

GENDER DISCRIMINATION AGAINST WOMEN AND DISCRIMINATORY LAW IN NIGERIA

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ABSTRACT

This research presents a systematic agenda to study gender discrimination against women and discriminatory laws that protects women's right in Nigeria. This research will show how gender discrimination is evident in all aspects of women's lives and how the role of the United Nations and States mechanisms to ascertain the extent to which issues of discriminatory laws are addressed.

The Committee on the Elimination of all forms of discrimination against women (CEDAW) has played a vital role in working on these discriminatory laws and how they affect women's rights. It stated that States are responsible for monitoring through measurable indicators the impact of laws, policies, and action plans and evaluating progress achieved towards the practical realization of women's substantive equality with men. In order to achieve this, States must consider putting into place temporary special measures. However, it is evident that even States whose Constitution guarantees equality before the Law has laws that discriminate against women despite all efforts by the United Nations. It is pertinent to know that these discriminatory practices exist in every corner of the globe, not just in Nigeria. However, it just differs from State to State, and new discriminatory laws are enacted. This thesis will show the forms of gender discrimination women face in Africa using Nigeria as a case study. It will propose and suggest solutions to discriminatory practices to promote and protect women's rights.

Keywords: CEDAW, Discriminatory Laws, Women, Girl-child, gender, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Constitution of the Federal Republic of Nigeria, United Nations (UN), Nigeria.

INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination (CEDAW) was adopted by the United Nations General Assembly, which focuses on women's rights and gender equality. Achieving equality between men and women and eliminating all forms of discrimination against women has been in the heart of the United Nations, is one of the core values. As such, a committee was formed to cater to this.¹

Nigeria is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol and other international and regional instruments on women's rights. The Federal Ministry of Women Affairs and Social Development is engaged in continuous advocacy to legislators, policymakers, and other stakeholders on the imperative to pass the CEDAW bill currently pending before the National Assembly.

The 1999 Constitution of the Federal Republic of Nigeria guarantees and protects the rights of women and minorities to freedom from discrimination under the fundamental rights provisions of the Constitution. However, the 1999 Constitution of Nigeria prohibits discrimination on gender, but customary and religious laws continue to threaten and restrict women's rights. The combination of the federation and a tripartite system of civil, customary, and religious Law makes it very difficult to harmonize legislation and remove discriminatory measures.

This research will reveal how the 1999 Constitution of Nigeria prohibits discrimination against women on gender. However, customary laws and religious laws continue to threaten and restrict women's rights; these factors have contributed significantly to the discrimination women face. The form of discrimination women face starts from childhood, from when a girl-

child is born, and these continue on and on to adulthood. In traditional African societies like Nigeria, culture has a pervasive influence on how women are treated. Many Nigerian women have been unable to realize their full potential due to cultural beliefs and practices. It is, therefore, no surprise that all discriminations against women tend to seek justification in cultural moves, beliefs, and practices. There are also considerable gender disparities between boys' and girls' education, especially in the older generation; the younger persons are more likely to be literate than the older ones.

This research will also propose the 1999 Constitution of the Federal Republic of Nigeria and International instruments like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which sets standards or rules that should be adhered to in order to protect human rights. Provide a profound solution to discriminatory practices and laws in Nigeria. A unified statutory, customary, and religious Law in conformity with international and regional instruments on women's rights ensures that the formal provisions prevail in the case of conflicts between formal legal provisions and customary law.

Discrimination against women is very prominent today, not just in Nigeria but all over the world. The causes and forms of all discrimination against women and girls should be eradicated, and women should be protected to have equal rights as men in every aspect of life.

EQUALITY

Equality and Non-Discrimination

The principle of equality and non-discrimination lies at the heart of international human rights law. Judge Tanaka articulated the theory of non-discrimination and equality in his famous dissent in *South West Africa* casesⁱⁱHe explained that the principle of equality does not exclude the different treatment of persons from the consideration of the differences of factual circumstances such as sex, age, language, religion, economic condition, education, etc. To treat different matters equally in a mechanical way would be as unjust as to treat similar matters differently.

Attaining equality between men and women and eliminating all forms of discrimination against women are fundamental human rights and United Nations values. In order to achieve equality between men and women, it requires an understanding of how women experience this discrimination. The principles of equality and non-discrimination formed the basis of all human rights instruments and cut across all the rights found within human rights treaties influencing both the interpretation and enjoyment of rightsⁱⁱⁱ. Article 1 of CEDAW defines discrimination against women based on sex. "For the purposes of the 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.^{iv}”

Article 2 highlights that the State is responsible for violations of rights within both the public and private sphere regardless of whether the State commits those violations or non-State actors^v. Article 1 of CEDAW includes both direct and indirect discrimination^{vi}. Also, requires States parties to ensure equality of opportunity and result, thus making it beyond the formal (liberal) model of Equality which Mackinnon argues requires a reversal and comparison of the sexes^{vii}. Mackinnon argues that by relying on a false premise, namely that the playing field is level for both men and women, a formal model of equality fails to take into account socio-structural inequalities which result in women not being able to enjoy their rights on equality.

