

GENDER INEQUALITY AND DISCRIMINATION AGAINST WOMEN AND WOMEN'S RIGHTS CHALLENGES IN NIGERIA

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ABSTRACT

This article will present the concept of equality and non-discrimination through the working of the human rights mechanism on the promotion and protection of women's rights. This research will further focus on gender inequality and discriminatory practices against women; and identify the challenges encountered in the implementation of women's right in Nigeria.

Nigerian women constitute about half of the Nigerian population and are known to play significant roles in the society. However, gender inequality and discrimination due to the patriarchal system has deeply affected women's structurally unequal position in many aspects such as families, inheritance, workplace, education and politics.

Tradition and religion have also contributed to men domination in the structure of social organization and institution at all levels of leadership while women are confined to domestic activities. Gender stereotype, roles ideology and discrimination have limited women from maximizing their potentials on the basis of equality with men even though the Federal Republic of Nigeria constitution provides for gender equality between men and women.

Several efforts has been made by the government of Nigeria to promote gender equality and non-discrimination, however, the failure of Nigeria to domesticates the International and regional treaties as part of it municipal law has slowed down the pace of women's emancipation. Consequently, Nigerian women have suffered intense marginalization and relegation to the background. Women are victims of discrimination in all aspects of their lives,

this discrimination has persisted for so long that is deeply rooted and institutionalized in the Nigerian system.

Keywords: Gender equality, non-discrimination, women's rights, Nigeria, United Nations, Treaty, human rights, constitution, patriarchal system, legislations, CEDAW, Maputo protocol

INTRODUCTION

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.

"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".

Across the world and not just in Nigeria, do women continue to face a wide range of inequalities and discrimination on the basis of sex. Though the Nigerian constitution provides for gender equality between men and women, however, in practice women continue to suffer injustices and marginalization. Conservative social attitudes, gender norms, customary law, cultural norms, religious practices and gender stereotypes, are some major challenges encountered in the implementation of women's right.

This article will mention the major challenges of implementing women's rights for the protection of the rights of Nigerian women and make its recommendations.

THE CONCEPT OF GENDER EQUALITY AND NON-DISCRIMINATION UNDER THE HUMAN RIGHTS MECHANISMS FOR THE PROTECTION OF WOMEN'S RIGHTS

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Maputo protocol on women's rights and other instruments made provisions in analyzing issues of equality between men and women, particularly Article 1 which 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.ⁱⁱ Article 4 made provision for temporary measures to accelerate equality, Article 5 relates to custom, tradition, and stereotyping that constitute obstacles to the elimination of discrimination faced by women and General Recommendation No. 25 (temporary special measures to accelerate the elimination of de facto discrimination). With respect to the substantive articles of the International Covenant on human rights, Articles 6-16 of the CEDAW Convention and related General Recommendations also can be illuminating.

In addition to these mechanisms that have played vital roles in the eradication, prevention and protection of women, the International Covenant on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR) also pays special attention to women's rights and prohibit gender-based discrimination. It further made provision for equal enjoyment of rights by both men and women. Article 26 of the International Covenant on Civil and Political Rights also provides for equality before the law and equal protection of the law and the Convention on the Elimination of Discrimination against Women (CEDAW), which specifically obligates State parties to take steps to eliminate gender discrimination and to achieve gender equality.

Judge Tanaka articulated the theory of equality and non-discrimination in the famous case of South West Africa casesⁱⁱⁱ 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 or education. 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 requires an understanding of how women perceive and experience discrimination. The principles of equality and non-discrimination are basis of all human rights instruments and cut across all the rights found within human rights treaties influencing both the interpretation and enjoyment of rights^{iv}.” The convention also prohibits practices that can perpetuate women’s inequality. Substantive gender inequality and formal gender equality as well as de facto or indirect and direct discrimination or de jure^v are central concepts in the convention’s equality framework.

Direct or de jure discrimination occurs when there is a difference in treatment relies directly and explicitly on distinctions based exclusively on sex or distinguishes between certain groups and characteristics of men or of women which cannot be justified objectively. For instance, where there are laws prohibiting women from driving or buying property. While indirect or de facto discrimination occurs when a law, policy or program does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Although, much progress has been made to eliminate discriminatory laws there still exist some forms of discrimination which should be the priority for States to comply with the human rights obligations, laws, policies or programs that have detrimental effects on women even though they appear to be gender-neutral^{vi}. 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^{vii}

Current legal regime on equality and gender discrimination

- State parties’ obligation to promote gender Equality

The convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Maputo Protocol to the African Charter on Peoples and Human Rights on the rights of African women requires that women enjoy the same rights as men. While international human rights treaties refer to equality, in other sectors the term equity is often used. While the term gender equity is sometimes referred to stereotypes about women’s role in the society, suggesting that women should be treated fairly considering their roles in the society^{viii}.

