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P.M.B.01, AKUNGBA – AKOKO, ONDO STATE, NIGERIA



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Date: 21 June, 2018.

*Dr (Mrs) O.S. Ekundayo,*  
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*Ibadan, Oyo State.*

Dear Madam,

### ACCEPTANCE OF ARTICLE FOR PUBLICATION IN AKUNGBA LAW JOURNAL

Your article titled “An Examination of the Laws discriminating against Women in Nigeria” submitted for publication in the *Akungba Law Journal*, refers.

I write to inform you that the Editorial Committee, following the report and recommendation of the assessors, has accepted your paper for publication in our journal. Your article will be published in the (2018) Vol. 6 No. 1, *Akungba Law Journal*.

Two copies of the volume in which your paper is published will be sent to you upon publication.

Thank you.

**Prof E.A. Taiwo, LLD,**  
*Editor-in-Chief, Akungba Law Journal.*  
08071899326.

## **An Examination of the laws discriminating against women in Nigeria and ways of addressing it.**

### **Abstract**

The paper examines the discrimination and disempowerment that Nigerian women face throughout their lives. It also provides an outline of what must be done to eliminate gender discrimination and empower women and girls in Nigeria. By addressing inequality in this way, it is necessary to have a fuller understanding of the theory compared with the reality and what to do about it. The paper begins by examining the status of women in Nigeria today and then proceeds to discuss how gender equality will move women and girls forward and how enforcement of women's rights will ultimately produce dividend: namely, advancing the rights of both women and children especially girls. The premise on which this is based is that when women are educated and able to take the opportunities life affords them, then their children thrive and the country flourishes. This paper also provides two main reasons as to why it has focused on gender equality in discussing the state of women in Nigeria: Firstly, gender equality furthers the cause of economic development and secondly, gender equality is essential to creating – a world of peace, equity, tolerance, freedom, respect for the women folk and children. It is pointed out that general and discriminatory legislative ineffectiveness also creates a climate that is conducive to discriminatory practices against women, therefore society sees no evidence of willingness by the State. It highlights the persistence of gender inequalities, the power relations that support these inequalities and the everyday processes through which inequalities are reproduced and normalised. It concludes that Nigeria needs to take effective action to sanction the discriminatory acts that are practiced in the country. There are two reasons why I have embarked on this study, first is because to effectively address the marginalisation of women in Nigeria, a female perspective and presence is essential and I think I should be capable to do this. Second, bearing in mind that one of the targets of Sustainable Development Goals (SDG) 2030 is to end all forms of discrimination against women and girls everywhere must be attained.

### **1 Introduction**

The origin of United Nations (UN) actions for the progress of women began with the signing of the UN Charter.<sup>1</sup> In its Preamble, the members of the UN reaffirmed their faith 'in fundamental human rights, in the dignity and worth of the human person, in **the equal rights of men and women** and of nations large and small...'<sup>2</sup> In addition, Article 55 of the Charter requires States to promote ... 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' Since then, a number of international instruments on women's rights have been adopted by the UN. Among these treaties are: The Convention on the Political Rights of Women (1952)<sup>3</sup>, The Convention on the Nationality of Married Women (1957)<sup>4</sup>, The Convention on the Consent to

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<sup>1</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at:

<http://www.refworld.org/docid/3ae6b3930.html> (accessed 7 February 2016)

<sup>2</sup> Preamble of the UN Charter (emphasis mine).

<sup>3</sup> Convention on the Political Rights of Women, 20 December 1952, A/RES/640(VII) available at

<http://www.refworld.org/docid/3ae6b3930.html> (accessed 7 February 2016)

<sup>4</sup> Convention on the Nationality of Married Women 11 August 1958, 309 UNTS 65, available at

<http://www.refworld.org/docid/3ae6b3930.html> (accessed 7 February 2016)

Marriage (1962)<sup>5</sup> The Convention on the Elimination of all forms of Discrimination Against Women (1979) (CEDAW)<sup>6</sup> and at the regional level in Africa there are; African Charter on Human and Peoples' Rights (ACHPR),<sup>7</sup> and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.<sup>8</sup>

It is presumed that most States must have ratified at least one of the above listed human rights instruments, which is an evidence that there is universal acceptance of the norm of equality. Sadly, the reality is somewhat different. In line with the United Nations human rights instruments, State Parties seem to appear to uphold the principle of non-discrimination including on grounds of sex and also provide for equality before the law. But in reality, the principle of non-discrimination is often not respected, in the area of rights of women. The most obvious manifestation of this is in the continued existence of laws that directly discriminate against women, despite clear international legal obligations requiring States to abolish, amend or repeal laws that discriminate against women on the basis of sex.<sup>9</sup> This is compounded by lack of implementation of laws which promote women's equality and the absence of institutional mechanisms to promote the human rights of women. Furthermore, there appears to be in some jurisdictions, instances where international commitments are made subject to domestic laws.<sup>10</sup> There is clear evidence that even those States whose Constitutions guarantee equality before the law most of them also have laws that discriminate against women. Customary laws were identified as the most problematic. For example, discriminatory provisions were found in laws enshrining a lower age of marriage for girls than boys and, in some cases, sanctioning child marriage, paternal power vis-à-vis decisions concerning the child which was often linked to marital power over the wife, discrimination in nationality and citizenship laws, different grounds for divorce and discriminatory property division on death and divorce. Even procedural laws were sometimes found to be discriminatory privileging male witnesses over female ones. Discriminatory practices and provisions were also identified in employment law and criminal law. These arguments are being considered in the paper. At the very least, laws that apply to everybody should not be discriminatory. It should be noted that the principle of non-discrimination on the basis of sex is an immediate and not a progressive obligation

This was reiterated by the President of the Human Rights Council in his address where he expounded as follows:

“...I believe that the commitment to the human rights of women and the girl child undertaken in Beijing has been strengthened with the reform of the UN human rights system. At the World Summit of 2005, the Heads of State and Government recognised Human Rights as one of the

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<sup>5</sup> Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) A/RES/1763 A (XVII) available at <http://www.refworld.org/docid/456d89064.html> (accessed 7 February 2016)

<sup>6</sup> Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979) A/RES/34/180 available at <http://www.refworld.org/docid/3b00f2244.html> (accessed 7 February 2016)

<sup>7</sup> Africa Charter on Human and Peoples' Rights (ACHPR) (1979) OAU Doc.CAB/LEG/67/3 rev.5, I.L.M.58 (1982)

<sup>8</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa OAU Doc.CAB/LEG/66.6Rev.1.