Equality of rights for women is a fundamental principle of the United Nations. The Preamble to the Charter of the United Nations sets as one of the organization's central goals the reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". Article 1 proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to sex. The status of human rights, including the goal of equality between women and men, is thereby elevated: a matter of ethics becomes a contractual obligation of all Governments and the UN.

Discrimination and inequality can be in various ways; it can be through de jure or direct discriminatory provisions, such as when a law or policy restricts, prefers, or distinguishes between certain groups, for instance, prohibiting women from driving, owning lands or inheriting property. It should be the utmost priority of the State to eliminate discriminatory laws and comply with human rights obligations^{viii}. 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. Laws, policies, or programs can have detrimental effects on women even though they appear to be gender-neutral. This is known as de facto discrimination. Indeed some "gender-neutral laws" may constitute discrimination against women; for example, if a State fails to provide services needed exclusively by women, not least in the provision of reproductive services^{ix}. An example of direct discrimination against women was highlighted in the 2006 CESCR concluding observations to the Mexican report where the Committee censured the State for the practice in the textile industry produce whereby women were required to provide medical certificates proving that they were not pregnant in order to be hired or to avoid being fired^x. By way of contrast, Chile in its fifth report to the Human Rights Committee detailed how it had amended its labor law to prohibit the "making a woman's access to employment, mobility, promotion or contract renewal dependent on her not being pregnant^{xi}". Identified as equally problematic by CEDAW and constituting discrimination against the girl child is the requirement in some States that pregnant girls are excluded from school, but interestingly not the boys responsible. This damages the life chances of the girl whose right to education is curtailed unnecessarily^{xii}.

Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women, which cannot be justified objectively while indirect discrimination occurs when Law, policy or program does not appear to be discriminatory but has a discriminatory effect when implemented. The Committee on Economic, social and cultural Rights explained in its general comment No. 16 (2005) that states parties to the Covenant are obliged to.

The Universal Declaration of Human Rights was adopted in 1948 also proclaimed the equality between men and women "without distinction of any kind, such as Sex...." In drafting the Declaration, the choice of word was put into consideration in order to be gender-neutral. The

term "all human beings" and "everyone" was adopted in order to leave no doubt that the Universal Declaration was intended for both men and women^{xiii}. The first draft began with the phrase "All men and Eleanor Roosevelt did not support changing it, stating that "it has become customary to say 'mankind' and which means both men and women. The draft changed when it got to the Third Committee that the first article began with "All human beings." Also, the first drafts of the preamble omitted the Charter's reaffirmation of the "equal rights of men and women." Morsink conveys the arguments made against omitting this clause from the Declaration. Ultimately the Third Committee voted 32-2 for the UDHR's preamble to include the reference to the Charter's reaffirmation of the "equal rights of men and women." The two states that voted against included China and the United States^{xiv}.

States Parties has the responsibility to address the causes of discrimination which could be on the grounds of sexual orientation, immigration status, age, race and ethnicity and disabilities, inequality against women^{xv}. It is also essential that they provide positive measures that eliminate these discrimination practices. The Committee on the Elimination of all forms of discrimination against women further stated that in order for women to enjoy these rights the measures must be adopted towards a real transformation of opportunities, institutions, and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns^{xvi}.

Additional measures, such as temporary special measures may also be required to move beyond formal equality and to accelerate the realization of de facto or substantive equality.^{xvii} Human rights law provides for the principles of non-discrimination to be derogated from in the use of such measures^{xviii}. In the case of *Kalanke v. Freie Hansestadt Bremen*^{xix} the court identified three different aims of temporary special measures or affirmative action:

"A first model aims to remove, not discrimination in the legal sense, but a condition of disadvantage which characterizes women's presence in the employment market. In this case, the objective is to eliminate the causes of fewer employment and career opportunities, which (still) beset female employment. A second model of positive action may be discerned in actions designed to foster a balance between family and career responsibilities and a better distribution of those responsibilities between the two sexes. A third model of positive action is that of action

as a remedy for the persistent effects of historical discrimination of legal significance; in this case, the action takes on a compensatory nature, with the result that preferential treatment in favor of disadvantaged categories is legitimized, in particular through systems of quotas and goals."^{xx}

Equality, Equity, and Gender Equity

"Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles, and prejudices^{xxi}". The concept of equality between men and women includes both formal and substantive equality.

"Equity is the moral imperative to dismantle unjust differences based on principles of fairness and justice. It requires a focus on the most disadvantaged and the poorest. Many [development organizations] have made equity a central part of their agenda. However, from a human rights perspective, relying on equity has certain risks because its definition is a malleable concept that is not legally binding. While equity may denote justice, it may dilute rights claims if considered separately from equality and non-discrimination and risks being defined arbitrarily according to political and ideological expedience^{xxii}."

