, Ten Years Later' (2015) 25 (4), *Journal of Communication Theory*, 393.

<sup>10</sup> L Chiglashvili, 'Legal Rights of Homeless Children and Single Mothers - General Overview' (2015) *European Scientific Journal*, 128.

<sup>11</sup> This practice of negative stereotyping and discrimination towards singles is what is called 'singlism' (Hancock (n.8)15. The definition is further expanded by DePaulo and Morris to include the practice of prejudice and stigmatisation of single adults - P M DePaulo and W L Morris, 'The Unrecognized Stereotyping and Discrimination Against Singles', (2006) 15 (5), *Current Directions in Psychological Science*, 251.

<sup>12</sup> V S Mannis, 'Single Mothers by Choice' (1999) 48 (2) *Family Relations*, 121.

<sup>13</sup> De Paulo and Morris (n.11).

<sup>14</sup> M O Tenibiaje and D J Tenibiaje, 'Effects of Single Parenthood on the Academic Performance of Secondary School Students in Ekiti State, Nigeria' (2011) 2 (1), *International Review of Social Sciences and Humanities*, 240.



lack of legislation that clearly provides special protection to single mothers, like there is for married women.<sup>15</sup>

Although there are many factors contributing to the challenges single mothers face, there are also numerous possible solutions. Single mothers and their children present unique challenges to the legal system and society as a whole. The Paper therefore calls for State intervention where new laws would be enacted to promote and protect the rights of single mothers.<sup>16</sup> Additionally, advocacy must be strengthened at family and community levels to promote a culture of respect for the rights of single mothers.

## 2. Defining Single Motherhood

In Nigeria, the existence of single parenthood was largely unknown, and where they existed, they were ignored as exceptional cases.<sup>17</sup> Presently, single parenthood, especially single motherhood, is a fast-growing family pattern which is becoming as common as the renowned 'nuclear family' consisting of a mother or father and the children.<sup>18</sup> In America, single mother households constitute a significant part of the contemporary American family profile. Single mothers represent an ever-growing proportion of the adult population, and the proportion of mothers who are single is growing across all socio-economic groups.<sup>19</sup>

Although the most common type of single-parent family is one that consists of a mother and her biological children,<sup>20</sup> attempting a definition of the term 'single motherhood' is rather complicated and rife. There are a lot more definitions on the term single parenthood than there are definitions on

<sup>15</sup> An example is the *Married Women's Property Act*, 1882.

<sup>16</sup> *Ibid*, 567.

<sup>17</sup> *Ibid*.

<sup>18</sup> *Ibid*.

<sup>19</sup> Mannis (n.12).

<sup>20</sup> 'Single-parent Families', *Encyclopedia of Children's Health* <<http://www.health.ofchildren.com/S/Single-Parent-Families.html>> accessed 10May 2021.

single motherhood.<sup>21</sup> However, the definition of single parenthood appears to have been adapted to suit the description of who a single mother is. Therefore, single mothers are women who, voluntarily or involuntarily, either by choice or other circumstances of life, are left on their own to raise their children by themselves without the support of the other parent. The Collins English Dictionary defines a single mother as a mother who has a dependent child or dependent children and who is widowed, divorced, or unmarried.<sup>22</sup>

Single mothers are parents who care for one or more children without the physical assistance of the other biological parent. The definition and the legal aspects associated with single mothers may vary according to jurisdictional laws of different regions.<sup>23</sup> A single mother can also be referred to as a mother who does not have a husband or partner. This presupposes that the mother in this category is raising the child or children alone. She can also be described as a 'lone-mother.' The term 'single mother' or 'lone mother' in itself focuses attention on a woman's marital status and on the fact that she is raising children without a man.<sup>24</sup>

## 3. How Single Motherhood Arises

There are many circumstances that give rise to single motherhood. Understanding the reasons would provide an insight into the circumstances surrounding the daily lives of single mothers,<sup>25</sup> and possibly aid a paradigm shift. Although scholars do not seem to agree on the reasons for widespread 'mother-only' or 'non-marital births,' Bock identifies the most widespread factors to include widowhood, rape, divorce, separation, abandonment and

<sup>21</sup> 'Single Mothers' <<http://family.laws.com/single-mothers>> accessed 31 January 2020.

<sup>22</sup> *Collins English Dictionary*, (HarperCollins Publishers, 2020).

<sup>23</sup> "Single Mothers" (n.21).

<sup>24</sup> M K Nelson, *The Social Economy of Single Motherhood*, (Taylor and Francis Group, New York 2005) 4.

<sup>25</sup> A K Ali and S M Soomar, 'Single Parenting: Understanding Reasons and Consequences', (2019) 10 (2) *JOJ Nursing and Health Care*.

adoption.<sup>26</sup> Comstock avers that 'the rise of single-parent families has been attributed to the increasing divorce rate, death of a parent; out of wedlock birth, court appointed guardianship, rejection or other factors that leave one adult totally responsible for the rearing of children.'<sup>27</sup> According to Amato and Keith, other factors such as death of a parent, unintended pregnancy or birth to unmarried couples, and single parent adoption are the major causes of single parenthood in the contemporary society.<sup>28</sup> Additionally, there are instances where single motherhood may be a choice in exercise of an individual's human right.<sup>29</sup> Some of these situations are further discussed below.

(i) **Single Motherhood from Death of Spouse**

Single motherhood can arise from the death of a spouse. A married woman who loses her husband automatically becomes a single mother, and assumes responsibility of raising her children by herself. Adekile defines a widow as 'a woman whose husband has died during the subsistence of a legally valid marriage, and who has not remarried.'<sup>30</sup>

(ii) **Single Motherhood by Choice (SMC)**

There are also women who choose single motherhood deliberately. Single mother by choice' (SMC) or 'choice mother' represents a new phenomenon.<sup>31</sup> Jadva observes that in recent years, there has been a rise in the number of women choosing to have children without the involvement of a

partner. These women differ from single mothers who find themselves parenting alone following divorce or separation.<sup>32</sup>

For an SMC woman, although unmarried, some intentionally go into conception<sup>33</sup>. Levin admits that the single mother landscape has changed in the past decade, with an increasing number of SMCs arising from advancements in In vitro-fertilisation (IVF) and accessibility to sperm donation.<sup>34</sup> Some SMCs are -educated women in professional occupations who become mothers in their late 30s or early 40s.<sup>35</sup>

(iii) **Single Motherhood by Adoption**

Single motherhood also arises from adoption. Adoption is a procedure by which a person legally assumes the role of a parent to a child that is not his or her biological child.<sup>36</sup> Adoption is therefore the assumption of full legal and parental responsibility for a child.<sup>37</sup> It is a life-long commitment.<sup>38</sup>

Under the 1989 United Nations Convention on the Rights of the Child, adoption is recognized as one of the forms of alternative care for children who

<sup>32</sup> V Jadva and S Badger, 'Mom by Choice, Single by Life's Circumstance ... Findings from a Large Scale Survey of the Experiences of Single Mothers by Choice' (2009) 12 (4) *Human Fertility*.

<sup>33</sup> Hayford and Guzzo (n.31).

<sup>34</sup> J Tynan, What Makes Someone a 'Single Parent'? *The Sydney Morning Herald* <<http://www.smh.com.au/lifestyle/life-and-relationships/what-makes-smeone-a-single-parent-20190115-p50reu.html>> accessed 19 April 2021.