<sup>9</sup> Art2 CEDAW

<sup>10</sup> Gani Fawehinmi v. General Sani Abacha (1996) 9 NWLR (Pt 475), see also Oba, A. A. 'The African Charter on Human and Peoples' Rights and ouster clauses under the Military Regimes in Nigeria: Before and After September 11', (2004) 4 *African Human Rights Law Journal*, pp.275-302. See also F. Vijoer 'Application of the African Charter on Human and Peoples' Rights by domestic courts in Africa' (1999) 43 *Journal of African Law* 1.

pillars of the United Nations and reaffirmed their commitment to uphold the rights of women, gender equality and the empowerment of women”.<sup>11</sup>

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.<sup>12</sup> Gender-based violence and all forms violence and sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking are incompatible with the dignity and worth of the human person and must be eliminated.<sup>13</sup>

At the domestic level, the Constitution of Nigeria has explicit provisions outlawing discrimination on grounds of amongst other things, sex or gender,<sup>14</sup> thus upholds the principle of equality, and non-discrimination, but in most cases custom, culture or religion dominates. If the Constitution is the supreme law of the country, one would expect that other laws would be in compliance therewith because the principle of constitutional supremacy must prevail.<sup>15</sup> On the contrary, personal laws regarding marriage, divorce, and inheritance, triumph in most cases if there is a conflict between constitutional provisions and personal law so long as it passes ‘repugnancy test’.

There has been several defenders of rights of women. Morna for example points out that despite all the hue and cry since the first World Conference on Women in Mexico,<sup>16</sup> barefaced discrimination against women continues to be practiced in many countries. According to her, in most African countries modern legislative reforms exist side by side with customary laws and the sorts of issues that affect the equality of women invariably occur in the private as opposed to the public domain.<sup>17</sup> This situation is largely due to gender inequality and discrimination, which takes its root in patriarchy. According to Cusack, a large factor in the subordination, oppression and status of women is general acclimatising, which originates in the family and in society.<sup>18</sup> Cusack asserts that because society, tradition, and religion support male authority and superiority, copiousness of beliefs and myths has been constructed and evolved into explanations and rationalisations for the way of things.<sup>19</sup> Most times culture is often used as a sledgehammer of oppression to perpetuate inequality and gender injustice against women in Africa including Nigeria. Gender inequalities inhibit a country’s development by imposing a high cost on a nation’s quality of living standards, hindering productivity and economic progress. Gender inequality also creates the feminisation of poverty, violence, and distortions in the family as well as economic limitation of women’s resources, productive activities, and social and political participation.<sup>20</sup> A British

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<sup>11</sup> President of the Human Rights Council, in his address at the 51<sup>st</sup> session of the Commission on the Status of Women in 2007.

<sup>12</sup> Article 18 Vienna Declaration and Programme of Action 12 July 1993, A/CONF.157/23.

<sup>13</sup> *ibid*

<sup>14</sup> S.42(1) 1999 Constitution of Nigeria

<sup>15</sup> S.1 1999 Constitution of Nigeria

<sup>16</sup> World Conference of the International Women’s Year, Mexico City (19 June to 2 July 1975). It was the first international conference held by the United Nations to focus solely on women’s issues and marked a turning point in policy directives.

<sup>17</sup> Morna, C. L. (1999) *Equality: nice word, hollow sound* (Johannesburg, Gender Links Associates).

<sup>18</sup> Cusack, K. (1999) Barriers to effective intervention, in: D. Coker-Appiah & K. Cusack (Eds) *Breaking the silence & challenging the myths of violence against women & children in Ghana* (Accra, Gender Studies & Human Rights Documentation Centre).

<sup>19</sup> *ibid*

<sup>20</sup> Heyzer, N. (2002) Gender equality is key to sustainable development, *Earth Times Monthly*.

Council research project conducted in 2012 assessed the level of gender equality in Nigeria. According to the British Council research report, Nigeria ranks 118 out of 134 countries in the Gender Equality Index.<sup>21</sup> Any attempt at achieving substantive gender equality and non-discrimination in Nigeria therefore requires a determined governmental cooperation, critical analysis of laws, policies and programmes, and a societal acceptance of desire to seek equity and fair treatment for women and the girl-child.

## 2 Equality and Non-Discrimination

The principle of equality and non-discrimination is a fundamental element of international human rights law. International human rights law strongly condemns discrimination on unjustifiable grounds. Various human rights instruments guarantee the right of individuals to be free from discrimination on the grounds of race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>22</sup> The principle of non-discrimination as enshrined in the United Nations Charter is an overarching principle, and its significance is being recognised increasingly. The principles of equality and non-discrimination form the basis of all human rights instruments and cut across all the rights found within human rights treaties, property, birth or other status influencing both the interpretation and enjoyment of rights.<sup>23</sup> Despite the fact that the principle of non-discrimination is contained in most human rights instruments only a few instruments expressly provide a definition of discrimination.<sup>24</sup>

Principles of equality and non-discrimination are embedded throughout the human rights framework and prescribe that all rights must be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin. Article 1 of CEDAW provides a definition of discrimination against women on the basis of sex;

...For the purposes of the present Convention, the term 'discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'<sup>25</sup>

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International Monetary Fund (1995) Enhanced structural adjustment facility for Togo. Available online at: <http://www.imf.org/external/np/sec/pr9731.htm> (accessed 15 January 2016).

<sup>21</sup> The British Council (2012) 'Gender in Nigeria Report 2012: Improving the lives of girls and women in Nigeria', London: The British Council.

<sup>22</sup> UDHR Article 2, ICESCR Article 2(2), Article 2 CRC, Articles 2& 3 ACHPR and Article 3 ACRWC.

<sup>23</sup> Vandenhoe, W. (2005) *Non Discrimination and Equality in the view of the UN Human Rights Treaty Bodies* Antwerp: Intersentia, See CESCR general comment 16 on equal rights of men and women in the enjoyment of economic, social and cultural rights, E/C.12/2005/4, 11 August 2005, paras. 2, 3, 10 and 22. See also, Human Rights Committee general comment 18 on Non Discrimination, CCPR/C/21.Rev.1.Add1, paras. 1 &12. The ICCPR also has the free standing article 26 which does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

<sup>24</sup> Article 1 CEDAW, Article 2 CRPD, Article 1(1) ILO and Article 1 (1) Convention against Discrimination in Education.

<sup>25</sup> It is noteworthy that both the CESCR and the Human Rights Committee have adopted the definition of discrimination found in article 1 of the Women's Convention, which provision was modelled on the definition of

In addition, Article 1 of CEDAW includes both direct and indirect discrimination<sup>26</sup> and requires States parties to ensure equality of opportunity. Article 2 further highlights that the State is responsible for violations of rights within both the public and private sphere regardless of whether those violations are committed by State or non-State actors.<sup>27</sup> Also, the prohibition against discrimination enshrined in Article 2(2) of the ICESCR is subject to neither progressive realisation nor the availability of resources; it applies fully and immediately and encompasses all internationally prohibited grounds of discrimination.<sup>28</sup>

Under Rights Based Approach (RBA), 'the ground is level', no one is singled out for special favour, no distinction based on colour and no one is identified as being superior or inferior. The principle of non-discrimination on the basis of sex is an immediate and not a progressive obligation. All are equal. On the contrary Mackinnon points out that by relying on a false premise, namely that the 'playing field' is level for both men and women, is just a mere formal model of equality which has failed to take into account socio-structural inequalities which result in women not being able to enjoy their rights on an equal basis with men.<sup>29</sup> True equality is not simply about reversing the sexes and comparing, nor is it simply about passing laws that appear on the face of them to be gender neutral. The Human Rights Committee has noted that the principle should be guaranteed, including during states of emergency while any public emergency derogations should show that they are non-discriminatory.<sup>30</sup> Gender equality is one of the Sustainable Development Goals (SDG) 2030 Target which is to achieve gender equality and empower all women and girls.<sup>31</sup> Finally, the right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to other citizens. Equality or lack of it, affects the capacity of one to enjoy many other rights. In sum, it is important to recognise that women and girls should experience equal conditions as men and boys to enable them to realise their full human rights, and have the opportunity to contribute to and benefit from national, political, economic, social and cultural development.