Gender equity "is used in some jurisdictions to refer to the fair treatment of women and men, according to their particular needs. This may include equal treatment or treatment that is different but considered equivalent in terms of rights, benefits, obligations, and opportunities". The term gender equity has sometimes been used as a way of women stereotype in the role they play in the society, suggesting that women should be treated "fairly" in accordance with the role that they carry out^{xxiii}. The Committee on the Elimination of Discrimination against women in its general recommendation of No. 28 (2010) on the core obligations of States parties under article 2 of the Convention states that "States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention." The legal term used in the Convention, gender equality, cannot be replaced by equity, which is a concept conditioned by subjective criteria^{xxiv}.

DISCRIMINATION AGAINST WOMEN IN NIGERIA

United Nations General Assembly of Human Rights Council Universal Periodic Review On Nigeria

Nigeria is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol as well as other international and regional instruments on the rights of women. Out of thirty two recommendations on Nigeria by the working group on the Universal Periodic Review Seventeenth session held in Geneva, 21 October- 1 November 2013, three recommendations were on repeal laws that allow violence and discrimination against women eliminate existing harmful traditional practices and adopt all necessary measures to provide full protection of children, girls, women, and widows from the effects of these traditions were accepted. In Nigeria, it is a state priority to address violence against women through public policies. Efforts are being made to consolidate and strengthen policies and programs which will eliminate violence against women and provide support for victims^{xxv}. A product of these efforts is the violence against persons Bill being considered in the National assembly. Section 42 of the 1999 Constitution of the Federal Republic of Nigeria guarantees and protects the rights of women and minority to freedom from discrimination under the fundamental rights provisions of the Constitution^{xxvi}. Under this provision, a citizen of Nigeria shall not be subjected to discrimination based on sex. Under section 46 (1) of the Constitution, women who are victims of violence and discrimination may apply to a High Court for redress by way of fundamental rights enforcement proceedings in the event of the application of any law that allows violence and discrimination against them. Nigerian courts have on several occasions declared null and void all laws and customs that are not in the spirit of the Constitution in this regard^{xxvii}.

The Federal Ministry of Women Affairs and Social Development are engaged in continuous advocacy to legislators, policymakers, and other stakeholders on the imperative to pass the CEDAW bill currently pending before the National Assembly. The government has taken the necessary steps also to engage traditional and religious leaders on the importance of eradicating contrary to cultural practices from their communities. Some states of the federation have passed laws eradicating some of these practices, including Female Genital Mutilation and harmful widowhood rights.

The vulnerability of Nigerian women is an incontestable fact despite the ratification by Nigeria of several international standards that sanction gender discrimination and inequality. Among such standards are the Universal Declaration of Human Rights (UDHR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Convention on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the commitment of the Fourth World Conference on Women in Beijing, China. According to Section 17 (1)(2) of the Constitution which states "That every citizen shall have the equality of rights, obligations, and opportunity before the Law^{xxviii}," Section 42 of the same Constitution further states that no Nigerian citizen shall be discriminated against because of a particular sex, religion, or ethnic group". Moreover, it also guarantees the right to private and family life. Furthermore, Article 18(3) of the West African Charter on the People's Human Rights also frowns against discriminatory practices on the grounds of sex. Nigeria is a signatory to this charter^{xxix}.

In 2006, the federal ministry of Women's Affairs (FMWA) pushed for the adoption of the National Gender Policy to replace the National Policy on Women, which was adopted in 2000. The overall policy goal is to build a just society devoid of discrimination, harness the full potentials of all social groups regardless of sex or circumstance, promote the enjoyment of fundamental human rights and protect the health, social, economic and political wellbeing of all citizens in order to achieve equitable rapid economic growth; evolve an evidence-based planning and governance system where human, social, financial and technological resources are efficiently and effectively deployed for sustainable development while one of its policy objectives is to include the principles of United Nation's Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other global and regional frameworks that support gender equality and women empowerment in the country's laws, legislative processes, judicial and administrative systems.

Tradition, Culture, and Religion as Negative Factors that Contribute to Gender Discrimination in Nigeria

In traditional African societies like Nigeria, culture has a pervasive influence on how women are treated. The culture policy of Nigeria (1988), the official document that regulates the administration of cultural matters, states that culture is perceived as the whole way of life of a given society. It is, therefore, no surprise that all discriminations against women tend to seek justification in cultural moves, beliefs, and practices. Many Nigerian women have been unable to realize their full potential as a result of cultural beliefs and practices.

Even though the 1999 Constitution of Nigeria prohibits discrimination on the ground of gender, but customary and religious laws continue to threaten and restrict women's rights. The combination of the federation and a tripartite system of civil, customary, and religious Law makes it very difficult to harmonize legislation and remove discriminatory measures. Some states in the northern part of Nigeria follows the Islamic (Sharia) law, although not exclusively and only instances where Muslims make use of Islamic courts. These laws are mostly to the disadvantaged and unfavorable to women.

Religion, tradition, and cultural beliefs form part of what is responsible for discrimination in the Nigeria society. Women and the girl-child still have unequal access to education, healthcare, adequate housing, employment, denial of the right to inherit or own property, child or early marriages, domestic violence, and female genital mutilation/ cutting (FGM). Violence against women is the most acute form of gender inequality in Nigeria.