<sup>35</sup> S Graham and A. Braverman, 'ARTs and the Single Parent' In: M Richards, G Pennings and J B Appleby (eds.) *Reproductive Donation: Practice, Policy and Bioethics* (Cambridge University Press, Cambridge 2012).

<sup>36</sup> O I Tajudeen, 'Adoption Practice in Nigeria - An Overview' (2013) 19 *Journal of Law, Policy and Globalization*, 7.

<sup>37</sup> *Ibid*.

<sup>38</sup> *Ibid*, maintaining that the legal effect of an adoption order is the severance of all parental rights and obligations between the adopted child and his biological parents, and transfer of legal ties to the new adoptive family. The child in question becomes a full member of the adoptive family.

<sup>26</sup> J D Bock, 'Doing the Right Thing? Single Mothers by Choice and the Struggle for Legitimacy', (2000) 14 (1), *Gender and Society*.

<sup>27</sup> D Comstock, *Diversity and Development* (CA: Thomson Brooks/Cole, Belmont 2005).

<sup>28</sup> P Amato and B Keith, 'Parental Divorce and the Well-being of Children' (2000) 110, *A Meta Analysis Psychological Bulletin*, 26.

<sup>29</sup> Bock (n.26).

<sup>30</sup> O M Adekile, 'Towards a Socio-Legal Approach to the Protection of Widows in Africa', (2013) 2, *The Nigerian Journal of Public Law*, 30.

<sup>31</sup> S R Hayford and K B Guzzo, 'The Single Mother by Choice Myth', (2015) 14 (4), *American Sociology Association*.



have been temporarily or permanently deprived of their family environment, and also for children who are unable to remain in their family environment.<sup>39</sup>

#### (iv) **Single Motherhood by Divorce**

Another reason for single motherhood is separation or divorce. The rate of divorce has increased significantly in the last few decades globally and particularly in Africa. Confirming the point, Olaniyi's research identified barrenness or infertility as the major cause of divorce. He stated that other causes include absence of love, ignorance, poverty, religious differences, unemployment, and others.<sup>40</sup>

In Pakistan, about 40,410 cases of parent's separation have been reported in the family court of Pakistan, which eventually led to single parenting.<sup>41</sup> Ali and Soomar estimate that there are more than 100 cases of divorce registered in family courts of Pakistan on a daily basis.<sup>42</sup> In England and Wales, the proportion of adult population who are divorced increased from 1.3 percent in 1971 to 9.3 percent in 2010; the proportion divorced increased with age, at age 53, 17.6 percent were divorced. In the United States of America, the percentage of persons aged 18 and over who were divorced increased from 8.3 percent in 1990 to 10.4 percent in 2010. Among males and females, crude divorce rates increased from 7.2 and 9.3 percent in 1990 to 9.0 and 11.7 percent, respectively, in 2010.<sup>43</sup>

In Nigeria, the alarming rate of marital dissolution was 11 per 1000 population. Divorce rate was highest in the South-South and North-East regions and least in the South-East region. More females were divorced or

<sup>39</sup> Article 20(1) & (2), Article 20(3) of the Convention recognises other alternative child care devices including fostering, guardianship, custodianship and kafalah (the 'unlimited entrustment' of a child to a new family).

<sup>40</sup> A.A Olaniyi, 'Analytical Study of the Causal Factors of Divorce in African Homes' (2015) 5 (14) *Research on Humanities and Social Science*, 18.

<sup>41</sup> A K Ali and S M Soomar, 'Single Parenting: Understanding Reasons and Consequences' (2019) 10 (2), *JOJ Nursing and Health Care*.

<sup>42</sup> *Ibid*.

<sup>43</sup> Marital Status of the Population by Sex, Race, and Hispanic Origin: 1990 to 2010 (US Census Bureau 2012).

separated than males, while age-specific marital dissolution rates ranged from 24 to 132 per 1000 ever married women, and 15 to 24 for men; the higher rates were among younger persons aged 10-24 years.<sup>44</sup> or instance, the proportion of adult population in England and Wales who are divorced increased from 1.3 per cent in 1971 to 9.3 per cent in 2010; the proportion divorced increased with age, at age 53, 17.6 per cent were divorced (Office for National Statistics, 2011). In the USA, the percentage of persons aged 18 and over who were divorced increased from 8.3 per cent in 1990 to 10.4 per cent in 2010. Among males and females, crude divorce rates increased from 7.2 and

#### (v) **Single Motherhood from other Factors**

Other factors that are also responsible for single motherhood include, rape, incest, breach of promise to marry where conception had already taken place, deceit or falsehood about current marital status.<sup>45</sup> Kinnear indicates that in developing countries, desertion and imprisonment produce single-parent families.<sup>46</sup> According to Adejoh, *et al*, 'some other perceived reasons for the rise in the number of never married single mother include family background, age, careless sexual behaviour and non-use of contraceptives, personal preference and perceived economic benefits.'<sup>47</sup>

<sup>44</sup> L F Ntoimo and M E Akokuwebe, 'Prevalence and Patterns of Marital Dissolution in Nigeria' (2014) 12 (2), *The Nigerian Journal of Sociology*, 1.

<sup>45</sup> N N. Chinwuba, 'Human Identity: Child Rights and the Legal Framework for Marriage in Nigeria' (2015) 51 (4) *Marriage and Family Review*.

<sup>46</sup> K L Kinnear, *Single Parents: A Reference Handbook*, (CA: ABC-CLIO, Santa Barbara 1999).

<sup>47</sup> S O Adejoh, *et al*, 'Single Motherhood: Experiences of Never Married Women in Lagos, Nigeria', (2019) 17 (2) *The Nigerian Journal of Sociology and Anthropology*, 100.

Domestic violence<sup>48</sup> has equally been identified as another reason why some women end existing relationships to escape violence.<sup>49</sup> Although many abused women get caught up in the cycle of violence and are unable or unwilling to leave their spouses, some others prefer to leave for their safety. Bowlus and Seitz argue that abused women are 1.7-5.7 times more likely to divorce.<sup>50</sup> Because of the unpleasant and risky experiences of violence, some women have the phobia for marriage as they fear men could torture or torment them. They prefer to remain unmarried and raise their children themselves as single mothers.<sup>51</sup>

#### 4. Rights of Single Mothers

Single mothers have some acclaimed rights that all human beings and other women share. Rights are the common claims of people which every civilized society recognizes as essential claims for their development, and which are therefore enforced by the State. They are legal, social, or ethical principles of freedom or entitlement.<sup>52</sup> A right also refers to what is proper and correct under the law or ethics; something owed a person because of a just claim; a protected and recognized interest.

Rights belong to every citizen of the State, and they include the rights of property, marriage, protection by law, freedom to contract, etcetera. These rights are capable of being enforced or redressed in a civil action in a court of

<sup>48</sup> Walker defines domestic violence as 'a pattern of abusive behaviours including a wide range of physical, sexual, and psychological maltreatment used by one person in an intimate relationship against another to gain power unfairly or maintain that person's misuse of power, control, and authority. It has a high likelihood of resulting in injury, psychological harm, mal-development, or even death - L E Walker, 'Psychology and Domestic Violence Around the World' (1999) 54, *Journal of Am Psychol*, 21.