The International human rights treaty provides that State parties are obligated to guarantee women’s enjoyment of their rights on the basis of equality^{ix}. The Committee on the

Elimination of Discrimination against Women stated in its general recommendations and concluding observations on different countries in general recommendation No. 28 (2010) that the core obligations of member states under article 2 of the Convention is that states are to use exclusive concepts of equality of men and women, and not to the use of the concept of gender equity in implementing their obligations under the convention. The legal term used in the Convention is gender equality which cannot be replaced by equity, a concept conditioned by subjective criteria^x.

International human rights treaties mandate state parties to take proactive steps to protect and eliminate discrimination, inequalities and practices that negatively affect women's rights. Treaties are designed to promote and protect human rights worldwide. A State voluntarily decides to become a member of a treaty and to be bound by its provisions. By ratification of a treaty, the State becomes obligated under international human rights law to implement the provisions of that treaty and to demonstrate that its domestic legislation, as well as judicial and executive actions, conforms to the provisions of the treaty. It is thus incumbent on the sovereign State parties to use their powers to implement them at their national level^{xi}. In general, however, States have autonomy regarding programs and policies for realizing the treaty rights. Therefore, States are subjected to international obligations and have primary responsibility for the promotion and protection of human rights in their national jurisdictions, once they become parties to the treaties.

Article 2 also highlights that State parties have the obligation to protect women and violation of rights with the public and private sphere regardless of whether the State commits those violations or non State actors^{xii}. States parties are 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^{xiii}. 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.

General comment No 28 was adopted by the United Nations human rights Committee to implement International Covenant on Civil and Political Rights (ICCPR)^{xiv}. State parties are required to ensure equal rights of men and women. Article 3 implies that all human beings enjoy the rights provided by the covenant on an equal basis and in totality. State parties carry both positive and negative obligations to promote human rights at the national level^{xv}. Positively, it has the obligation to take all necessary protective measures to guarantee

protection of individual and collective rights within their national jurisdictions, and to ensure that those rights become attainable for all people without distinction. Negatively, they are required not to curtail or interfere in the enjoyment of the rights. Each State party to a treaty, therefore, has an obligation to respect, protect and fulfill the human rights commitments enumerated by that treaty, which include rights applicable to individuals and groups. The obligation to respect means that the State must not take any actions that interfere with or curtail the enjoyment of rights^{xvi}. The obligation to protect requires the State to protect individuals and groups against human rights abuses by third parties, including business enterprises. The obligation to fulfill means that the State must take positive action to facilitate the enjoyment of basic human rights by enacting new or amending existing legislation that promotes and protects economic, social, and cultural rights. Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations.

- State parties mandate to address gender discrimination

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^{xvii}. It is also essential that they provide positive measures that eliminate these discriminatory 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^{xviii}.

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.^{xix} Human rights law provides for the principles of non-discrimination to be derogated from in the use of such measures^{xx}. In the case of *Kalanke v. Freie Hansestadt Bremen*^{xxi} 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."^{xxii}

The Committee on the Elimination of Discrimination against women, general recommendation No. 25 (2004) recognized that the gender neutral laws have discriminatory effects and formal equality is not enough to address gender discriminations that women face often. In addition article 5, emphasize a commitment to substantive equality. In addition, the Committee on the Elimination of Discrimination against Women, General Recommendation No. 5 (Seventh session, 1988) temporary special measures noted that the significant progress has been made in regards to repealing and modifying discriminatory laws, there is a great need to implement fully the convention by introducing measures to promote de facto equality between men and women.