A vast majority of the violence against women can be described as Harmful Traditional Practices against Women (HTPs). Some of the standard Harmful Traditional Practices against Women in our communities include female genital mutilation, child marriage, ritualistic widowhood practices, nutritional taboos, cult prostitution, domestic violence, and sexual freedom for husbands. Other discriminatory practices include traditional land tenure systems and patterns of inheritance, lack of access to credit, family preference for sons, lack of participation in public decision-making, discrimination in housing and employment, discriminatory legislation, and discriminatory religious practices, as well as rape, battery, trafficking in women, murder, kidnapping, and induced prostitution.

Nigerian Law on testate inheritance/succession includes the Wills Act and its Amendments (1837, 1852); The Wills Law Western Nigeria (1987). Succession Law Edict, 1987 of old Anambra State as amended and applicable to Enugu and the Ebonyi States^{xxx}. These laws/statutes do not extend to widows who contracted customary law marriages, but in most regions, customary Law does not grant women equal rights to inheritance as with men. Women are denied a legal right or granted limited ownership to property or inherit the land. In North-East Nigeria, women own only 4% of land and just over 10% of land ownership in the South-East and South-South. Civil Law entitles women to have access to inheritance rights, but specific customary laws stipulate that only men have the right to own land. In the case of *Nezianya v. Okagbue*^{xxxii} the court held that under the Law and custom of Onitsha, a widow in possession of her deceased husband property does not give her the right to own the property, and she cannot deal with the property without the consent of the husband's family. Furthermore, if a husband dies without a male child, his real property descends to his family, and his female children do not have the right to ownership of the property, according to custom. Also, in the case of *Nzekwu v Nzekwu*^{xxxiii}, the Supreme Court of Nigeria restated the principle that the widow's dealings over her deceased husband's property must receive the consent of the family, and she cannot by the effluxion of time claim the property as her own. She has, however, a right to occupy the building or part of it during her lifetime, but this is subject to her good behavior. Also, in the case of *Onwuchekwa v Onwuchekwa*^{xxxiii} The Court of Appeal refused to reject as repugnant a custom in which a husband is said to own the wife along with her properties. In that custom, a woman is equated to a property, which is a form of gender discrimination in itself.

After some time, the judicial pronouncement had a second look at discriminatory customs against women. In the case of *Mojekwu v Mojekwu*^{xxxiv} The Court of Appeal Enugu held that the "Oli-Ekpe" custom of Nnewi in Anambra State under which male children only inherit their father's property is unconstitutional. Niki Tobi J.C.A delivering the lead judgment asked the following questions;

Is such a custom consistent with equity and fair play in an egalitarian society such as ours?

Daily, we hear of and read about customs, which discriminate against women in this country. They are regarded as inferior to men. Why should it be so?

According to the learned Justice of the Court of Appeal: "All human beings-male and female-are born into a free world, and are expected to participate in freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on the ground of sex apart from being unconstitutional is an antithesis to a society built on the tenets of democracy, which we have freely chosen as a people. We need not travel to Beijing to know that some of our customs, including the Nnewi "Oli-Ekpe" custom, are not consistent with our civilized world in which we all live today. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Accordingly, for custom or customary Law to discriminate against a child based on sex is an affront, I have no difficulty in holding that the "Oli-Ekpe" custom of Nnewi, is repugnant to natural justice, equity and good consciences."

Also, in the case of *Muojekwu v. Ejikeme*^{xxxv}, the Court of Appeal held that a female child could and has the right to inherit from the deceased father's estate in Igbo land, which is in the Eastern part of Nigeria without the performance of the Nrachi ceremony. Nrachi is a traditional ceremony where one of the female children is left at home unmarried for the rest of her life; she is expected to raise issues, mainly male, to succeed the father. After the daughter has fulfilled this obligation to her family, she assumes the position of a man in her father's house. As regards this case, the court took the liberty to interpret the constitutional nature of freedom from discrimination. The court held that by Section 42 (1) of the Constitution of the Federal Republic of Nigeria, 1999 a citizen of Nigeria community, ethnic group, place of origin, sex, religion or political opinion should not, by reason only that he is such a person, be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions which citizens of Nigeria of other communities, ethnic groups, placed of origin, sex, religious or political opinions are not made subject. Consequently, the court held that such a customs discriminated against the daughter of the deceased who did not perform the ceremony and is therefore unconstitutional in the light of the provisions of section 42 of the Constitution of the Federal Republic of Nigeria, 1999.

Daughter's inheritance right under customary Law varies across the country, but in no region does the customary law grant women equal rights to inheritance with men. Nigerian women have limited rights to ownership of property. Civil Law entitles women to have access to land, and a few states have enshrined equal inheritance rights into Law, but specific customary laws stipulate that only men have the right to own land. Mostly, women who have land or ownership to a land obtain it through marriage or family. As a result, there is a gender gap in ownership of land. The Nigerian society, both historical and contemporary, has been dotted with peculiar cultural practices that potentially harmful to women's emancipation.