<sup>49</sup> Z Rakovec-Felser, 'Domestic Violence and Abuse in Intimate Relationship From Public Health Perspective' (2014) 2 (3), *Health Psychol Res. Journal*, 1821.

<sup>50</sup> A Bowlus and S Seitz, 'Domestic Violence, Employment and Divorce' (2006) 47 (4), *International Economic Review*, 1113.

<sup>51</sup> Rakovec-Felser (n 49).

<sup>52</sup> K KGhai, 'Rights: Meaning, Features and Types of Rights' <<https://www.yourarticlelibrary.com/essay/law-essay/rights-meaning-features-and-types-of-rights/40373>> accessed 27 December 2021.

law. A right is an entitlement to something, whether to concepts like justice and due process, or to ownership of property or some interest in property, real or personal. These rights include various freedoms, protection against interference with enjoyment of life and property, civil rights enjoyed by citizens such as voting and access to the courts, natural rights accepted by civilized societies, human rights to protect people throughout the world from terror, torture, barbaric practices and deprivation of civil rights.<sup>53</sup>

The essential rights of single mothers which are perceived as their basic entitlements are discussed below:

#### (i) Right to Conceive and Raise Children

One of the major rights available under the law is the right to conceive and to raise their own children. These rights essential, basic civil rights of man and have been considered to be more precious than property rights.<sup>54</sup> Under the Protocol to the African Charter on Women's Rights in Africa (Maputo Protocol), the right to health and reproductive health care rights have been considered among the most important of the many rights contained in the Protocol.<sup>55</sup> As provided under Article 14 (1(a), (b) and (c)), women's rights to sexual and reproductive health include: the right to control their fertility, the right to decide the number of children and the spacing of children, the right to choose any method of contraception, and the right to have family planning education.

The choice of single motherhood is arguably a right to which the individual is entitled. It has actually been argued that the question whether to accept or not to accept single motherhood borders on morality rather than

<sup>53</sup> G N Hill and K T Hill, 'Right' <http://legal-dictionary.thefreedictionary.com/Right>. accessed 27 December 2021.

<sup>54</sup> 'The UK's Child Support Act' *Centre for Public Impact* <http://www.centreforpublicimpact.org/case-study/child-support-act-uk>. accessed 01 June 2021.

<sup>55</sup> R Sigsworth and L Kumalo, 'Women, Peace and Security: Implementing the Maputo Protocol in Africa' (2016) 295 *Institute for Security Studies*, 2.



legality.<sup>56</sup> Admittedly, in Africa, due to the strong influence of religion and culture the choice of single motherhood generally suffers a moral disapproval; although such disapproval does not nullify the right of an adult to conceive and raise children if she so desires.<sup>57</sup>

#### (ii) **Right to Custody of Children**

The word 'Custody' is neither defined in the Matrimonial Causes Act nor the Child's Right Act.<sup>58</sup> Therefore, there is currently no statutory definition of the term, custody. However, in *Nwosu v. Nwosu*,<sup>59</sup> the Court defined custody as, 'The care, control and maintenance of a child awarded by a court to a responsible adult. Custody involves legal custody (decision making authority) and physical custody (care giving authority), and an award of custody usually grants both rights.'

A parent's right to custody<sup>60</sup> is a fundamental right.<sup>61</sup> One of the major rights a single mothers could enjoy is the right to be appointed the sole guardian without giving any notice to the 'deserter' or 'absentee' father.<sup>62</sup> Where a child is born out of wedlock, there is a generally accepted perception that a single mother is the custodial parent of that child. Therefore, single mothers have a right to obtain full physical and legal custody over their children. This is because every mother has parental responsibility for her child

<sup>56</sup> W Moka-Mubelo, *Reconciling Law and Morality in Human Rights Discourse: Beyond the Habermasian Account of Human Rights* (2015), PhD Thesis, Boston College, Boston, United States of America.

<sup>57</sup> Sigsworth and Kumalo (n.55).

<sup>58</sup> E Oyitso, 'Child Custody in Nigeria: Guiding Principles and Considerations' [https://www.academia.edu/36800385/Child\\_Custody\\_in\\_Nigeria\\_Guiding\\_Principles\\_and\\_Considerations](https://www.academia.edu/36800385/Child_Custody_in_Nigeria_Guiding_Principles_and_Considerations) accessed 29 October 2021.

<sup>59</sup> (2012) 8 NWLR (Pt. 1301) 1 at 32 paragraphs F-G.

<sup>60</sup> Also known as parental custody interest.

<sup>61</sup> B L Weiss, 'Single Mothers' Equal Right to Parent: A Fourteenth Amendment Defense Against Force-Labor Welfare Reform' (1997) 15 (11) *LAW & INEQ.*, 240.

<sup>62</sup> M S Melli, 'The Changing Legal Status of the Single Parent' (1986) 35 (1), *National Council on Family Relations* 31.

and is generally expected to become the parent with care, in the event of a separation or divorce.<sup>63</sup>

In Nigeria, Sections 68 and 69 of the Child's Right Act<sup>64</sup> relate to access and custody of a child born outside wedlock. The provisions also allow a father or mother of a child born outside wedlock to file an application before the Family Court established under the Act, seeking an order granting him or her custody and parental responsibility for the child, or right of access to the child.

#### (iii) **Right to Direct the Upbringing of Their Children**

In most countries, individuals are entitled to make their own choices, and those of their children without undue interference from the State. The idea of broad parental rights of choice is supported by the ruling in *Meyer, Pierce, Yoder and La Fleur*.<sup>65</sup> Whatever the source of the rights, *Yoder, Meyer and Pierce* establish that within broad limits, parents have the primary authority to choose the style of their children's 'care and management.'<sup>66</sup>

It has been argued that under no circumstances must any law intrude on the 'liberty' guaranteed by the Due Process Clause.<sup>67</sup> In *Meyer v. Nebraska*, a US court concluded that the liberty interest, '[w]ithout doubt, 'included the right to 'establish a home and bring up children' and 'the power of parents to control the education of their own [children].' This position of the US law was reaffirmed in *Pierce v. Society of Sisters*<sup>68</sup> which held that the Due Process Clause granted parents the 'liberty... to direct the upbringing and education of children under their control.'<sup>69</sup>

<sup>63</sup> *Ibid.*

<sup>64</sup> CAP C50 LFN, 2004.

<sup>65</sup> J S Bybee, 'Substantive Due Process and Free Exercise of Religion: Meyer, Pierce and the Origins of Wisconsin v. Yoder' (1996) 352, *Scholarly Works*, 887.

<sup>66</sup> M Walsh, 'Courts Affirm Rights of Parents to Control Children's Upbringing' (2020) <<https://www.edweek.org/policy-politics/court-affirms-rights-of-parents-to-control-childrens-upbringing/2000/06>> accessed 29 December, 2021.

<sup>67</sup> Bybee (n.65).

<sup>68</sup> 268 U.S. 510 (1925).

<sup>69</sup> *Ibid.*, at 534-35.

In Nigeria, the provisions of Section 37 of the Constitution of the Federal Republic of Nigeria (as amended), guarantees and protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications. This provision supports the US Supreme Court view that parents, including single mothers, have a right to their privacy and that includes a right to make their decisions concerning their children.