Nigeria's status under the treaties in the prohibition of discrimination against women

Discrimination against women still persists in Nigeria despite the International, regional and domestic treaties such as the International Convention on Economic, Social, and Cultural Rights (ICESCR) signed 29 July 1993, The International Covenant on Civil and Political Rights (CCPR) signed 29 July 1993, The International Convention on the Elimination of all Forms of Racial Discrimination (CEDAW) signed 16 October 1967, the Convention Against Torture and other Cruel, Inhuman Treatment, and Punishment signed 28 June 2001, The Convention on the Rights of the Child, (CRC) signed 19 April 1991, The Optional Protocol on the CRC on the Involvement of Children in Armed Conflict signed 8 September 2001, The Optional Protocol on the CRC on the Sale of Children, Child Prostitution, and Child Pornography signed 8 September 2001 on the promotion and protection of women's rights^{xxiii}. This persistence can be attributed to structural and ideological factors. The United Nations Covenants of 1966 provide protection against discrimination on the grounds of gender^{xxiv}. The 1956 Supplementary Convention on the abolition of Slavery, the Slave Trade and Practices Similar to Slavery emphasized the importance of women's consent to marriage and advocated the elimination of customs such as bride wealth and funeral rites in which women are subjected

to harmful practices and objects of inheritance after the death of their husbands. The 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages considers some customs and traditions relating to marriage and the family is inconsistent with the Universal Declaration of Human Rights.

In terms of the regional human rights treaties, Nigeria has ratified the Maputo protocol to the African charter on Human and People's Rights on the Rights of women in Africa and the African Charter on Human and People's Rights on the establishment of an African court on Human Rights; it is yet to domesticate these protocols^{xxv}. The CEDAW and the African Charter on Human and People's Rights on the women's rights guaranteed protection of women and full equality of men and women. There is a ministry of women's affairs under the federal government of Nigeria which focuses on promoting and improving women. However, the prevailing practices in Nigeria coupled with the pre-colonial practices prevent the achievement of full equality.

Gender discrimination during the pre-colonial and contemporary time in Nigeria

During the pre-colonial period in Nigeria, gender roles were applied to both men and women in the community. Male dominance was incorporated into the social system of some ethnic groups while the female played a significant and vital role in all aspects of the lives of the community^{xxvi}. Although at the time some women became political, economic and religious leaders, discrimination was on the basis of status and gender. Women with higher status were not treated equally with other women in terms of their rights^{xxvii}.

Following the 1991 country reports on Human Rights Practices submitted to the United States Congress House Committee on Foreign Affairs and Senate Committee on Foreign Relations, the Women International Network (WIN) concluded that women have always had some economic, power and have exerted influence in Nigerian society through women's councils, family connections, and to a much lesser extent, mainstream social, economic or political organizations^{xxviii}. The report also recognizes that religion and ethnicity contribute to discrimination women face such as the practice that gives men the rights to disallow their wives from working and the rural men to beat their wives without any legal intervention. Ownership of landed properties and rights to inheritance of spousal property are denied to women as well as employment for single women. The origins of the structure of inequality are predominately from male dominant social systems.

The rights of production and reproduction are women's rights which cover the family, economic, social and political sphere. Rights of production include recruitment, promotion, training, entitlements and benefits as well as equal opportunity for decision making in an organization. While the rights of reproduction relates to women's rights to make decision that relates to her body such as pregnancy, family planning which include abortion^{xxix}, control on the size of the family, discipline of children, control of family resources and control of children after divorce. Article 5 (a) of CEDAW recommends that state parties modify the social and cultural patterns of the conduct of men and women with a view to eliminating any practices of inferiority or superiority of either sexes or on stereotypes roles of both men and women.

Due to the patriarchal system practice in Nigeria, women are required to take care of the home including the husband and children. In the case of working mother or wife, she has a double burden and this may adversely limit the ability of women to productive and concentrate on their careers or trades. Now child bearing obligations are expected to outweigh their careers goals and aspirations^{xxx}. Under the Nigerian law and administrative practice, men are the head of the household and he has absolute power and authority. In spite of the past and contemporary examples of cross gender cooperation in any household and female as head of family units, predominant attitude of men as head still persists^{xxxi}.