Women's Education in Nigeria

Gender inequality in education is extreme. Girls are less likely to access school, to remain in school or to achieve in education. Despite more than 30 years of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and 20 years of the Convention on the Rights of the Child (CRC), today girls make up around 56 percent of the 77 million children not in school, and women make up two thirds of the adults who are illiterate. Even girls who do enroll in school may have irregular attendance due to other demands on them, and the fact that their education may not be prioritized. Girls are more likely to repeat years, to drop out early, and to fail critical subjects, and in most countries, girls are less likely to complete the transition to secondary schooling. Inequality in society inevitably has an impact on the provision and content of education. Hence, the need to examine and address the issues surrounding poor education of women in our society cannot be overemphasized.

Girls continue to suffer severe disadvantage and exclusion in education systems throughout their lives. An estimated 31 million girls of primary school age and 32 million girls of lower secondary school age were out of school in 2013. Sub-Saharan Africa has the lowest proportion of countries with gender parity: only two out of 35 countries. Moreover, South and West Asia have the widest gender gap in its out-of-school population - 80 percent of its out-of-school girls are unlikely to ever start school compared to 16 percent of its out-of-school boys. Furthermore, many countries will still not have reached gender parity. On current trends, it is projected that 69 percent of countries will have achieved parity in primary education, and 48 percent of countries will have achieved parity in lower secondary education by the 2015 deadline^{xxxvi}. Education is a tool that helps men and women to claim their rights and realize their potential

in every aspect of their lives. Education, not just in Nigeria, should be an intrinsic part of addressing gender-based discrimination against women and girls. Women remain disadvantaged, especially in the area of education, according to the US Agency for International Development and World Bank, 57 percent of the 72 million primary school-aged children who do not attend school are females. Additionally, girls are four percent less likely than boys to complete primary school^{xxxvii}. Nigeria is still among the nations facing many challenges in bridging the gender gap in primary and secondary education. Nigeria significantly influences the achievement of the United Nations Millennium Development Goal (MDG) in sub-Saharan Africa because of its sheer size. Hence, the situation of women and girls in Nigeria has a vital role to play in determining the progress of the region. It is imperative to say that education plays a vital role as a foundation for girls' development towards adult life.

At every educational level, women earn less than their male, and in some cases, men with less education earn more than better female peers. More than two-thirds of 15-19-year-old girls in Northern Nigeria are unable to read a sentence. There is a significant gap between boys and girls enrolled in school. Nigeria performed poorly in terms of gender equality according to Gender in Nigeria Report data. According to the Gender Gap Index, Nigeria scored 134 out of 142 countries in educational attainment^{xxxviii}. According to the Central Bank of Nigeria, the gender gap in literacy rates at the rural level between boys and girls was 18.3 percent in favor of the boys overall. However, in the age group 6–9 years (primary school ages), it was only 3.9 percent in favor of boys^{xxxix}. This indicates that there is a gender dimension to educational attainment and development in Nigeria. According to the Examination Council of Nigeria (1994), there are still other problems, such as high drop-out rates of female students, poor performance, reluctance on the part of female students to enroll in science-based courses, and poor classroom participation^{xl}. Across various geo-political delineations in Nigeria, a more significant percentage of school-age girls are needlessly out-of-school, compared with the ratio applicable to boys of same age grouping.^{xli} In Nigeria, educational facilities are generally believed to be inadequate, and access is limited for many, especially girls and women^{xlii}. According to the United Nations Human Development Report (2005), Nigeria was classified as a low development country in respect of equality in educational accessibility,^{xliii} despite the education policy which evolved since the 1980s, which was towards a gender focus.

The tradition, customs, socio-cultural values, ethics, motherhood instincts are some of the factors influencing gender bias in the education sector. Cultural and social beliefs, attitudes, and practices prevent girls from benefiting from educational opportunities to the same extent as boys. The achievement of girls' right to education can address some of the societies' deeply rooted inequalities, which condemn millions of girls to life without quality education and, therefore, also all too often to a life of missed opportunities. Education is seen in some societies as a fear of change, and now, with globalization, the fear becomes even more significant, fear of losing the cultural identity, fear of moving towards the unknown, or unwanted.

It is often believed that women are subordinate to men and because of societal stereotype and stigmatization on specific professions and subjects as the exclusive preserve of men, most women have been forced into less paid jobs such as teaching, nursing services, agriculture, small scale food processing, secretarial duties, clerical duties, note-counting in banks, cleaners and middle-level professional occupations. These beliefs have resulted in parents not sending the girl-child to school as she will eventually marry and get low pay jobs. The Nigerian tradition has been seen as a tradition that attaches a higher value to men than women, whose place is believed to be the kitchen^{xliv}. The imbalance in boys' and girls' participation in schooling can be linked to the long-held belief in male superiority and female subordination^{xlv}.

Issues of gender equality in education have been the subject of much debate during the past decades, not just in Nigeria but in every part of the world. While gender parity has improved, barriers and bottlenecks around gender disparities and discrimination remain in place, especially at the secondary school level and among the most marginalized children.