**(iv) Right to Sue the Other Parent Not Providing Care for the Child**

A single mother is entitled to sue the parent not providing child support or care. Each parent has specific responsibilities under law to provide and care for their children.<sup>70</sup> In Nigeria, maintenance of spouse and children is provided for under the Matrimonial Causes Act.<sup>71</sup> The court is empowered under Section 70 to make orders for maintenance of the children of the marriage. Under Section 73, the court can order that maintenance be paid weekly, monthly, yearly, or even as a lump sum. The Act also empowers the court to review maintenance orders.

Under Section 69 of the Act, the term, 'children of the marriage' has been defined to include 'any child adopted since the marriage by the husband and wife or by either of them with the consent of the other.' In *Okoli v. Okoli*,<sup>72</sup> the court ordered the father of the twin minor children of his marriage to Mrs. Okoli to pay child support for the upkeep of the children. The parties in this case were married in Boston on 4th October, 1991, and separated in November of 2000. They unsuccessfully attempted to have children since 1992 through a variety of means, including In vitro fertilization (IVF). At the time of their separation, they were on a waiting list for donor eggs to pair with donor sperm. Donor eggs became available in November 2001 and consent was given by the husband for the IVF procedure to proceed. The court ruled that he was the legal father of the twins and entitled to pay child support to his wife for their upkeep.

<sup>70</sup> E. A. Cordano, *Single Mothers' Rights* < <https://www.cor-law.com/blog/single-mothers-rights/> accessed 25 September 2021.

<sup>71</sup> CAP 7 LFN, 2004.

<sup>72</sup> [2003] 8 NWLR (Pt. 823) 565.

Furthermore, the provisions of Section 16 (1) of the VAPP Act 2015 make it an offence for a spouse to abandon his children, spouse and other dependants. The offending spouse shall be liable on conviction to a term of imprisonment not exceeding three years or to a fine of not more than ₦500,000 or to both such imprisonment and fine. No doubt, a single mother who has been abandoned by her spouse has the right to seek redress in the court of law.<sup>73</sup>

**(v) Right to Retain or Change Status as a Single Mother**

The choice of motherhood is a right to which every woman is entitled. In recent years, a number of modern women are opting for this choice to enable them fulfill their life-long dreams of being a mother.<sup>74</sup> The right to choose to be or not to be a single mother has been recognized under Article 14 (1(a), (b) and (c)) of the Maputo Protocol which guarantees women's rights to sexual and reproductive health including the right to control their fertility, the right to decide the number of children and the spacing of children and the right to choose any method of contraception. Interestingly, recognition of women's rights and gender equality is still problematic because there are currently no specific laws, neither are there any policies in Nigeria that seek to address the rights of single mothers.<sup>75</sup>

**(vi) Right to be Free from Discrimination as a Single Mother**

In Nigeria, there are provisions within the Constitution and national laws from which single mothers can seek protection from discrimination. Fundamental rights are guaranteed under Chapter IV of the Constitution.

<sup>73</sup> S. Muurling, J kamp and A Schmidt, 'Unwed Mothers, Urban Institutions and Female Agency in Early Modern Dutch German and Italian Towns', (2021) 26 (1), *History of the Family*, 20.

<sup>74</sup> Hayford and Guzzo (n.31).

<sup>75</sup> Chiglashvili (n.10) 131.



Sections 33-44 list out the different kinds of rights that every citizen should rightfully enjoy devoid of all forms of discrimination.<sup>76</sup> Specifically, Section 42 of the Constitution prohibits discrimination against a Nigerian citizen based on sex and other characteristics listed. It provides protection for all citizens of Nigeria and prohibits the subjection of any individual to restrictions by any law in force or by any government action. It goes further to prohibit withdrawal of privileges or advantages to a Nigerian citizen by any law in force or executive or administrative action by reason of the person's sex.

### 5. Overview of Core Institutions Protecting Rights of Single Mothers in Nigeria

For a long time, societies have dealt with the issue of 'illegitimacy' differently. In the early modern period, the circumstances of unmarried pregnant women were generally precarious.<sup>77</sup> For instance, in Morocco, like in many other Arab countries, several laws contain deep inequalities for women, which marginalize and stigmatize them. Single mothers are generally unprotected by law. In fact, they and their children are defined by law as illegitimate.<sup>78</sup>

In Nigeria, like the rest of Sub-Saharan Africa, having children outside wedlock, irrespective of circumstances, is largely considered immoral and a taboo.<sup>79</sup> Before the coming into force of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the law had no place for children who were born outside wedlock. He or she was regarded as the son or daughter of

<sup>76</sup> They include the right to life, right not to be subjected to torture or to inhuman or degrading treatment, right to personal liberty, right to fair hearing, right to privacy, right and freedom to change religion or belief, freedom to hold opinions, right of association, freedom from discrimination and the right to acquire and own immovable property anywhere in Nigeria.

<sup>77</sup> Muurling *et al* (n.73) 11.

<sup>78</sup> E B Majbar, "Single Mothers' Between Law and Civil Society in Morocco (2013) *Asian Conference on the Social Sciences*, 471.

<sup>79</sup> M O Izz, 'An Analysis of the Concept of Legitimacy and Legitimation Under Nigerian Family Law' (2017) 5 (1), *The Journal of Property Law and Contemporary Issues*, 180.

nobody and aptly termed, *fillius nullius*.<sup>80</sup> A child was considered legitimate if 'born to parents who are married to each other either at the time of birth or subsequently.'<sup>81</sup>

There are different institutions - family, community, religious institutions and state structures - whose arrangements affect single motherhood in one way or another. These institutions are discussed below:

#### (i) Family Unit

The term family is recognized under Article 23 (1) of the International Covenant on Civil and Political Rights as 'the natural and fundamental group unit of society and is entitled to protection by society and the State.' In Nigeria, the family is extremely important. Family bonds are often fueled by strong societal traditional norms. Labeodan argues that although Nigerian families are not the epitome of indestructible knit, there exists that strong family bond which is mostly described by the saying, 'blood is thicker than water.'<sup>82</sup>

Marriage which is a means by which a family is formed is viewed as a necessary but not the only condition under the law to create a family.<sup>83</sup> In line with the patriarchal structure of Nigeria, it has been stated that marriage determines the status of a woman, unless her remaining single is prescribed by the 'gods'.<sup>84</sup> Thus, regardless of a woman's achievements, or circumstances of being single, being unmarried renders her inferior to a married woman.<sup>85</sup> Most individuals aspire to marry especially before the age of thirty-five (for women)

<sup>80</sup> Latin phrase meaning, 'the son of nobody.'

<sup>81</sup> Izz (n.79).

<sup>82</sup> M O Labeodan, 'The Family Lifestyle in Nigeria' 5 <<https://paa2005.princeton.edu/papers/51248>> accessed 01 June 2021, 14.

<sup>83</sup> *Ibid*.

<sup>84</sup> A. Atsenuwa, *Constitutionalism and Legal Feminism: Stepping Stones or Impediments on the Long Road to Freedom for Nigerian Women?* (Nigerian Institute of Advanced Legal Studies, Lagos 2011).