In contemporary times, women still suffer legal discrimination in the administration of custody law regarding children. Pursuant to the provision of the covenant in Article 16, 1, d, parent shall have equal and responsibility of their children and the interests of the children is to be given primary responsibility. While contrary to the provision of the customary law, the equality of spouse is precluded sometimes as a result of great age gap of the spouses which gives the man more control over his wife. This is also applicable to divorce where women are only entitled to custody prior to weaning or after the child is 7 years in some cases and under the Islamic law until the age of puberty or marriage. However, a woman has the rights to claim maintenance from the father of her child even if she is not married, in the event of divorce in some case only after the bride price is refunded. Nigerian women are deprived of inequitable access to divorce, in the Muslim communities in Nigeria divorce by repudiation is acceptable. Article 4 of the CEDAW calls for temporary special measures focused on accelerating de facto equality between men and women in order to achieve equal opportunity and treatment. As a result, Nigeria mandated the appointment of women in both Federal and State government levels^{xxxii}. Notwithstanding the provision of this appointment at top levels, women still lack

access to decision making positions rather they are placed in higher positions based on tokenism in order to meet the quota of female representation which does not recognize the extent of educational and professional achievement among the Nigerian women.

Also, pursuant to Sustainable Development Goal No 5 provides that gender equality is a human right. Thus, women have the right to enjoyment of same status as men so that they can fully realize their human rights and have a meaningful impact in their respective societies.

WOMEN'S RIGHTS CHALLENGES IN NIGERIA

Gender Inequality and Discriminatory practices against Nigerian women

Nigeria is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Maputo Protocol and its Optional Protocol and other international and regional instruments on women's rights. The Federal Ministry of Women Affairs and Social Development are engaged in continuous advocacy to legislators, policymakers, and other stakeholders. On May 10, 2019 there was protest by Nigerian women in Abuja to challenge the impunity and gender based discrimination of the country's constitution and sought for its amendment,^{xxxiii} however the bill was rejected by the legislators.

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^{xxxiv}; 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^{xxxv}.

Section 4 of the 1999 constitution empower the states to legislate on issues in the concurrent list, the states has power to make provisions for women's rights promotion and protection. Some states in Nigeria such as the Edo State Female Circumcision and Genital Mutilation Prohibition Law of 1999, Rivers State Abolition of Female Circumcision Law of 2001, Cross River State Girl Child Marriages and Female Circumcision of 2000, Ogun State Female Circumcision and Genital Mutilation Prohibition Law of 2000 criminalized female genital mutilation; Ekiti State Gender Based Violence Prohibition Law of 2001. Some states specifically protects the fundamental rights of widows such as the Enugu State Protection of Widows and Widowers Fundamental Rights Law of 2001, Anambra State Malpractices against Widows and Widowers Prohibition Law of 2004, Oyo State Widow's Empowerment Law of 2002; while some State laws combat negative cultural practices on the realization of women's rights such as the Kebbi State Prohibition of Early Marriage Law, Kano State Retention in School and against withdrawal of Girls from School Law, Lagos State Violence against Women Law. These State laws also made provisions for the penalties for the violators of the law^{xxxvi}.

In addition, some States made gender equality a priority in their states laws in order to promote gender equality and prohibit gender-based discrimination. The States include Imo, Anambra, Ekiti, Plateau and Kogi State; they also enacted the Gender and Equal Opportunities Law. This law gives women the right to equal participation in politics. Despite the robust legal frameworks for the promotion and protection of women's right, Nigerian women still faces different kinds of discrimination in both private and public spheres^{xxxvii}.

Rejection of policy reforms by the Nigerian legislative

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.

In the bid to promote and protect the rights of women against all forms of discrimination, the Nigeria government through legislations introduced various reforms to improve the status of Nigerian women such as the Gender and Equal Opportunity (GOE) bill which was first introduced in 2006 and rejected^{xxxviii}. It was thereafter reintroduced in 2010 which it suffered many setbacks and brought forward again in 2015. The gender and equal opportunity bill 2015 failed to pass the second reading in the senate on 15 March 2016^{xxxix}. Due to the insufficient of female legislators the bill was objected by some of the male members of the Senate to the enactment of the bill. Majority of the senate voted against the bill on the grounds of religious and cultural reasons^{xl}, thus the bill was rejected for lack of merit^{xli}. However, in 2016 the bill was reintroduced, the members of the Senate reflected on some of the concern of the previous version^{xlii}. The bill passed the second reading stage and was referred to the Committee on Judiciary, Human Rights and Legal Matters for deliberations^{xliii}.

The Gender Opportunities and Equality (GEO) bill primarily focuses on gender equality and seeks to corroborate with the provisions of the 1999 constitution of the Federal Republic of Nigeria such as Chapter II and IV which deal with Fundamental Objectives and Directive Principles of State Policy and the Fundamental Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol to the African Charter on the rights of Women in Africa^{xliv}. The bill contains provisions that address prohibition of discrimination, prohibition of violence against women, adoption of temporal measures to eliminate discrimination in political and public life, establishment of an equal opportunities commission and the enforcement of the National Gender policy amongst other innovative features^{xlv}.