There are various barriers to girls' education throughout the world, ranging from supply-side constraints to harmful social norms. Some include school fees; healthy cultural norms favoring boys' education when a family has limited resources; inadequate sanitation facilities in schools such as lack of private and separate latrines; and adverse classroom environments, where girls may face violence, exploitation, or corporal punishment. Additionally, schools often lack sufficient numbers of female teachers, because most of the women are not given to opportunity to be educated, so therefore female teachers are limited compared to men. Education helps women take advantage of opportunities that could benefit them and their families, preparing

women for the labor force and helping them understand their legal as well as their reproductive rights — the essential ingredient of employment opportunity in education, especially higher education. If employment opportunities are different, standards of living, life expectancies, and other parameters of existence and well-being will be different. "For Nigeria to achieve the goal of being among the most significant 20 economies in the world, she must rapidly educate the children, most of all, the girls. Educating girls is known to be the basis for sound economic and social development.

Primary education helps women and girls with the understanding of essential health- they vulnerable, nutrition and family planning, giving choices, and the power to decide over their lives and bodies. Women's education leads directly to better reproductive health, improved family health, economic growth, for the family and society, as well as lower rates of child mortality and malnutrition. As women education increases, fertility, population growth, and infant and child mortality fall, and family planning, as well as health, tend to improve significantly. According to The International Center for Research on women, the education that a girl-child receives is the strongest predictor of the age she will marry, and it is a critical factor in reducing the prevalence of child marriage^{xlvi} and birth, because women generally give birth soon after marriage. Women with no education that marries at the age of 18 years will most likely give birth at 19-20 years, while the educated ones marry between 25-30 years, will deliver later. With childbirth at a later age, fertility, and overall population, growth is reduced. Women in Nigeria suffer more than men by poverty due to lack of emphasis placed on female education and the prevalence of early marriage which tends to impoverish women further and subject them to statutory discrimination^{xlvi}.

CEDAW has realized the rights and equality of woman is also the key to the survival and development of children and to building healthy families, communities, and nations. Article 10 has spelled out changes that must be changed in order to help Nigerian women and other women suffering from gender disparity:

- 1) It states that there must be the same conditions for careers, vocational guidance, and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas. This equality shall be ensured in pre-school, general, technical,

professional and higher technical education, as well as in all types of vocational training^{xlvi}.

- 2) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same qualities.
- 3) The Elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education. This is encouraged by coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods.
- 4) Girls and boys should have access to the same opportunities to benefit from scholarships and other study grants.
- 5) The same opportunities of access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.
- 6) The reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely.
- 7) Opportunities to participate actively in sports and physical education. Lastly, it is access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

In Nigeria, there are considerable gender disparities between the education that boys and girls receive, especially in the older generation, the younger persons are more likely to be literate than the older ones. In a survey done by the International, Education Statistics measured Nigerian literacy among different 5-year age groups. Among persons aged 15 to 19 years - those who were of primary school age in the 1990s - the literacy rate is 70%. Among persons 80 years or older, only 13% are literate. Additionally, the gap between boys and girls aged 15 to 19 is only 11% Currently Nigerian women are making advancement within the society^{xlix}. In recent years, three male-dominated professions, the Nigerian Medical Association, the Nigerian Bar Association, and the Institute of Chartered Accountants of Nigeria, have been led by female presidents. The subsequent creation of the National Commission for Women and a ministerial portfolio for Women Affairs provides additional avenues for the promotion of women's educational issues and the enhancement of the role of women in national development

by way of a statutory body and a Ministry. As a result, more children are enrolled in schools, both boys and girls, although Nigerian women's access to formal education is still being restricted due to their unfair workload within the household division of labor.

SUGGESTIONS AND RECOMMENDATION

Gender equality is essential for the achievement of human rights for all. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) has been very instrumental in protecting women's right. It mandated the states to take full responsibilities in eliminating discrimination such as through appropriate legislation prohibiting discrimination, ensuring the legal protection of women's rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions. Many countries in the world, not just Nigeria is very slow in enacting laws that affect women despite the ratification by the states and monitoring by the Committee on the Elimination of Discrimination against Women to ensure the implementation of these laws, discrimination against women persists both in Law and practice.

The 1999 Constitution of the Federal Republic of Nigeria protects the rights of Women; however Nigerian women still suffers different forms of discrimination based on sex. Customary and religious laws still have loopholes that prevent the implementation of these rights. There should be a harmonize statutory, customary, and religious law in conformity with international and regional instruments on women's rights and ensure that where conflicts arise between formal legal provisions and customary Law, the formal provisions prevail.

In order to achieve equality between men and women, States party needs to systematically review its domestic legislation to ensure without delay that all discriminatory legislation is explicitly amended or repealed and brought into full compliance with the provision of the Convention. If a definition of discrimination against women is included in the domestic laws encompassing both direct and indirect discrimination in line with Article 1 of the Convention, it will help in the eradication of discrimination. Provisions on the equal rights of women in line

with Article 2(a) of the Convention and sanctions for acts of discrimination based on sex as well as remedies for violations of the rights to non-discrimination against women and gender equality should be included in the Constitution or other appropriate legislation. States need to prioritize the adoption of a comprehensive legal framework to address all forms of discrimination and violence against women and accelerate the implementation of existing measures.