<sup>85</sup> E. Durojaye, 'Woman but not Human: Widowhood Practices and Human Rights Violations in Nigeria. International (2013) 27, *Journal of Law, Policy and the Family*, 176.

and forty-two (for men).<sup>86</sup> Family norms are still strictly adhered to in Nigerian culture. The institution of marriage is rarely established without the involvement of the extended family members.<sup>87</sup> Ogundipe-Leslie's study shows that more women than men feel oppressed in their families. Regrettably, despite the fast spread of westernized lifestyle and easier access to formal education, women remain at a disadvantage in many Nigerian families.<sup>88</sup>

The rights of single mothers are rarely protected by the family unit. Regrettably, single mothers are not given a good place of recognition by their family members. Often, family members feel the need to ostracize the single mother as the child does not belong to the family. There are examples of parents and close family members driving away a daughter or female family member who becomes pregnant out of wedlock. Ms. Zanzi (real name withheld) was only 16 years in Senior Secondary School 3 (SSS3) Class when she became pregnant for a young man she barely knew. She claimed it was this young man that 'deflowered' her. Her parents disowned her while other family members disdained her for her wayward behaviour. Her place in the family was never the same again as she had to go through life alone fending for herself and the baby devoid of any form of support from the family.<sup>89</sup>

## (ii) Community

Community is essential for all its members, for parents, but especially single parents whose workload is undeniably burdensome.<sup>90</sup> Because the African community setting is highly patriarchal, single mothers are generally stereotyped in most Nigerian communities. According to Alemika, 'the traditions and culture of every society determine the values and

<sup>86</sup> Labeodan (n.82).

<sup>87</sup> M Ogundipe-Leslie, *Re-Creating Ourselves: African Women and Critical Transformations* (African World Press, Inc. 1994).

<sup>88</sup> Labeodan (n.82).

<sup>89</sup> Interview conducted on 03 July 2021 in Uyo, Akwa Ibom State.

<sup>90</sup> 'A Single Parent's Path to Community' *Focus on the Family* <http://www.focusonthefamily.com/parenting/a-single-parents-path-to-community/>, accessed 04 June 2021.

behavioural patterns of the people and society...a culture that attributes superiority to one sex over the other exposes the sex that is considered to be inferior to various forms of discrimination.<sup>91</sup> Single mothers, especially the unmarried, are often seen as immoral, hence the stigmatization against mother and child. The community network of support for single parents is often limited following the breakup of a couple.<sup>92</sup>

In African traditional society, particularly Nigeria, single parenthood is considered bad for society or detrimental to children's self-esteem and to others.<sup>93</sup> Therefore, behaviour that is acceptable or unacceptable at the family unit is the same behaviour accepted or rejected ultimately at the community level.<sup>94</sup> In many societies, the phenomenon of single parenting is perceived differently depending on the gender. While some societies discriminate more against volunteered single parents, some others tend to be sympathetic to male single parents and those whose single parent status is occasioned by death of spouse. Mothers of children born out of wedlock are often placed in the most unfortunate position and are more negatively perceived by the society.<sup>95</sup>

In Nigeria, among the Hausa and Yoruba communities, single parenting is perceived as unacceptable, with Yoruba (78.5 percent) and Hausa (65.8 percent) rating it as bad or very bad. Other ethnic groups including Igbos and Ebira perceive single parenting relatively more positive (42.1 percent as good or very good).<sup>96</sup> Anyebe's study reveals that males tend to consider single parenting more unacceptable (88.7% see it as bad or very bad) than females (52.6% as bad or very bad). However, females appear to be more

<sup>91</sup> E Alemika, 'Family Practices and Violations of the Rights of Women' (2010) 8, *University of Maiduguri Law Journal*, 25.

<sup>92</sup> A Lee, *Single Mothers 'Bad for Society'* [http://www.huffpost.com/entry/single-mothers-bad-for-so\\_n\\_825446](http://www.huffpost.com/entry/single-mothers-bad-for-so_n_825446), accessed 01 June 2021.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> T S Grall, *Custodial Mothers and Fathers and Their Child Support* (US Census Bureau, Washington 2016).

<sup>96</sup> E Anyebe, H. Lawal, R Dodo and B Adeniyi, 'Community Perception of Single Parenting in Zaria, Northern Nigeria', (2017) 1, *Journal of Nursing and Care*, 4.



neutral in judging the phenomenon as good or bad. For marital status, both single and married respondents in Anyebe's findings consider single parenting as bad or very bad almost equally (61.0% and 59.9%, respectively), with the married respondents being more indifferent or neutral (22.5%).<sup>97</sup> This finding is similar to Allers' description of what he refers to as a 'single-mother hierarchy.'<sup>98</sup> Some authors have also reported that the loss of spouse attracts more public sympathy than the choice to bear children outside the confines of a marriage union. There is much emphasis laid on the unwelcoming idea of such choice in the community whose set rules are at variance with the single-mother-by-choice option.

It is interesting to observe the sharp contrast in society's preference for single fathers. In fact, society 'martyrs' single fathers but often 'demonises' single mothers as primary parents.<sup>99</sup> Single parents by choice are faced with discrimination, unlike the widowed who are seen as victims of unfortunate circumstances. Interestingly, the widowed, divorced or once-married gradient rating is often 'validated' by a patriarchal structure that favours the single fathers.<sup>100</sup>

### (iii) Religious Institutions

In Anyebe's study, the two main religions - Christianity and Islam - see single parenting as bad or very bad. However, Muslims tend to condemn it more (66.7 percent) than Christians (54.5 percent).<sup>101</sup> Although the Bible does not directly address single mothers, it gives examples of God's gentle interaction with women, mothers, widows and their children. The biblical account in Deuteronomy 10 verse 18, which shows that God 'executes

<sup>97</sup> *Ibid*, 6.

<sup>98</sup> K .S. Allers, 'There's a Single-Mother Hierarchy, and it Needs to Stop' *The Washington Post* <http://www.washingtonpost.com/news/parenting/wp/2016/06/10/the-single-mother-hierarchy/>. accessed 01 June 2021.

<sup>99</sup> A R Haire and C R. McGeorge, 'Negative Perceptions of Never-married Custodial Single Mothers and Fathers: Application of Gender Analysis for Family Therapists' (2012) 24, *Journal of Feminist Family Therapy*, 24.

<sup>100</sup> *Ibid*.

<sup>101</sup> Anyebe *et al* (n.96).

judgment on the fatherless and the widow,' is an expression of God's protection of a category of single mothers.<sup>102</sup> The Bible expressly warns that sex outside of marriage is sinful and dangerous In Hebrews 13 verse 4 the Bible provides as follows; 'let marriage be held in honour among all, and let the marriage bed be undefiled, for God will judge the sexually immoral and adulterous.'<sup>103</sup> Therefore, single motherhood outside wedlock or widowhood is forbidden and primarily creates a strong bias. However, it is note-worthy that in Christianity for instance, if a single mother reconciles with God or finds favour before God, God bestows His love and allows her full rights of 'daughter-ship' as discussed below.