### 3 Legal Framework on non-discrimination and equality for women

The UN Charter provides in its preamble that there is a need *"to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."*<sup>32</sup> The Universal Declaration of Human Rights (UDHR)<sup>33</sup> which followed and which forms the basis of bills of rights of many national constitutions was equally clear providing in article 1 that, *"All human beings are born free and equal in dignity and rights"*. Article 2 speaks of the entitlement of all persons to the enjoyment of the rights contained within the Declaration *"without distinction of any kind, such as race,*

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discrimination found in Article 1 of the Race Convention. CESCR general comment 16 para. 11, Human Rights Committee General Comment 18 para. 6. Finally see Disability Convention Article 2.

<sup>26</sup> CESCR general comment 16, paras. 12 and 13. Give definitions of direct and indirect discrimination.

<sup>27</sup> See also CEDAW General Recommendation 19 on violence against women, A/47/38, para. 9.

<sup>28</sup> Article 2(2) and 3 ICESCR, see also, Article 26 ICCPR, Article 2 CRC and Limburg Principles at 35 and 37.

<sup>29</sup> Mackinnon C. (1989) *Towards a Feminist Theory of the State* (Boston, Harvard University Press, 217. See also C. Mackinnon (2001) *Sex Equality* (Westgroup).

<sup>30</sup> Human Rights Committee General Comment No 18- Non- Discrimination para 2. HRI/GEN/1/Rev.9 (Vol I) 1989.

<sup>31</sup> SDG Goal 5

<sup>32</sup> Preamble of the UN Charter

<sup>33</sup> Universal Declarations of Human Rights. G.A. Res 217, UNGAOR 3<sup>rd</sup> Sess.Supp. No 127 at 71 UN Doc A/80 (1948).

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The two instruments coming out of the UDHR, the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic Social and Cultural Rights, 1966 (ICESCR) also so provide.<sup>34</sup> There are instruments addressing specific elements of discrimination against women these include, the 1967 Declaration on the Elimination of All Forms of Discrimination against Women,<sup>35</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) otherwise known as Women’s Convention.<sup>36</sup> Other international instruments provide for non-discrimination and equality before the law these include, the Convention on the Rights of the Child, 1989,<sup>37</sup> the International Convention on the Protection of all Migrant Workers and Members of their Families, 1997<sup>38</sup> and the Convention on the Rights of Persons with Disabilities, 2006.<sup>39</sup>

### **3.1 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**

Why a convention is needed that deals exclusively with women? The answer is that the previous international conventions human rights did not specifically address worldwide discrimination against women on grounds of their sex and marital status, this type of violation human rights was not sufficiently identified and punished. There came the UN Declaration on the Elimination of Discrimination against Women of 1967 which is not legally binding. CEDAW was adopted by the General Assembly of the United Nations with resolution 34/180 of 18 December 1979. It entered into force on 3 September 1981, in accordance with Article 27(1). No doubt, CEDAW represents the most important international legal instruments for protection of human rights specifically women. CEDAW applies to all women irrespective of their nationality or other legal status including marital status. Its scope and reach makes it an international bill of women’s human rights. It is considered the cornerstone of women’s rights. The Convention has so far been accepted by 189 Parties.<sup>40</sup> Unfortunately a number of states have made general reservations on most of the substantive articles in the Convention upon ratification which has given rise to great concern among other State Parties because it is the opinion of many that such reservations could affect the full implementation of the Convention. Under the Convention, such reservations are permissible<sup>41</sup> but they must not impair the ‘objects and purpose’ of these articles.<sup>42</sup> For political, legal and religious reasons some states have entered so-called reservations, which are contrary to the Vienna Convention on treaty provisions, since they contradict the objective and the purpose of such a convention.<sup>43</sup> CEDAW defines what constitutes discrimination against women and

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<sup>34</sup> The International Covenant on Civil and Political Rights, 1966 (ICCPR), 999 UNTS 171, articles 2, 3 and 26 & The International Covenant Economic, Social and Cultural Rights, 1966 (ICESCR), 993 UNTS 3, articles 2 and 3.

<sup>35</sup> UN Declaration on the Elimination of all Forms of Discrimination against Women, GA Res. 22263 (XX11) of 7 November 1967.

<sup>36</sup> Convention on the Elimination of all Forms of Discrimination against Women, 1979, 34 UN GAOR Supp. No. 46, 193, UN Doc. A34/46.

<sup>37</sup> Convention on the Rights of the Child, adopted by GA Resolution 44/25 of 20 November 1989.

<sup>38</sup> Article 7 International Convention on the Protection of all Migrant Workers and Members of their Families, A/RES/45/158.

<sup>39</sup> Convention on the Rights of Persons with Disabilities, A/61/611, preamble paras. a, h and p and art. 2, 3 (b) and (g) and 5. Article 6 goes further making special provision for the rights of disabled women.9

<sup>40</sup> [www.un.org](http://www.un.org)

<sup>41</sup> Article 28, para 1 CEDAW

<sup>42</sup> Article 28, para 2 CEDAW

<sup>43</sup> Article 19(c) Vienna Convention on the law of treaties

sets up an agenda for national action to end such discrimination. According to the Convention, discrimination against women is;

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>44</sup>

Article 1 is of utmost importance as it defines what constitutes 'discrimination'. It establishes that the Convention therefore deals with discrimination directed against women and not with discrimination based on sex.<sup>45</sup> This includes discrimination that exists formally in the laws (*de jure* discrimination) as well as discrimination that originates from practices and customs (*de facto*). CEDAW is the only international human rights treaty which targets culture and tradition as influential forces shaping gender roles and family relations. It defines the civil, political, economic, social and cultural rights of women.