Nigeria is a party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the Convention has set standard rules for the protection of women's right. Therefore, Nigeria is under an obligation to enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women.

The government should adopt campaign awareness through educational and public awareness programs to enlighten the citizens through media to convey the message that all forms of discrimination against women and girls, especially domestic violence against women, should be an offense and punishable under the Law. All victims of such abuse should be protected and the accused should be punished under the Law regardless of status in the society or religious beliefs. The rule of Law must be upheld in such situation.

The principle of equal pay for work of equal value and equal social benefits and services should be promoted. Prohibition of discrimination at the workplace based on sex should cover all aspects of work ethics, including access to vocational training, employment, wage or salary, promotion, terms, and conditions of employment. Women should not be treated and discriminated from certain professions, which are generally perceived as men's profession; equal opportunities should be given to both men and women. The State should further help to apply a legal provision governing maternity benefits, adopt legislation on sexual harassment to apply in both the private and public sector, and ensure that women have access to means of redress if measures allowing for the reconciliation of family and professional responsibilities are adopted and implemented, including the provision of affordable childcare. Equal

responsibilities of domestic and family tasks between men and women are encouraged. It will bring about a balance in the family, and this result in the development of the society as a whole.

CONCLUSION

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) has played a vital role in the eradication, prevention, and protection of women and girls from various forms of discrimination. The challenge in the form of discrimination women face starts from childhood from when a girl-child is born, and these continue on and on to adulthood. She is treated differently from the boy child; she is brought up to believe that she is only suited for specific professions or in some cases, only to serve as a wife and a mother. Gender lines are drawn early, and exclusions for women continue throughout adulthood. This discrimination has been described in every stage of admission into schools, stage of employment, from selection and recruitment to training and remuneration, and also includes occupational segregation and time of termination of the employment relationship. These constant messages have led to a false belief that women do not belong in the high-powered corporate world. Women around the world continuously and regularly suffer violations throughout their lives, and realizing women's human rights has not been fully achieved. Women do not still enjoy equality rights with men. Achieving equality between men and women requires a comprehensive understanding of how women experience discrimination in various forms right from childhood to adulthood and implementing appropriate measures of discriminatory laws that protect their rights.

States are under an obligation to ensure the reform of existing discriminatory laws and practices in order to promote and protect the rights of women. Equal treatment of men and women under the Law is essential. As such, it makes women and girls realize their potential and enjoy equal rights and opportunities with men. Laws that discriminate against women not only impede gender equality but also send a message that the State considers them to be lower and second citizens to men. Girls and women face various forms of discrimination right from childhood until adulthood, and these trends continue throughout their lifetime. The State should adopt all necessary measures to reform or eliminate discriminatory cultural practices and stereotypes.

The Constitution of Nigeria prohibits discrimination against women on the ground of gender, but customary laws and religious laws continue to threaten and restrict women's rights. The combination of the federation and a tripartite system of civil, customary, and religious Law makes it very difficult to harmonize legislation and remove discriminatory measures. Religion, tradition, and cultural beliefs also form factors that are responsible for discrimination in the Nigeria society. Women and the girl-child still have unequal access to education, healthcare, adequate housing, employment, denial of the right to inherit or own property, child or early marriages, domestic violence, and female genital mutilation/ cutting (FGM). Violence against women is the most acute form of gender inequality in Nigeria.

A vast majority of the violence against women can be described as Harmful Traditional Practices against Women (HTPs). Some of the standard Harmful Traditional Practices against Women in Nigeria communities include female genital mutilation, child marriage, ritualistic widowhood practices, nutritional taboos, cult prostitution, domestic violence, and sexual freedom for husbands. Other discriminatory practices include traditional land tenure systems and patterns of inheritance, lack of access to credit, family preference for sons, lack of participation in public decision-making, discrimination in housing and employment, discriminatory legislation, and discriminatory religious practices, as well as rape, battery, trafficking in women, murder, kidnapping, and induced prostitution. It is, therefore, no surprise that all discriminations against women tend to seek justification in cultural moves, beliefs, and practices. Many Nigerian women have been unable to realize their full potential as a result of cultural beliefs and practices. Discrimination against women is very prominent today, the causes and forms of all discrimination against women and girls should be eradicated, and women should be protected to have equal rights as men in every aspect of life.

Undoubtedly, Nigeria and the world at large have, in the last decade, witnessed an unprecedented expansion of women's rights, which is one of the most profound social revolutions the world has ever seen. A couple of decades back, only two countries allowed women to vote. Today, that right is virtually universal. Millions of men and women around the world now support the call for gender equality, although there is much to be done, especially in developing countries like Nigeria.

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ENDNOTES

ⁱ The Convention defines discrimination in its **Article 1** as "... 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". This discrimination encompasses any difference in treatment on the grounds of sex that intentionally or unintentionally disadvantages women; Prevents society from recognizing women's rights in both the private and the public spheres; Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.