The bill seeks to guarantee the rights of women to equal opportunities in employment, equal rights to inheritance for both male and female children; equal rights for women in marriage and divorce, equal access to education, property/land ownership and inheritance. It also seeks to protect the rights of widows; guarantee appropriate measures against gender discrimination in political and public life and ensure the prohibition of violence towards women. Amnesty International stated the importance of the bill as an instrument the freedom and rights of women. It will be an opportunity for women and girls to exercise their rights to be free from discrimination and enjoy their rights to education, healthcare and ownership of property

without barriers and exclusions based on gender^{xlvi}. However, the bill was rejected and reintroduced again in November 2019.

Gender Inequality in the Legal system and Gender Discrimination under Nigerian Customary and Sharia Laws

Nigeria is made up of about 216,841,571^{xlvii} people with approximately 371 Nigerian tribes across over 250 ethnic groups each of the ethnic groups operates a peculiar customary law. It is generally believed that customary and Sharia law has greatly influence gender discrimination in Nigeria. For example, under the customary law women disinheritance, child or force marriage, wife battering, harmful widow's practices and violence against women is permitted. The sharia law under the other hand operates exclusively in the Northern part of Nigeria. For example, under the Shari law, the sharia court favours the men and discriminates against women in cases of adultery. The case of Safiya Husseni is an example of such discrimination. In this case, Safiya was sentenced to death by an upper sharia court in sokoto state, Nigeria for committing adultery while no co-adulterer was alongside with her. This judgment gave the impression that adultery can be committed by one person. In practice, even if a woman names the co-adulterer, the man is only made to swear an oath of innocence and allowed to go scot free afterwards while the woman is left to face the consequences alone. Under the sharia law, the punishment of stoning to death is accorded to a woman who commits adultery and 100 lashes of cane for fornication. These punishments are discriminatory because it is only target at women only and not men that commits the same crime with the woman.

For instance, under most customary law in Nigeria, wife or daughters inheritance of husbands or fathers are not recognized due to the patriarchal practice. Only the male are entitled to inheritance of their father's property and land. However, in the South East of Nigeria, the case of *Mojekwu v Ejikeme*^{xlviii} the court of Appeal struck down the discriminatory practice of inheritance against women to inherit from husbands or father's property. The Nigerian Court of Appeal learned Judge relied heavily on the Convention on the Elimination of all Forms of Discrimination against women (CEDAW) in delivering it judgment. It was held that the custom was repugnant to natural justice, equity and good conscience, and contrary to public policy.

Likewise, most customary law in Nigeria permits wife chastisement and some women have accepted to be inferior to men and norm to be maltreated by men. Most of the women accepted

it as a norm because most of them are dependent on men and the men are view as the head of the home that have the power to chastise the women. They are therefore subdued to suffer in silence. Also, female genital mutilation (FGM) is a form of violence practiced by some communities to curb the girl child sexual appetite and tendencies of waywardness. This practice has been condemned by health practitioners to be an unhygienic and unhealthy act. During the process of the heinous and barbaric act some women bled to death while some contacted diseases such as HIV/AIDS.

In addition, a girl child can be given up to forced or early marriage under some customary law. Some have been married off as early as the age of 10 years by her parents to an older man for economic rewards and upgrade of status in the society. Often times, such a girl child is denied access to education and reproductive rights. She is exposed to medical hazards due to early child bearing such as Veisco Vaginal Fistula and Recto Vaginal Fistula which are conditions for uncontrollable passage of urine.

Most part of Nigeria practices the payment of bride price on the commencement of customary law marriages. In the event of divorce, no matter the length or duration of such marriage the bride price will be refunded. Also, the inheritance of the wife of deceased husband by his living brother gives the impression that women under the Igbo customary law can be inherited as chattel or property. In the event of dissolution of customary marriage, women are denied custodial and maintenance rights as the products of customary marriages in Nigeria belong exclusively to men. Payment of maintenance to an ex-wife is not recognized under the customary law; she is expected to refund the bride price that was paid on her behalf during the commencement of the defunct marriage^{xlix}. In the event of the death of the husband, a woman is subjected to harmful widowhood practices and degrading treatment such as drinking of the water used in bathing the corpse of her deceased husband in order to proof her innocence. If she does not die after drinking the water, her innocence is established. She is also forced to shaved her hair and sleep with the corpse of her deceased husband in the night. Her movement is restricted throughout the period of mourning; these discriminatory practices render the widow economically incapacitated. Under the same Igbo customary law, if a man loses his wife he is not subjected to the same degrading and dehumanizing practices.