The Convention covers all forms of discrimination against women in all spheres of life. This is very relevant in African society due to patriarchal concepts which are still entrenched in the society. The Convention calls for modification or abolition of practices, by appropriate measures such as through legislations, such customs and patterns of culture imposed by culture or religious beliefs which promote inferiority of women to men and also those that justify discrimination against women.<sup>46</sup> The purpose of Article 2 is to ensure that each State Party establishes appropriate constitutional and legal structure to guarantee equality, to provide remedies and sanctions for public and private acts of discrimination and to repeal overtly discriminatory laws.<sup>47</sup> For the purpose of considering the progress made in the implementation of the Convention, CEDAW established Committee on the Elimination of Discrimination against Women.<sup>48</sup> The CEDAW Committee monitors the implementation of CEDAW by State Parties. The Committee members are nominated by the State Parties and elected for a period of four years.<sup>49</sup> Members may be reelected.<sup>50</sup> The members come from different professional backgrounds and therefore can identify the widely ranging forms of discrimination in various spheres of women's lives. Pursuant to Article 21(1) the Committee may make General Recommendations. The Committee was the first UN body through its recommendations to draw attention to violence against women and genital mutilation as a specific form of violence and it states clearly that State Parties must prevent such human rights violation through legislation and other measures.<sup>51</sup> CEDAW Committee also expressed special concern about the situation of disabled women who suffer from a double discrimination linked to their special living conditions and recommends that State parties must ensure that they have equal access to education, employment and health services so that they can participate in all areas of social and cultural life.<sup>52</sup> On the whole, CEDAW represents an especially significant treaty as it bans discrimination of women in all spheres of life and imposes obligation on State Parties to ensure *de jure* and *de facto*

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<sup>44</sup> Article 1 CEDAW

<sup>45</sup> Murray R. *Human Rights in Africa* (Cambridge, CUP, 2004), 162.

<sup>46</sup> Article 2(f) and Article 5(a) CEDAW

<sup>47</sup> Van Bueren, G. *The International Law on the Rights of the Child* (1998) Martinus Nijhoff, p.40.

<sup>48</sup> Article 12 CEDAW

<sup>49</sup> Article 17(5) CEDAW

<sup>50</sup> *ibid*

<sup>51</sup> General Recommendations Nos 12 (1989), 14(1990) and 19(1992).

<sup>52</sup> General Recommendation No 18 (1991).

equality. Initially, the dilemma was that in Africa, the traditional perceptions have not yet been acquainted with women's rights in the light of international legal instruments and the traditional women's organization had insufficient knowledge of human rights activities in the Western World. Things are changing as these are evident with the regional human rights instruments namely ACHPR and Women protocol which are described next.

### 3.2 The African System

The African Charter on Human and Peoples' Rights (ACHPR), (1981)<sup>53</sup> is the primary treaty providing a framework for human rights in the region. The Charter recognises and affirms women's rights in three provisions namely, a non-discrimination provision covering sex,<sup>54</sup> an equal protection before the law<sup>55</sup> provision and most importantly, Article 18 specifically make reference to women stating that: *the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions.*<sup>56</sup> Despite these provisions in the ACHPR, it was noted with great concern that the rights of women remain insufficiently protected in many African countries and women continued to face all forms of abuses. Also the African Charter on the Rights and Welfare of the Child, 1990 (ACRWC)<sup>57</sup> is unequivocal that principles of non-discrimination and equal protection before the law should prevail,<sup>58</sup> and in particular discrimination experienced by the girl child.<sup>59</sup> And importantly, the Charter obligates that child marriages should be proscribed and laws passed setting the minimum age of marriage at 18 for both sexes.<sup>60</sup> Sadly, all these frameworks and policies did not seem to provide effective protection of the fundamental human rights of African women as they still continued to face all forms of abuses. In order to fill this significant gap, the Protocol to the African Charter on Human and Peoples' on the Rights of Women in Africa (the Women Protocol) was adopted on July 11 2003 and it went into force in 2005. It is worth mentioning that the definition section of the protocol makes clear that the term woman includes the girl child.<sup>61</sup>

#### 3.2.1 Protocol to the African Charter on Human and People's Rights on the Rights of Women

Given the scope of protection of women under the CEDAW what then is the added normative value of the Women Protocol? It is argued by some that it is an unnecessary duplication and there is extensive overlap in the provisions of CEDAW and the Women Protocol. Viljoen responded as follows; *"Compared to the CEDAW, the Protocol speaks in a clearer voice about issues of particular concern to African women, locates the CEDAW in African reality..."*<sup>62</sup> It must be noted that duplication of these rights that are in the CEDAW and now in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women is not a problem but a benefit, as it brings additional attention to these rights.

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<sup>53</sup> African Charter on Human and Peoples' Rights, 1981 OAU Doc. CAB/LEG/67/3 rev.

<sup>54</sup> Articles 2 ACHPR

<sup>55</sup> Article 3 ACHPR

<sup>56</sup> Article 18(3) ACHPR

<sup>57</sup> African Charter on the Rights and Welfare of the Child, 1990, (ACRWC) OAU Doc CAB/LEG/24.9/49

<sup>58</sup> Articles 3 and 21 (1) (b) ACRWC.

<sup>59</sup> Article 21 ACRWC.

<sup>60</sup> *ibid*

<sup>61</sup> Article 1 (a) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

<sup>62</sup> Viljoen, Frans, *International Human Rights Law in Africa* (2<sup>nd</sup> ed), (Oxford: Oxford University Press 2012), p.253.

Duplication is to stress the need for State Parties to make available additional measures of enforcement for effective implementation of the treaty.

Although ACHPR is the primary regional treaty which provides a framework for human rights in Africa, its provisions on women's rights are largely seen as ineffective and inadequate. Though ACHPR recognises and affirms the rights of women in Articles 2, 3 and 18(3), the protocol reiterates that despite the ratification of the ACHPR, women in Africa continue to be victims of discrimination and harmful practices.<sup>64</sup> The African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (African Women's Protocol). It is the main legal instrument for the protection of the rights of women and girls in African, dubbed the "African CEDAW". Like CEDAW and the other African human rights instruments, the Protocol has both civil and political and economic social and cultural rights. It specifically addresses violence against women in article 3, female genital mutilation in article 5 and the rights of women living with HIV/AIDS Article 14(1) (d) (e), amongst other provisions. The African Commission on Human and Peoples' rights (the African Commission) welcomes the ratification of this important instrument by the majority of AU Member States. There is also the need to translate this laudable document into domestic laws and programmes so that African women can enjoy the rights provided in the Protocol. Sadly according to the Commission many countries are yet to undertake the necessary legislative changes towards domesticating the protocol. The preamble to the Protocol makes clear that despite widespread ratification of the African Charter and several international human rights instruments and states "solemn commitment to eliminate all forms of discrimination against women and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices." The Protocol remains the main legal framework and authority on African Women's Rights complementing CEDAW.

### 3.3 National Level

International human rights law is not worth the paper it is written on, unless it is absorbed and made part of national law and policy.<sup>64</sup> A treaty that is not incorporated into the municipal law is as good as being inconclusive.<sup>65</sup> The effect of a human rights treaty will be greatly reduced if it is not domesticated into the laws of the state party. The municipal law of each country states the permissible mode of incorporation of the treaty, and where this is not expressly stated it could be inferred from the type of legal system in operation in the country. Usually, common law countries adopt dualism while civil law countries are monist.