Essien and Bassey<sup>104</sup> postulate that the Bible does not directly address single motherhood, much less voluntary single motherhood. The term is not biblical although single mothers appear under the class of widows or women of marital age who had lost a spouse. The Book of Genesis<sup>105</sup> records an account of a young Egyptian girl, Hagar, an attendant to Sarai,<sup>106</sup> the wife of Abram.<sup>107</sup> Hagar was the first single mother in the Bible, the first woman and mother to be sent away or abandoned by her partner, God cared for her and gave her promises of inheritance. There are many accounts in the Bible where Jesus, Prophets and New Testament Churches ministered to single mothers. In particular, Elijah and Elisha ministered to widowed single mothers.<sup>108</sup> Jesus comforted the widow of Nain and raised her son back to life.<sup>109</sup> He also rebuked the religious leaders of his day for their exploitation of widows.<sup>110</sup> In

<sup>102</sup> *The English Standard Version Study Bible* (Crossway, Illinois 2008)

<sup>103</sup> S Aldrich, 'What Does God have to Say to Single Mothers?' <<http://www.gotquestions.org/single-mothers.html>>. accessed 01 February 2020

<sup>104</sup> A M Essien and A ABassey, 'The Social and Religious Challenges of Single Mothers in Nigeria', (2012) 2 (4), *American Journal of Social Issues & Humanities*, 248.

<sup>105</sup> Genesis 16: 1-16; 21: 1-16.

<sup>106</sup> Later known as Sarah.

<sup>107</sup> Later known as Abraham.

<sup>108</sup> 1Kings 17: 10, 12-14 and 2 Kings 4: 1-7.

<sup>109</sup> Luke 11: 12-16.

<sup>110</sup> Mark 12: 38- 39.

2 Timothy Chapter 1 Verse 5, Timothy, a great church leader, was raised by a single mother of sincere faith, Eunice. Furthermore, the woman recorded in 1 Kings Chapter 17 Verses 7-24 was a widow with a son. She was a single mother whose status resulted from widowhood.

In spite of the restorative attitude and teachings of Jesus Christ about sinners, some Christians, including those in Nigeria, find it difficult to fully accept single mothers who bear children outside wedlock. In the Old Testament of the Bible, sex before marriage was also seen as a grave sin. Verses 19 and 20 of Leviticus Chapter 18 limit sexual relations within marriage and prohibit them outside marriage.<sup>111</sup> In the New Testament, virginity in a woman was highly valued before marriage.<sup>112</sup> In that text, the woman is called both the betrothed and a virgin.<sup>113</sup> Because of the way the society perceives single mothers, many, religious bodies and organizations keep unmarried single mothers away from responsible work positions but rather give to the married who may be younger and inexperienced in comparison with the single women. Nyoro argues that this is borne out of the misconception that the unmarried singles are prone to the sin of impurity than the married.<sup>114</sup>

Notwithstanding the changes in many concepts, Islam has no place for single motherhood. The Sharia - a combination of the Qur'an, the Hadith (Prophet Muhammad's sayings and conduct) and fatwas (rulings of Islamic

scholars) - governs all aspects of a Muslim's life.<sup>115</sup> It places premium on the family and has no place for 'western-type sexual freedom' which accommodates single motherhood.<sup>116</sup>

In Islam, single motherhood is abhorred. In fact, premarital and extramarital relations are criminalized and penalised. In some Northern States in Nigeria, an extramarital relationship attracts stiff penalties.<sup>117</sup> In 2001, the Islamic Court in Gwadabawa, Sokoto State, sentenced Ms. Safiya Hussaini Tungar-Tudu to death after finding her guilty of having premarital sex, an offence punishable under Sharia law. Ms. Tungar-Tudu became the first woman to be sentenced to death by an Islamic Court for having sex outside of marriage. The man she allegedly had sex with was set free by the same court after concluding that it lacked sufficient evidence to prosecute him for the alleged adultery.<sup>118</sup> Furthermore, in 2002, a Sharia High Court at Funtua, Katsina State condemned 30-year-old Ms. Amin Lawal to death by stoning for engaging in sex out of wedlock. Ms. Lawal had given birth to her daughter more than nine months after divorcing. The man she identified as the child's father denied the accusation and was acquitted for lack of evidence to prosecute him.<sup>119</sup>

<sup>111</sup> "The Boundaries of Godly Sexuality" (Leviticus 18: 6-29) <https://bible.org/seriespage/13-boundaries-godly-sexuality-leviticus-186-29>. accessed 08 July 2021.

<sup>112</sup> 1 Corinthians 7. Also, Paul says in 1 Thessalonians 4:3-5: 'For this is the will of God, your sanctification: that you abstain from sexual immorality; that each one of you know how to control his own body in holiness and honour, not in the passion of lust like the Gentiles who do not know God.'

<sup>113</sup> *The Price of Honor: An Application of Exodus 22:16-17* <https://edgeinducedcohesion.blog/2010/12/04/the-price-of-honor-an-application-of-exodus-2216-17/>. accessed 08 July 2021.

<sup>114</sup> V Nyoro, *Legal Security to Christian Marriage in Nigeria* (Jamel Publishers and Press, Calabar 2004) 213.

<sup>115</sup> For development and application of Shari'a in Nigeria see "Political Sharia? Human Rights and Islamic Law in Northern Nigeria" <<https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria>> accessed 21 May 2021.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Nigeria: Women Sentenced to Death Under Sharia* <<https://www.hrw.org/news/2001/10/23/nigeria-woman-sentenced-death-under-sharia>> accessed 22 May 2021.

<sup>119</sup> *The Associated Press*, August, 20 2002 <<https://www.nytimes.com/2002/08/20/world/court-upholds-stoning-for-nigerian-mother.html>> accessed 22 May 2021.



(iv) **State Structures**

State structures distinguish between three different Branches of State power<sup>120</sup> - legislature, executive and judiciary - to ensure that none of the Branches accumulates too much power.<sup>121</sup> In a true democracy, the prominent stakeholders are the three arms of government namely, the Legislature, the law-making body; the Executive, which is expected to implement the law passed, and the Judiciary who interprets the law.<sup>122</sup> In Nigeria, the Federal Government of Nigeria is composed of three distinct Branches: Legislative, Executive, and Judicial, whose powers are vested by the Constitution of Nigeria in the National Assembly, the President, and the Federal Courts, including the Supreme Court, respectively.<sup>123</sup>

The functions of the legislature are numerous. Legislatures were conceptualized by Loewenberg as 'assemblies of elected representatives from geographically defined constituencies, with lawmaking functions in the governmental process.'<sup>124</sup> The legislature is one of the basic structures of any political system. Jewell identified two features that distinguish legislatures from other Branches of government, stressing that legislatures have formal authority to pass laws that are implemented and interpreted by the Executive and Judicial Branches respectively.<sup>125</sup>

Under the Nigerian legal system, the primary role of the judiciary is to interpret and expound both the spirit and letter of the law. Specifically, under Section 6 (1) of the Constitution of the Federal Republic of Nigeria 1999, the

<sup>120</sup> *The Structure of the State* (2017) <https://www.unsereverfassung.at/the-structure-of-the-state/?lang=en>, accessed 02 June 2021.

<sup>121</sup> *Legislature* <https://www.britannica.com/topic/legislature>, accessed 09 August 2021.

<sup>122</sup> GLoewenberg, 'Legislatures and Parliaments In: Seymour Martin Lipset (ed.) (Vol. 111, Encyclopedia of Democracy, London 1995).