In conclusion, the principles of equality and non-discrimination is 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 rights. It is the core obligation of the state to use exclusive

concept of equality of men and women in implementing its obligations rather than the use of the concept of gender equity for the protection of women's rights.

The international and regional treaties such as the CEDAW and the Maputo protocol African Charter on Human and People's Rights on women's rights guaranteed protection of women's rights and full equality of men and women. It mandates state parties to take proactive steps to protect and eliminate discrimination, inequalities and practices that negatively affect women's rights. However, the failure of Nigeria to domesticate the International and regional treaties as part of its municipal law has slowed down the pace of women's emancipation which has consequently resulted in the intense marginalization and relegation of Nigerian women. Therefore, it is recommended that the Federal Republic of Nigeria, domesticate the international treaties as part of its municipal law in order to protect the rights of Nigerian women.

Gender inequality and discrimination against women in Nigeria has persisted for so long which is deeply rooted in patriarchal system that has significantly affected women's structurally unequal position in many aspects. Women in Nigeria are constantly fighting for equality and social justice. They are still treated as second class citizens and are mostly victimized in various types of social discrimination. Unfair treatment of women has been prevalent throughout time. Although there has been many movements attempt to terminate this tendency but discrimination still occurs and women are being treated differently on the bases of gender. It is recommended that gender stereotype, roles ideology and discrimination should be eradicated to enable women maximize their potentials on the basis of equality with men.

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ENDNOTES

ⁱ 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.

ⁱⁱ 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.

ⁱⁱⁱ 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.

ⁱⁱⁱⁱ W. Vandenhoe Non-Discrimination and Equality in the view of the UN Human Rights Treaty Bodies

^{iv} W. Vandenhoe 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.

^v. For definitions of direct and indirect discrimination, see CESCR general comment 16, paras. 12 and 13.

^{vi} Globally, laws that discriminate against women remain a significant problem, and even when there is 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 in practice, available from www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx (accessed 6 November 2013).

^{vii} 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 Reproductive Rights *Women of the World: Laws and Policies Affecting*

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^{viii} 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. See, e.g., Joint Monitoring Programme for Water Supply and Sanitation of the World Health Organization (WHO) and the United Nations Children’s Fund (UNICEF), Equity and Non-Discrimination Working Group, especially its “Background note on MDGs, non-discrimination and indicators in water and sanitation”, available from www.wssinfo.org/post-2015-monitoring/working-groups/equity-and-non-discrimination/ (accessed 19 May 2014).

^{ix} Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Articles 2,3 & 26. International Covenant on Civil and Political Rights (ICCPR); Articles 2 and 3 International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 2, Convention on the Rights of the Child; Articles 5 and 6, Convention on the Rights of People with Disabilities.

^x “Building on achievements: women’s human rights five years after Beijing”, May 2000, paras. 9–22. Available from www.ohchr.org.

^{xi} Monica Hakimi, “State Bystander Responsibility” (2010) 21:2 EJIL at 350.

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

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

^{xiv} Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights Addendum General Comment No. 28 (68) Equality of rights between men and women (article 3), CCPR/C/21/Rev.1/Add.10, CCPR General Comment 28, and 29 March 2000.

^{xv} A study of Human Rights (Delhi: Central Law Publication, 2008) at 24 [Rashee Jain].

^{xvi} ICESCR, *supra* note 36, article 2 (1); UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of State Parties’ Obligations (Art.2, Para 1, of the Covenant), UN Doc. E/1991/23, online <: <http://www.refworld.org/docid/4538838e10.html>> [ICESCR, General Comment No. 3].

^{xvii} 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)

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

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

^{xx} 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.

^{xxi} *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.

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

^{xxiii} Nigeria is also not a signatory to the Optional Protocol to the CCPR, and the Second Optional Protocol to the CCPR or to The International Convention on the Rights of all Migrant Workers and Members of their Family. Office of the United Nations High Commission for Human Rights. Status of Ratifications of the Principal Human Rights Treaties as of 26 November 2001. www.unhchr.ch/pdf/report.pdf.