#### 3.3.1 *The Constitutional Framework*

In the constitution of the Federal Republic of Nigeria, the executive arm of the government enters into international treaty. For the treaty to be enforceable it must be enacted by the federal legislative arms- the Senate and the National Assembly. These two 'houses' are empowered under the constitution to enact laws for the purpose of implementing treaties.<sup>66</sup> Despite its dualist mode of incorporation of treaty, Nigeria enshrined wholly into Nigerian Law the African Charter on Human and Peoples' Rights. It

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<sup>63</sup> Preamble of Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

<sup>64</sup> Koh Hongju Harold, 'How is international Human Rights Law Enforced?' *Indiana Law Journal* 74(Fall 1999) pp.1397-1417.

<sup>65</sup> *Ibid.*

<sup>66</sup> Section 12 1999 Constitution of Nigeria.

was incorporated into Nigerian law as African Charter on Human and Peoples' Right (Ratification and Enforcement) Act.<sup>57</sup> The Act makes the provisions of the Charter enforceable in any court of law in Nigeria. As a result of the domestication, the violated can go to court to challenge the violation. Sadly, Nigeria has not domesticated CEDAW and the Women Protocol, though it has ratified the two instruments.<sup>58</sup> The most effective way of ensuring that they have significant impact in the country's national order is through incorporation into Nigeria's domestic law. The 1999 Constitution of the Federal Republic of Nigeria, concretely enumerated provisions against discrimination on grounds of sex, religion, ethnicity, age or circumstances of birth against any citizen.<sup>59</sup> Section 42 of the 1999 Constitution which takes care of the fundamental human rights of the Nigerian citizens prohibiting all forms of discrimination on the basis of gender therefore protects the rights women too. Also Section 43 of the Constitution enables a women to acquire and own property anywhere in Nigeria. While noting that Sections 42 and 43 of the Constitution prohibits laws, customs, or traditions which are against the dignity, welfare or interest of women. There continued existence of legislation, customary laws and practices on inheritance, land ownership, widow inheritance, forced marriage that discriminate against women and conflict with the Constitution.

The Violence against Persons (Prohibition) Act, was enacted in 2015. It is an Act which prohibits all forms of violence against persons in private and public life, and provides maximum and effective remedies for victims and punishment of offenders. Some of the provisions are specifically to protect women, namely; Section 6 which prohibits female circumcision or genital mutilation, section 15 forbids harmful widowhood practices and section 20 outlaws harmful traditional practices. Notwithstanding the Act, female genital mutilation and other harmful practice continue to be prevalent. Also this Act, which proscribes female genital mutilation, harmful widowhood practices and other harmful traditional practices applies only in the Federal Capital Territory and not in the states of the Federation where these practices are prevalent. Gender-based violence against women and girls, including domestic violence, remains prevalent since the Act is, applicable only in the Federal Capital Territory. To date, the drafting and adoption of its "enforcement procedure" framework for the implementation of the Violence against Persons (Prohibition) Act has not been prepared.

In Nigeria, there are various state government legislations that protect women, some these are; Anambra State Malpractices against Widows and Widowers (Prohibition) Law No. 2005, Anambra State Gender and Equal Opportunities Law, 2007. Bauchi State Withdrawal of Girls from Schools for Marriage (Prohibition Law No 17 of 1985). This is very noteworthy because most girls in this part of Nigeria are usually withdrawn from school and are married off. On the other hand I have never heard or read cases of people charged to court for this and the practice still goes on. Some other states' legislations are Lagos State Protection against Domestic Violence Law 2007, Cross River State Law to Prohibit Girl-Child Marriages and Female Genital Circumcision or Genital Mutilation in, 2009. Rivers State Reproductive Health Service Law No. 3 of 2003. The Nigerian Government recognises the germaneness of achieving gender equality and has over the years, brought out national and state policies to achieve this goal. Some of these are for example, National Gender Policy, 2006, National Policy on HIV/AIDS-Federal Ministry of Health, (2009), National Reproductive Health Policy and Strategy — Federal Ministry of

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<sup>57</sup> Cap 10, LFN 1990

<sup>58</sup> Nigeria ratified CEDAW on 23<sup>rd</sup> April 1984 and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa on 16<sup>th</sup> December 2004.

<sup>59</sup> Section 42(1)(a)(b), (2) and (3) 1999 Constitution of Nigeria

Health, (2001), National Policy and Plan of Action on Elimination of Female Genital Mutilation in Nigeria (2002). Sadly, due to persistent negative socio cultural beliefs and practices that shape choices and decisions of the people in their various spheres of life, this has pushed to obscurity and undermined some of these laws and policies geared at remedying the cultural practices, resulting in non-enforcement. The crux of the matter is that implementation is where the challenge lies.

#### 4. Discriminatory laws, policies and practices

In Nigeria as in many states in Africa, law is complex, comprising plural normative systems including statute law, common law, customary laws and religious laws. These co-exist, sometimes harmoniously, but in most cases often not. With legal pluralism, Nigeria consists of a society that is poised between tradition and modernity. As a result there has been contradictions and inconsistencies created by the application of statutory, customary and sharia laws in Nigeria's tripartite legal system, particularly in the areas of marriage and family law. This leads to continuing discrimination against women. The following are three main challenges that need to be tackled to achieve gender equality in Nigeria; First one is religion, there is lack of proper interpretation of religious writings and most of the times quoting of religion as a defense for certain stereotypes and religious practices are used as shield. Second, culture and traditional practices can also be impediments. Third, legislature is also a challenge because there are some laws that are discriminatory. In addition there is a general lack of awareness and enforcement of existing laws exacerbated by slow response to change by law enforcement officers.

##### 4.1 Islamic Religion Law

Sharia Law which operates in the Northern part of Nigeria made provisions using the Islamic Law as the benchmark which allows access to the courts of law for legal redress. Under Sharia, treatments of parties are not the same. Treatment of women compared to men are inequitable, as men are more favored under Sharia. Sharia law dealing with women manifest mostly in marriage, early or child marriage, consent of parties and parental consent, divorce and inheritance rights.

##### *Marriage*

In Nigeria, under Islamic marriage, a man may marry up to four wives if he is able to treat them all equitably, has sufficient financial means and the wife he intends to marry is aware that he is already married. On the other hand a virgin female cannot contract an Islamic marriage on her own free will, only with the agreement of her male guardian. In practice it is the male guardian who is the one to decide if a girl is to marry. It is argued that under Islamic law that a marriage is invalid if either spouse is coerced into it. But it is only previously married woman who needs to express consent to marriage, virgin female who has previously married must be silent, as a result her silence is taken to mean consent. Also if a woman who is a virgin, marries without the permission of her male guardian, the guardian is entitled under Islamic marriage law to file for an annulment of her marriage. All these are discriminatory practices against Muslim women in relation to marriage.

##### *Divorce*

According to Islamic Family Law in Sharia, a man may unilaterally divorce his wife by pronouncing his repudiation of the marriage (*talag*) three times. This is a far cry to what the wives have to go through. A woman seeking to divorce her husband must apply to the Sharia court. She may file for no fault divorce (*khul*), under which she is mandated to pay back her dowry. Whereas the husband can make a divorce

with a single will by his word and does not need to see the judge. The procedure is discriminatory as a woman must go to court and seek a judge's order, the law should be changed so the husband also has to seek a divorce in front of the judge and in his wife's presence.