<sup>123</sup> A.O. Akinola, 'The Structure and Nature of the Nigerian State' In: *Globalization, Democracy and Oil Sector Reform in Nigeria* (Palgrave Macmillan, Cham, 2018)87.

<sup>124</sup> *Ibid.*

<sup>125</sup> A. E. Ogunna, 'The Nigerian Legislature: An Appraisal of the Imo Legislature in Democracy and National Development: 1983 and Beyond', Proceedings of the Tenth Annual Conference of the Nigerian Political Science Association University of Nsukka, 1983, 85.

judiciary is vested with the requisite judicial power to interpret and expound the law. Therefore, the judiciary interprets the law and breathes life into the law to ensure compliance.<sup>126</sup> Although there appears to be no known judicial pronouncement on the right of single mothers in Nigeria, there are many child-custody cases that have been brought before the courts for determination. The court must therefore be careful about decisions made in cases brought before it considering that those decisions affect the lives of both single mothers and their children, positively or negatively.

Regrettably, in Nigeria, the State structures through which children - especially those from single parent families - could realize their rights are faulty. The government's assumed responsibility to children is minimal where it exists. Government institutions (particularly, the Ministry of Women Affairs) charged with the responsibility of implementing child legislation in many States of the Federation are financially disabled to perform their roles, yet hold parents and the family responsible for infractions of child welfare protection laws.<sup>127</sup>

Just as there are many factors contributing to the challenge of single mothers, there are also numerous possible solutions. Single mothers and their children present unique challenges to the legal system and society as a whole. There is room for State intervention where new laws are enacted to promote and protect the rights of single mothers. The increase in non-marital births necessitates judicial and legislative responses, and perhaps policy changes to tackle the social phenomena. Anders proposes a designed system which should include the interests of all those involved. He identifies the lack of paternal involvement and support as one of the most significant contributing factors.<sup>128</sup>

<sup>126</sup> M. T. Ladan, *Judicial Approach to Environmental Litigation in Nigeria*, (2007), Paper Presented at a 4-Day Workshop on Environmental Law, Nigeria.

<sup>127</sup> M. Attah and E. Iyamu-Ojo, 'Who is my Child?' - Implications of Judicial Rejection of Commune-Cultural Conceptions of the Family for Children's Welfare in Nigeria' (2021) 12 (2), *Beijing Law Review*, 465.

<sup>128</sup> *Ibid.*, 567.

## 6. Challenges to the Protection of the Rights of Single Mothers in Nigeria

### (i) Discriminatory Culture and Customary Law Practices

One of the major challenges to the protection of the rights of single mothers is culture and customary law practices that are discriminatory against women and therefore repugnant to natural justice, equity and good conscience. These challenges have been identified within the family, community and religious settings and even at the state level where the law, in Vogel's opinion, is seen to fail single mothers and relegate them to a life of poverty and continuous struggle.<sup>129</sup>

Anaeme argues that the values placed on women and girls by the society have overbearing impact on their lives.<sup>130</sup> According to Odiaka, in Nigeria's patriarchal society, the inalienable rights of women are often subjected to extensive abuse, neglect and violations. Cultural, religious and societal norms have entrenched a historical imbalance in power relationships between men and women.<sup>131</sup>

### (ii) Patriarchy

In Nigeria, the idea of women's right to equal treatment as their male counterpart is still not generally acceptable. Patriarchy entrenches women's subjugation through cultural, religious and traditional prejudices. Until the 1950s' for the South and 1980's for the North, Nigerian women had no right to vote or be voted for in an election. Even though this right is now made

<sup>129</sup> L M Vogel, 'Children in Poverty: Welfare and Work Together Can Make a Difference' (1994), *KAN, J.L. & PUB. POL'Y, SPRING*, 173.

<sup>130</sup> F Anaeme, 'Reducing Gender Discrimination and Violence Against Women through Library and Information Services' (2012), *Library Philosophy and Practice*, 1.

<sup>131</sup> N O Odiaka, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link', (2013) 2 (1), *AfeBabalola University: Journal of Sustainable Development Law and Policy*, 190.

available to women, Aderinboye argues that the discrimination to being elected into a political office is persistent.<sup>132</sup>

In Nigeria, the inequality and unfair treatment meted out on single mothers are enormous. Generally, women continue to face discrimination at birth, at the family and community levels, and in fact in all other areas of life.<sup>133</sup>

### (iii) Limited Access to Land Ownership

On the basis of sex differences, a superordinate-subordinate hierarchy is established, which ensures that males have access to land holdings, inheritance, skills, productive employment and associated high status. Women, on the other hand, receive poor nutrition and medical care, and inferior or no education at all.<sup>134</sup> Although there is no legal justification for the continuous disinheritance of women, as articulated under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and other extant legislation, discriminatory cultural practices still marginalize women and continue to deny them the opportunity to fully actualize their rights.

For most parts of Nigeria, land acquisition for men and women is through inheritance, and inheritance rights to a great extent are influenced by the prevailing customs and norms in different parts of the country. Because of the patrilineal system of land inheritance which persists despite the provisions of the extant laws, most often, men have a greater chance of inheriting land over women.<sup>135</sup>

### (iv) Discrimination from Some Married Mothers

Single mothers often experience discrimination from married mothers. In many societies, married women and married mothers enjoy more respect

<sup>132</sup> A. Aderinboye, 'African Feminism and Women's Rights in Nigeria' (2014) <<https://www.dipookpeseyiandco.com/post/african-feminism-and-women-s-rights-in-nigeria>> accessed 17 June 2021.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

than single mothers. Because marriage is celebrated in traditional societies, single mothers often feel socially isolated and perhaps humiliated.<sup>136</sup>

Anyebe notes that society secretly categorizes and rates single mothers on a 'scale' of respectability, praising some and demonizing others usually across racial and socio-economic lines, depending on income, race and how one becomes a single mother.<sup>137</sup> Single parents by choice are constantly faced with discrimination, unlike the widowed who are seen as victims of unfortunate circumstances. Interestingly, the widowed, divorced or once-married gradient rating is often 'validated' by a patriarchal structure that favours the single fathers.<sup>138</sup>

Single mothers are often denied advantages and benefits that are available to individuals who are not single based solely on their non-single (relationship) status.<sup>139</sup> Many forms of discrimination are perpetrated by married women against the unmarried mothers. For instance, care of mothers for their married children is incomparable with care given to those children who are unmarried single mothers. This is because motherhood within marriage is highly valued by family and community members.<sup>140</sup>

#### (v) Negative Behaviour of Some Single Mothers

Negative attitude and actions of some single mothers have heightened the bias against them and created more obstacles to the protection of their rights. It has been argued that single motherhood often comes with a lot of emotional challenges and in a lot of cases such mothers could sink into frustration, depression, engage in immoral behaviour and abandon the primary

<sup>136</sup> R N Rimal and M K Lapinski, 'A Re-explication of Social Norms, Ten Years Later' (2015) 25 (4), *Journal of Communication Theory*, 393.

<sup>137</sup> Anyebe *et al* (n.96).

<sup>138</sup> Haire and McGeorge (n.99).