ⁱⁱ South West Africa (Second Phase), [1966] ICJ Reports, Advisory Opinions, and Orders, Judgment of 18 July 1966, Dissenting Opinion by Judge Tanaka. The claims were brought before the International Court of Justice by Ethiopia and Liberia against the apartheid regime of South Africa regarding its governance of South West Africa (later Namibia). Judge Tanaka's famed dissent argued against the ICJ decision to dismiss the claims on the ground that the applicant states had no legal ground to bring them.

ⁱⁱⁱ W. Vandenhole Non-Discrimination and Equality in the view of the UN Human Rights Treaty Bodies (Antwerp, Intersentia, 2005). 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. Human Rights Committee general comment 18 on Non-Discrimination, CCPR/C/21.Rev.1.Add1, para. 1. 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. It prohibits discrimination in Law or fact in any field regulated and protected by public authorities. Article 26 is, therefore, concerned with the obligations imposed on states parties concerning their legislation and the application thereof. Thus, when a State party adopts legislation, it must comply with the requirement of article 26 that its content should not be discriminatory. 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." Human Rights Committee general comment 18 paras. 12.

^{iv} 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 modeled on the definition of discrimination found in Article 1 of the Race Convention. CESCR General comment 16 paras. 11, Human Rights Committee general comment 18 paras. 6. Finally, see Disability Convention art. 2.

^v CEDAW general recommendation 19 on violence against women, A/47/38, para 9.

^{vi} For definitions of direct and indirect discrimination, see CESCR general comment 166, paras. 12 and 13.

^{vii} C. Mackinnon Towards a Feminist Theory of the State (Boston, Harvard University Press, 1989) 217. See generally C. Mackinnon Sex Equality (West group).

^{viii} Globally, laws that discriminate against women remain a significant problem, and even when there are laws in place that guarantee gender equality they are not yet being put into practice. See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), Progress of the World's Women 2011–2012: In Pursuit of Justice (2011), and "Report of the Office of the United Nations High Commissioner for Human

Rights on good practices in efforts aimed at preventing violence against women” (A/HRC/17/23). See also Working Group on the issue of discrimination against women in Law and practice, available from www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx (accessed 6 November 2013).

^{ix} CESCR general comment 16 paras. 18. CEDAW general recommendation 24 on Health, A/54/38/Rev.1, paras. 14 and 31 (b), (c) and (e), and see also Centre for Reproductive Right (CRR) and University of Toronto International Programme on Reproductive and Sexual Health Law Bringing Rights to Bear: An Analysis of the Work of the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights (New York, CRR and University of Toronto, 2002), 145-148. R. Cook and B Dickens "Human Rights Dynamics of Abortion Law Reform" (2003) 25 Human Rights Quarterly 1. Center for

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^x CESCR Concluding Observations: Mexico, E/C12/CO/MEX/4 (17 May 2006), para. 15. Human Rights Committee general comment 28, para. 20

^{xi} CESCR Concluding Observations: Mexico, E/C12/CO/MEX/4 (17 May 2006), para. 15. Human Rights Committee general comment 28, para. 20

^{xii} See CEDAW Concluding Observations: Togo, CEDAW/C/TGO/CO/3, paras. 24-25. See also **Student Representative Council of Molepolole College of Education v. Attorney-General** [1995] (3) LRC 447.

^{xiii} Johannes Morsink, "Women's rights in the Universal Declaration", Human Rights Quarterly, vol 13, No. 2 (May 1991).

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^{xv} See the view on the Committee on the Elimination of Racial Discrimination (CERD) in the case of *Yilmaz Dogan v. The Netherlands* (Communication no. 1 /1984), UN doc. CERD/C/36/D/1/1984 (1988). See also CERD, General Recommendation no. 25 (2000), on gender-related dimensions of racial discrimination, UN doc. HRI/GEN/1/Rev.8, pp. 258-59; Adrien Kathrine Wing, *Critical Race Feminism: A Reader* (New York University Press, 2nd ed, 2003)

^{xvi} General Recommendation no 25, para. 10

^{xvii} See Article 4 of the Convention; General Recommendation no.25, supra

^{xviii} Human Rights Committee general comment 18, para. 20; Human Rights Committee general comment 28, para. 3; CESCR general comment 16, paras. 15, 35, and 36. CESCR General comment 13 Para. 32. CEDAW general recommendation 23, para. 15. CEDAW general recommendation 25.

^{xix} *Kalanke v. Freie Hansestadt Bremen*, Case No.: C-450/93, reproduced in R. Emerton, K. Adams, A. Byrnes and J. Connors *International Women's Rights Cases* (London, Cavendish, 2005), 158.

^{xx} *Ibid*, para.9 (Emerton et al. pp. 168-9)

^{xxi} Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 22.

^{xxii} Catarina de Albuquerque, "The Future is Now: Eliminating inequalities in sanitation, water, and hygiene," October 2012. Available from www.ohchr.org.

^{xxiii} In development parlance, "equity" is a term commonly used to speak about inequalities on a variety of grounds, not only on sex. The word "equity" has sometimes been understood as more accessible to a broader public and suggests a need for redistribution. However, some have suggested that the term should be used with caution to ensure it is not masking a reluctance to speak more openly about discrimination and inequality.

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- xxviii Section 17 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria
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