### *Inheritance*

By law, in Islam, a woman will receive half of the share that a man will receive if she were in the same relationship to the deceased. For example, a daughter will receive half of what the son gets in their deceased father's wealth. This is a formal inequality in inheritance rights against the woman. This mode of distribution of inheritance is one of the reasons why some states in Northern Nigeria have refused to adopt the 2003 Child's Rights Act.<sup>70</sup> Whereas the 1999 Constitution of Nigeria which is the supreme law of the country states in Article 42 that all Nigerians are equal and that there is no distinction based on sex, religion, ethnicity, age or circumstances of birth.<sup>71</sup>

### *4.2 Culture and traditional practices that discriminate against women*

Under the traditional settings in Nigeria, the role of women is predominately restricted to the private spheres of the family, namely fulfilling the functions of child-bearing, child-care, and sustaining the family. Women are seen as subordinate to men, there is male dominance and female subordination. There is persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society. Such discriminatory attitudes and stereotypes constitute serious obstacles to women's enjoyment of their human rights and the fulfilment of the rights enshrined in the international human rights treaties such as CEDAW to which Nigeria is a State party. The entrenched harmful traditional and cultural norms and practices, include inheritance, widowhood rites and practices and early marriages. Sadly, culture used as a legitimate justification for violations of women's human rights most times. But it should be noted that culture is not static, it keeps evolving and Evidence Act stated clearly that any customary law sought to be applied but fails the test of repugnancy, compatibility and public policy test should be cast away and declared null and void and of no effect.<sup>72</sup>

### *Early or Child Marriage*

Early or child marriage refers to marriage and unions where one or both partners are under the age of 18. The practice is common in sub-Saharan Africa and South Asia. Child marriage is a long-standing tradition in areas where it is practiced, making protest most times barely possible. Parents marry their underage girls off out of economic necessity, or because they believe that marriage will protect girls from promiscuity. Under cultural law, there is no minimum age for marriage as girls are considered to be ready for marriage upon reaching puberty. Nigeria has a high rate of child marriage with girls below 12 years being married off. It is difficult to get accurate numbers on rates of early marriage because it is hard to ascertain the ages of these girls because their births are seldom registered. Incidence of early marriage is prevalent in the Northern part of Nigeria. It is argued that the husbands are prohibited from

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<sup>70</sup> So far, CRA have been adopted in 25 states of the Nigeria's 36 states. Source: <https://www.thisdaylive.com> 06/01/2017. Also according to the Chief Legal Officer of National Human Rights Commission (NHRC) 11 states in the country are yet to domesticate the Child's Rights Act 2003. The affected states are: Adamawa, Bauchi, Borno, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe, and Zamfara. <https://www.nigerianbulletin.com>

<sup>71</sup> Section 42(1)(a)(b), (2) and (3) 1999 Constitution of Nigeria

<sup>72</sup>Section 14(3) Evidence Act 2011

having sexual relations with these girls until they reach puberty, but this minimal safeguard is ineffective. The harmful consequences of early marriage in Nigeria include domestic violence, marital rape, early pregnancy which results in high rate of maternal and infant mortality. Premature pregnancy and motherhood (child having a child) are inevitable consequence of child marriage. The practice of child marriage is a main source of violence against the girl-child generally. Early marriage is a barrier to education for the girl-child. Although the Child Rights Act (CRA) of 2003 sets the legal age of marriage at 18 years for both women and men, it is applicable only in some states, but states that have not adopted the Act, especially in the northern region, child marriage is prevalent. Till date, nobody has been charged to court for marrying a girl below the age of 18 years, even in states that have adopted the CRA. The inconsistency between statutory laws, cultural and religious laws is the factor that allows early marriage to flourish.

#### *Women's inheritance Right – Widow's rights and female child's rights*

In Nigeria, several cultures deny women and the girl-child the opportunity to own or to inherit property for the simple reasons that they are female. For example, succession to the properties of a deceased Ibo man is by primogeniture, meaning it is to the first son. A daughter cannot inherit landed property and she cannot be made head of the family no matter her seniority in the family. This is even worse in the case of widows of customary law marriage, as they have no right to inherit their late husband's estates, instead they are treated like chattels and so can be inherited. Previously, in Nigeria, judicial attitude to litigation on issues bothering on customs and religion is characterised by great caution and passivity but now the feats achieved in judgments delivered on discriminatory traditional practices against women by Nigerian courts have been significant.

Niki Tobi J.C.A in *Mojekwu v. Ejikeme*<sup>73</sup> condemned the 'oli-ekpe' custom of Nnewi as discriminatory against women. In his words he said as follows,

“...All human beings male and female are born into a free world and are expected to participate freely without any inhibition on grounds of sex and that is constitutional...We need not travel all the way to Beijing to know that some of our customs, including the Nnewi 'oli-ekpe' custom relied upon by the appellant are not consistent with our civilised world in which we all are today... I have no difficulty in holding that the 'oli-ekpe' custom of Nnewi is repugnant to natural justice, equity and good conscience.”<sup>74</sup>

Similarly, the Court of Appeal in the case of *Asika v Atuanya*<sup>75</sup> held that any custom that is repugnant to natural justice, equity and good conscience must be abolished, and should not be allowed to rear its ugly head, a custom that discriminates against women by denying them the right to own land in their father's estate was held to be repugnant to natural justice, equity and good conscience. The Court also held further that the Constitution of the Federal Republic of Nigeria re-emphasised the rights of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria, as such women should not be deprived of ownership and the right of inheritance of immovable property.

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<sup>73</sup> *Mojekwu v. Ejikeme* (2000)7 NWLR 462

<sup>74</sup> *Ibid.*

<sup>75</sup> *Asika v Atuanya* (2008) 17 NWLR (pt 1117) p.484

The Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate. In *Ukeje v. Ukeje*,<sup>76</sup> Rhodes-Vivour, J.S.C. held that; ...the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of Section 42(1) and (2) of the Constitution...and the discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.<sup>77</sup>

In the decided case of *Onyibor Anekwe and Anor v. Mrs. Maria Nweke*,<sup>78</sup> the Supreme Court held that customary laws which disinherit women are repugnant to natural justice, equity and good conscience and should therefore not be allowed to stand. The court therefore declared as repulsive the custom of the Awka people in Anambra State which allows married women to be disinherited upon the death of their husband because they did not have a male child for the late husband,<sup>79</sup> this judgment being a decision of the Supreme Court no court can legally give a contrary judgment. These various decisions of the courts have opened the floodgate to women to boldly come forward and challenge situations of discrimination and injustice against them. This is informative because it provides hopeful facts with regards to overcoming cultural barrier and to enforce the right of women to equal treatment.