<sup>139</sup> This practice of negative stereotyping and discrimination towards singles is what is called 'singlism (Hancock (n.8)15. The definition is further expanded by DePaulo and Morris to include the practice of prejudice and stigmatisation of single adults - P M DePaulo and W L Morris, 'The Unrecognized Stereotyping and Discrimination Against Singles', (2006) 15 (5), *Current Directions in Psychological Science*, 251.

<sup>140</sup> Essien and Basse (n.104).

care and discipline of their children thereby exposing their children to a lot of risks.<sup>141</sup> Sadly, when children are exposed to such risks their single mothers are hardly trusted by their families, religious bodies and communities with welfare packages and the general custodial rights of such children and the general tendency is to deny them of such rights.<sup>142</sup>

#### 7. Conclusion

Discriminatory practices and stereotyping of women and girls is therefore a lingering occurrence in Nigeria's patriarchal and patrilineal society where women continue to suffer human rights violations throughout their lives, thereby making protection of women's rights an uphill task.<sup>143</sup>

Over the years, traditional society sets standards of acceptable behaviour within their communities. In spite of the acclaimed rights, these standards often perpetuate and reinforce patterns of gender discrimination against single mothers. For instance, there are certain ways a girl or woman is expected to behave within and outside the family; without corresponding rules for boys and men. These laid down practices and norms have defined women through the ages.<sup>144</sup>

Single mothers continue to face a number of gender-specific abuses which range from mild social discrimination whether at home, the church, mosque or school, to outright violence which women experience either as individuals or as groups.<sup>145</sup> Discrimination in law or in practice against single mothers may occur in the form of limited rights to inheritance, land or

<sup>141</sup> Noor Rahman, Haslindah Abdullah, Norazalina Darus and Amira Mansor, "Key Challenges Contributing to the survival of Single Mothers", available at [https://www.researchgate.net/publications/316159589\\_Key\\_Challenges\\_Contributing\\_to\\_the\\_survival\\_of\\_single\\_mothers](https://www.researchgate.net/publications/316159589_Key_Challenges_Contributing_to_the_survival_of_single_mothers), accessed 01 February, 2022.

<sup>142</sup> *Ibid*.

<sup>143</sup> N Igbelina-Igbokwe, 'Conceptualizing Gender Based Violence within Patriarchy in Nigeria' (2013), *Gender and Minorities* <<https://www.pambazuka.org/gender-minorities/contextualizing-gender-based-violence-within-patriarchy-nigeria>> accessed 19 June 2021.

<sup>144</sup> *Atsemuwa* (n.85).

<sup>145</sup> Y Noah, 'Incidence and Dimension of Violence Against Women in the Nigerian Society: A Case Study of Ilorin Township' (2001) 10 (1), *CENTREPOINT*, 65.



property,<sup>146</sup> as well as social stigma and harmful traditional beliefs, often resulting in multiple and intersecting forms of discrimination, which impede the full realisation of their human rights, and invariably their empowerment.<sup>147</sup> Most often, the rationale given for denial of human rights to single mothers is preservation of family and culture. However, preservation of family and culture need not, and should not, be pursued at the expense of protection of human rights.<sup>148</sup>

## 8. Recommendations

In the light of the foregoing, the following recommendations are apposite. First, there is a dire need for a paradigm shift from the discriminatory attitude towards single mothers and issues pertaining to their rights to mindset that objectively embraces the need to offer protection from the peculiar abuses and humiliations they suffer in society. To achieve this, there must be widespread enlightenment and training for individuals, organizations and government institutions of the need to promote a culture of respect for the human rights of the single mothers. It must however be emphasized that the success of the enlightenment and training or issues relating to single mothers lies largely in the ability of the government, parents, educational, traditional and religious institutions to generally challenge existing structures, particularly those that perpetrate gender inequality and gender injustice.<sup>149</sup>

<sup>146</sup> There remains a huge gender gap in land ownership in Nigeria, where less than 2 percent of women, compared to 17 percent of men, own land by themselves. Women's lack of access to land not only hampers their economic prospects, but also has a profound effect on their families. - I Oriaghan 'A Quick look at Women's Land and Inheritance Rights in Nigeria' (2018) *Landesa Rural Development Institute* <<https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria>> accessed 03 April 2021.

<sup>147</sup> *United Nations* <<https://esango.un.org/SideEvents/documents/2935>> accessed 20 March 2021.

<sup>148</sup> *Ibid.*

<sup>149</sup> D Ekpe, J Omenka, F Bisong, 'Strategies for Achieving National Gender Policy in Nigeria: A Critical Analysis' (2016) 3 (6), *Advances in Social Sciences Research Journal*, 144.

The peculiar ordeals suffered by single mothers as discussed in this paper calls for the enactment of specialized laws, bye-laws and policies at the Federal, State and local government levels to offer special protection and assistance to single mothers and their children. These enactments should ensure the best outcomes for single-mother families by taking into account the peculiar disadvantages that some of these families face and also provide penalties for violators of the rights and protections offered to single mothers.

Furthermore, since cultural values are constantly evolving, those discriminatory cultural practices must be changed to promote equality and protect the rights and freedoms of single mothers. Single mothers in Nigeria need to have greater capacity for self-determination. They need autonomy to transcend the patriarchal tradition. Therefore, in line with CIDA's (Canadian International Development Agency) Policy on Gender Equality, it is necessary to emphasize the importance of women's empowerment to the achievement of gender equality. Single mothers must be empowered with requisite knowledge about their rights to enable them take control of their lives, set their own agendas and build self-confidence.<sup>150</sup>

In a bid to build, sustain or restore public or communal trust and respect, it is further recommended that single mothers should strive to maintain good standards of entrepreneurship, professionalism, self discipline, moral rectitude and live exemplary lives in society and before their children.

This Paper further recommends strict application and adherence to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As amended). In accordance with the provisions of Section 1, Subsection 1 of the 1999 Constitution, the Constitution is supreme and shall have a binding force on the authorities and persons throughout the Federal Republic of Nigeria.<sup>151</sup> The Constitution supersedes every other law, belief,

<sup>150</sup> Schalkwyk, J., *Culture, Gender Equality and Development Cooperation*, (2000), p.4 <<http://www.oecd.org/social/gender-development/1896320.pdf>> accessed 08 July 2021.

<sup>151</sup> N Abdulraheem, 'Rights of Women in Pre & Post Colonial Era in Nigeria: Challenges for Today'. (2010) 3(2), *Journal of Public Law*, 83-91.

culture, tradition or custom that is inconsistent with its provisions, one of which is the right to equality of all persons as guaranteed under Section 42. In view of this, any culture that discriminates against single mothers on account of their status contravenes the non-discriminatory provisions of Section 42 of the 1999 Constitution. Consequently, such a culture is null and void on account of such inconsistency or irregularity. The Constitution derives its existence from the Nigerian people, who enjoy sovereignty because all powers emanate from them; as such they must ensure compliance with the provisions thereof.<sup>152</sup>

The Paper finally recommends that a Special Department should be created in the Ministry of Women Affairs and Social Welfare of Nigeria to examine the challenges, offer protection and support single mothers so that they can live meaningfully and support their children and develop society at large.

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<sup>152</sup> S. E Edeko, 'The Legality of the Constitution versus the Dictates of Military Power in a State of Revolution', (2011), 1 (1), *Sacha Journal of Policy and Strategic Studies*, 137.