^{xxiv} Art. 2,1 Civil & Political Covenant; Art. 2,2 Economic, Social and Cultural Rights.

^{xxv} The Protocol on the Rights of Women was adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005, while the Protocol on the Establishment of an African Court on Human and Peoples’ Rights was adopted in Ouagadougou, Burkina Faso on 9 June 1998 and entered into force on 25 January 2004. Available at <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>. (last accessed 17 May 2007).

^{xxvi} See Nina Emma Mba, “The Position of Women in Southern Nigeria Before 1900” in Nina Emma Mba, *Nigerian Women Mobilized: Women’s Political Activity in Southern Nigeria, 1900-1965*. Berkeley, CA: Institute of International Studies, University of California, 1982, pp. 1-37.

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- ^{xxviii} Country Reports on Human Rights Practices For 1991 Report Submitted to The Committee on Foreign Affairs, House of Representatives And The Committee on Foreign Relations, U.S. Senate, by The Department of State. Also see, *Women's International Network News*, Spring 1992, Vol. 18:2, p.8-20
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- ^{xxx} Dalhatu Muhammed, "Women, The Family and the Wider Society," in *Women & Family in Nigeria*, *op cit.*, p. 30; *African Guardian*, April 9, 1990, pp. 36-37.
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- ^{xxxii} First Report to CEDAW, pp.33-34
- ^{xxxiii} Nigeria risks falling behind on women's equality by Aniete Ewang, Researcher, Africa Division at Human Rights Watch, March 8 2022.
- ^{xxxiv} Section 17 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria
- ^{xxxv} Article 18 (3) of the West African Charter on People's Human Rights
- ^{xxxvi} Apart from the constitution, other national legislations inscribe the provisions that give protection to women's rights in Nigeria. These include the Criminal Code, penal code, the Marriage Act, the violence against women Prohibition Act, Police Act and Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 amongst others.
- ^{xxxvii} Obaoye, Justina Kehinde, and Li Shouping. "Gender discrimination against Women and discriminatory law in Nigeria." (2021).
- ^{xxxviii} Olusesan Makinde, Cheluchi Onyemelukwe, Abimbola Onigbanjo-Williams, Kolawole Oyediran and Clifford Odimegwu, 'Rejection of the Gender and Equal Opportunities Bill in Nigeria: A setback for sustainable development goal five' (2017) 32(3) *Gender in Management: An International Journal* 234.
- ^{xxxix} Yomi Kazeem, 'Nigerian lawmakers voted down a women equality bill citing the Bible and Sharia Law' (*Quartz*, 15 March 2016) < <https://qz.com/639763/nigerian-lawmakers-voted-down-a-women-equality-bill-citing-the-bible-and-sharia-law/> > accessed 11 July 2018
- ^{xl} For example, Senator Emmanuel Bwacha, a Christian senator from the Northern part of the country argued that the bill was unbiblical
- ^{xli} The Bill was sponsored by Senator Biodun Olujimi (a female senator).
- ^{xlii} This bill was reintroduced in the National Assembly by Senator Olujimi
- ^{xliii} PLAC Website 'Measure Activity: (i.e. stages of the Bill) <<http://placbillstrack.org/view.php?getid=2182#billanalysis>> accessed 11 July 2018
- ^{xliv} PLAC Website 'Measure Activity'
- ^{xliv} For example, section 4(1)(b)(i) of the SOB states that 'in the case of political and public sphere, that a minimum of 35 percent of all offices, positions, or appointments is reserved for women'
- ^{xlvi} Amnesty International Nigeria, 'Nigeria: Help end discrimination by passing Gender and Equal Opportunity Bill' (7 March 2017) <<https://www.amnesty.org/en/documents/afr44/5836/2017/en/>> accessed 11 July 2018
- ^{xlvii} The current population of Nigeria is 216,841,571 as of Monday August 8, 2022 based on the Worldmeter elaboration of the latest United Nations data.
- ^{xlviii} *Mojekwu v Ejikeme* (2000) 5 NWLR (pt 65 7) 402'
- ^{xlix} Ifemeje, S.C, "A Critique of Gender Discriminatory Practices in Igbo Customary Law Marriages", *Journal of Women and Minority Rights* vol. N0 1 2008. p 60.