#### *Harmful traditional practice- Female genital mutilation (FGM)*

Female Genital Mutilation (FGM) is a widely accepted problem for many Nigerian girl child. FGM remains a health hazard. The practice of all forms of female genital mutilation is a violation of human rights, and in particular the right to personal integrity, physical and mental health of women and girls, and an assault on their human dignity.<sup>80</sup> All forms of FGM degrade women and girls and deprive them of their basic human rights. The immediate risk of it includes severe pain, shock, hemorrhage, tetanus, sepsis, urine retention, ulceration of the genital region and injury to adjacent genital tissue. The long term consequences, includes increased risk of maternal morbidity, recurrent bladder and urinary tract infection, cysts, infertility and adverse psychological and sexual consequences, and increased risk of neonatal death for babies to mothers having undergone female genital mutilation.<sup>81</sup>

Many women in Nigeria are still faced with the consequences of FGM, and it is important to recognise that many women still live with the effect of FGM, a practice they had undergone since childhood. The victims suffer in silence thinking that it is their custom that decrees it as a result this harmful practice continues to be prevalent. In Nigeria, the practice has been reportedly performed on newly born baby girls and young women immediately before marriage, as well as women pregnant with their first child. It is discriminatory in nature, and assigns girls and women an inferior position in the family and society. The 2008 Nigeria Demographic and Health Survey (NDHS) found that 30% of women surveyed (aged 15-49) have undergone FGM. The NDHS also found that the practice is most common in South East 52.8% and South West 53.4% women who have undergone FGM. Osun State in South West Nigeria records the highest prevalence at 76.6%. About 20 million women and girls in Nigeria have

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<sup>76</sup> *Ukeje v. Ukeje* (2014) 11 NWLR.385.

<sup>77</sup> *Ukeje v. Ukeje* supra at 408.

<sup>78</sup> *Onyibor Anekwe and Anor v. Mrs. Maria Nweke* (2014) LPELR 22697 (SC).

<sup>79</sup> Decisions in ... are overruled

<sup>80</sup> Eliminating Female Genital Mutilation. An interagency statement, February 2008, available at <http://www.unhcr.org/refworld/docid/47c6aa6e2.html>.

<sup>81</sup> World Health Organization, Female Genital Mutilation, Trends, available at <http://www.who.int/reproductive-health/fgm/trends.htm>.

undergone FGM, 10% of the global total.<sup>82</sup> The practitioners are usually older women from local villages, who were taught the procedure by their mothers or grandmothers and continue to pass it down to their daughters and granddaughters. In 2015 through the adoption of the Violence against Persons (Prohibition) Act in 2015 which specifically prohibit FGM, the practice becomes punishable under the law. Sadly FGM continues to be prevalent in Nigeria because the Act, which proscribes female genital mutilation, applies only in the Federal Capital Territory.

The Constitution which is the ground norm of the country is supreme as affirmed in Section 1(3) which provides that *if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be null and void*. Both women and men have equal legal capacity and the same opportunities to exercise that capacity. However, such rights are often denied under customary law or sharia law despite the fact that the section of the Constitution that provides for equality before the law did not exempt the customary law or the Sharia law. Attitudes, customs and values that are detrimental to women and girls need to be confronted. Cultural practices often perpetuate inequality and discrimination passed on from generation to generation and so remain accepted and unchallenged. No legacy, religion or cultural practice should justify inequality and disempowerment of women.

## 5. Discriminatory laws and policies

There are various discriminatory provisions in the Constitution which remain in effect, these include; Section 26(2), which does not allow a Nigerian woman to transmit her nationality to her foreign spouse on the same basis as a Nigerian man, whereas non-Nigerian men who are married to Nigerian women are prevented from acquisition of Nigerian citizenship in situation where they desire. This means that there is non-conferment of citizenship to a foreign husband of a Nigerian woman. To rule out inequality, the constitution should include a provision whereby Nigerian women who are married to foreign men can also transmit their nationality to their husbands, so as to be on an equal basis with Nigerian men who are married to foreign women. Another 'offending' provision is Section 29(4) of the Constitution, which states that a woman is deemed to be of full age upon marriage, thereby lending support to early marriages. There is the presumption that any married female child assumes the status of an adult. This provision implicitly recognises and legitimises child marriage. CEDAW Committee in its Concluding Observation to Report submitted by Nigeria<sup>83</sup> urges the State party to repeal without delay Section 29(4) of the 1999 Constitution of Nigeria.<sup>84</sup> Section 42 (3) of the Constitution validates any law that may impose discriminatory restrictions with respect to appointment to the police force, thereby aiding the discriminatory provision of Section 118 (g) of the Police Act, which prohibits the recruitment of a married woman into the police force. This also gives weight to the Nigerian Police Regulations which prohibit the enlistment of married women and require women officers to request permission to marry in writing which are all discriminatory against women. If the provision of Section 42(3) of the Constitution is repealed, then these other discriminatory laws and policies will have of the Police will be easily repealed, because repealing them without repealing Section 42(3) of the Constitution, will still

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<sup>82</sup> <https://www.theguardian.com/society/2016/oct/11/fgm-nigeri...million-women-and-girls-undergone-female-genital-mutilation>

<sup>83</sup> Committee on the Elimination of Discrimination against Women (CEDAW) Concluding observations on the combined seventh and eighth periodic reports of Nigeria CEDAW/C/NGA/CO/7-8, 24 July 2017.

<sup>84</sup> *Ibid* para 32(b).

allow any other such discriminatory law to be enacted. There is the policy requiring a wife needing her husband's permission to obtain a passport, a father to consent before a passport or travel document could be issued to children, whereas there are no such prerequisites for men which is discriminatory against women. Section 55 of the Penal Code of Northern Nigeria<sup>35</sup> permits wife battery as chastisement as long as no grievous bodily harm is inflicted. Such provision encourages gender-based violence against women and girls, including domestic violence, which remains prevalent.

### 5.1 Non-consensual sex in marriage

Even though sections 218 and 357 of the Criminal Code protect girls under 13 years of age from forced sexual intercourse, section 6 excludes its applicability to girls of the same age in customary law marriages. The implication is that section 6 of the Criminal Code, legitimises child marriage and rape by excluding the applicability of sections 218 and 357 of the Criminal Code. In both section 357 of the Criminal Code and section 282 of the Penal Code, a husband cannot be charged with marital rape. Once the marriage is subsisting and the wife has attained puberty then any sexual intercourse with her is never rape. In its second and third periodic reports to CEDAW, Nigeria stated: "In a traditional setting, spousal rape is inconceivable. Under Nigerian Laws in both section 357 of the Criminal Code and section 282 of the Penal Code, a husband cannot be charged with marital rape. Once the marriage is subsisting and the wife has attained puberty then any sexual intercourse with her by her husband is never rape."<sup>36</sup> In Banda's view, non-consensual sex in marriage signifies that force used in wedlock under such circumstance is unacceptable.<sup>37</sup> Although rape is outlawed in most legal systems, sexual intercourse in marriage, including that which is not consensual is often not proscribed. The legal system of Nigeria does not view marital rape as a prosecutable offence, therefore allowing nonconsensual sex in marriage. Concerning the issue of marital rape, there is the thin line between the right of a spouse to be granted conjugal rights, the duty of the other to provide the same, as well as the individual right not to be forced into sexual intercourse against one's will. By failing to recognise marital rape, denies a wife the right to refuse sexual intercourse meaning that a wife is expected to be sexually available to her husband. Implicitly suggesting that there are unlikely to be many marital rape complaints or indeed prosecutions. This infers that on marriage a woman is taken to consent to sexual intercourse for the duration of the marriage even under pain of denial of support or on-going divorce.

## 6. Summary

This paper has explored the laws, policies and practices that are discriminatory against women and analysed the barriers to its effective elimination over the years. This was achieved by examining the country's legislations in comparison to its obligations under relevant international human rights instruments to which it is a state party. The two key findings in this paper are: one, there are substantial barriers to gender equality in Nigeria and, two, these obstacles can and must be surmounted. The paper has been able to identify discriminatory laws and cultural practices as impeding women's ability to enjoy their rights in Nigeria. Progress towards gender equality in Nigeria is difficult because key actors namely legislatures, executives and policy makers at national and sub-national levels are not committed to assimilating gender issues into day to day living of the populace. This has resulted

<sup>35</sup> Law No 18 of 1959 (Cap 89, 1963 Laws of Northern Nigeria)

<sup>36</sup> CEDAW/C/NGA/2-3, 22. Combined Second and Third Periodic Report of states parties: Nigeria

<sup>37</sup> Banda, F and C. Chinkin *Gender, Minorities and Indigenous Peoples* (London, Minority Rights Group, 2004).

in continuous discrimination of women, and widened socio-economic inequalities between men and women in the country with disastrous effects. It has not only fueled national and social problems, but it has retarded development and political empowerment. The downside to gender inequality is that it has set in motion: educational disparity, low self-esteem among women, indignity, high maternal deaths and limited their potential for sustainable economic development. The Human Rights Committee (HRC) has stated that the right to equal protection of the law in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) places affirmative obligations on States to deal with those social and economic inequalities between men and women that render formally equal treatment by the State problematic.<sup>38</sup> The paper reiterates that Nigeria having ratified CEDAW is under an obligation to address all forms of discrimination against women in the Nigeria and should focus on ending patriarchal domination and oppression and thereby open up opportunities for equal enjoyments of rights. The paper thus emphasizes the need to eliminate discrimination both in national policies and laws as well as discriminatory measures perpetuated through societal norms and views. The paper underlines that discrimination must be addressed within both the public and private spheres and in all fields, including civil, cultural economic, political and social. Nigeria has not effectively implemented free and compulsory primary education as required by relevant international instruments to which it is a State party and it has essentially failed to undertake the required measures in order to fully eliminate the For women, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. All members of society, and women and girls themselves are the individuals and groups who hold the power to eliminate gender discrimination and inequalities in Nigeria through everyday attitudes, behavior and practices. In addition to showing how far Nigeria has come, the assessment of this paper underlines how far there is to go. The challenge to achieve such change is as exhilarating as it is daunting. Although challenging, this process is worth the reward.

## 7. Conclusion and Recommendation

Eliminating gender discrimination will produce a double dividend, fulfilling the rights of women and going a long way towards the realising the rights of the children as well as future generations of women and children. With concerted efforts, real progress, universal based human rights and equal opportunities for women and men alike can be made towards transforming discriminatory attitudes behavior, customs, laws and policies and practices in society. The idea of every human being enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his/her civil and political rights, as well as his/her economic, social and cultural rights. Women who are economically and socially unequal and who are disproportionately poor, do not enjoy liberty, security of the person, freedom from violence, sexual and personal autonomy, privacy, or full social and political citizenship. Whereas, achievement of women's civil and political rights is very much dependent upon their equal enjoyment of economic and social well-being and liberty. Despite the urgent priority and commitment accorded elimination of every form of discrimination against women and girls through international and regional instruments, discrimination against girls based on gender still persists and this situation perpetuates the social gap between males and females in Nigeria and sub-Sahara Africa. Nigeria have ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the African Charter on Human Rights and Peoples' Rights (ACHPR), the African Charter on the Rights and Welfare of the Child and the Optional

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<sup>38</sup> Choudhury, T.A. 'Interpreting the right to equality under Article 26 of the International Covenant on Civil and Political Rights' *European Human Rights Law Review* (2003) 8 (1)24.

Protocol to the African Charter on Human and People's Rights on the Rights of Women, the country still has the responsibility of dismantling cultural and institutional obstacles and barriers that diminish opportunities or prevent women and girls children from enjoying their rights to the fullest. Until there is gender equality there can be no sustainable development.

The following recommendations are therefore made; Government should be committed to ensuring that violence, abuse, exploitation and discrimination against women have no place in society. Government have a key role in addressing gender discrimination and equality through legislation, policies and funding for key programmes. It should implement laws to protect women and girls from culture and beliefs that are prejudicial to them. There should be commitment to preserving the dignity of women and engage the public to accept their responsibility to protect them.

The judiciary needs to penetrate social relations realizing that people's most basic demands can be met through the rule of law. Courts should strike down discriminatory laws, policies and practices and afford those affected an effective remedy. Repeal and amend all laws that discriminate against women. It should be ensured that the ongoing constitutional review process addresses the applicability of statutory, customary and Islamic personal laws, which afford varying degrees of protection for women and girls, in order to guarantee all women the same rights and protection against discrimination. There is the need to expedite the repeal or amendment of all discriminatory laws identified by the CEDAW Committee following its concluding observations on reports submitted to the Committee by Nigeria. It is suggested that religious leaders be included in the process of addressing issues of faith and human rights, so as to build on "faith for rights" initiatives and identify common ground among all religions in the State party. This can be achieved by raising awareness among religious and traditional leaders and the general public about the criminal nature of female genital mutilation, including so-called "female circumcision", and its adverse effect on the human rights of women.

Recalling its previous recommendation (CEDAW/C/NGA/CO/6, para. 22), and in line with Sustainable Development Goal 5.3, to eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation, so Nigeria needs to take effective measures to prohibit and eliminate child marriage and other practices mentioned by the Committee. In line with Sustainable Development Goal 5.2, to eliminate all forms of violence against all women and girls in the public and private spheres, there is need to ensure that the Violence against Persons (Prohibition) Act of 2015 is applicable in all federal states and expedite the drafting and adoption of its "enforcement procedure" framework, which should be focused on developing a comprehensive prevention strategy for gender-based violence against women. Along the same line, the Child Rights Act of 2003 should be applicable throughout all the states, so states that have not adopted it into their laws should be urged to do so. Finally, there is need to review the legal regimes governing inheritance under customary law and Islamic personal law to ensure that women's inheritance rights are in line with the Convention and effectively enforced and that women are fully informed about the changes in the law.

#### *Concluding Remark*

It is impossible to realise our goals under the SDG while discriminating against half of the country's population who are female of achieving all the other goals. Declarations, Conventions, goals and legislations are not enough, it is imperative that the country moves resolutely from realms of words to realms of concrete action. Words on paper alone do little justice to the aspirations inherent in these documents: the rights they contain must be humanised and the time is now.