A STUDY OF DOMESTIC IMPLEMENTATION IN NIGERIA OF THE CONCEPT OF GENDER EQUALITY UNDER INTERNATIONAL LAW

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DEPARTMENT OF PUBLIC LAW
AHMADU BELLO UNIVERSITY, ZARIA

JULY, 2018

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BEING A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITIES, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS – LL.M

DEPARTMENT OF PUBLIC LAW
AHMADU BELLO UNIVERSITY, ZARIA

JULY, 2018

DECLARATION

I declare that the work in this dissertation entitled. "*A Study of Domestic Implementation in Nigeria of the Concept of Gender Equality under International Law*" has been carried out by me in the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, Nigeria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other Institution.

Ruqayyah Olaide, OGUNWALE	**SIGNATURE**	**DATE**
P15LACM8004		

CERTIFICATION

This dissertation entitled "A STUDY OF DOMESTIC IMPLEMENTATION IN NIGERIA OF THE CONCEPT OF GENDER EQUALITY UNDER INTERNATIONAL LAW" by Ruqayyah Olaide, OGUNWALE meets the regulations governing the award of degree of Master of Laws-LL.M of the Ahmadu Bello University, and is approved for its contributions to knowledge and literacy presentation.

Dr. I.F Akande **Chairman, Supervisory Committee**	**Date**
Dr. D.C John **Member, Supervisory Committee**	**Date**
Dr. K.M Danladi **Head, Department of Public Law**	**Date**
Prof. K. Bala **Dean, School of Post-Graduate Studies**	**Date**

DEDICATION

This dissertation is a dedicated to my beloved Daddy Alhaji Abdulaziz Omobolanle Ogunwale who taught me how to love and care for others. I LOVE YOU SO MUCH DADDY. You are my mentor and role model.

ACKNOWLEDGEMENTS

I give thanks to Almighty Allah for the successful completions of this dissertation. I beseech Him to continue to shower His mercy on His Prophet and Messenger, Prophet Muhammad (PBUH).

First of all, my immense appreciation goes to my supervisors Dr. I.F. Akande and Prof. D.C. John for their guidance and support in the course of doing this work. I pray to God Almighty to continue to guide and guard you in all your endeavours and your entire family.

My greatest indebtedness goes to my parent, Alhaji and Hajiya Abdulaziz Ogunwale for their love, support, and understanding and for not giving up on me. It is my humble pray that may Allah (SWT) continue to showers His mercy on my daddy and may He grant my mum long life and sound health.

I am grateful to my husband, my brothers, family members and friends too numerous to mention for their support. May Allah reward you all abundantly.

Finally, my appreciation goes to the entire staff of Faculty of Law, Ahmadu Bello University, Zaria and to everybody who had assisted me in one way or the other during my stay in this great institution may Almighty Allah be with you all.

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ABBREVIATIONS

AFRC	-	Armed Forces Ruling Council
AHG	-	Assembly of Head of Government
AIDS	-	Acquired Immune Deficiency Syndrome
ALL ER	-	All England Law Report
Anor	-	Another
AU	-	African Union
CA	-	Court of Appeal
CAP	-	Chapter
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	-	convention on Eliminated of Racial Discrimination
ECOWAS	-	Economic Communities of West Africa States
ECWCCJ	-	ECOWAS Court of Justice
EHRR	-	European Human Rights Reports
FGM	-	Female Genital Mutilation
GA	-	General Assembly
HIV	-	Human Immunodeficiency Virus
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Convents on Economic Social and Cultural Rights
LFN	-	Laws of Federation of Nigeria
LPELR	-	Law Pavilion Electronic Law Report
NPA	-	Nigeria Port Authority

NCLR	-	Nigeria Constitutional Law Report
NDHS	-	Nigeria Demographic and Health Survey
NEPU	-	Northern Elements Progressive Union
NGO	-	Non-Government Organization
NHRC	-	National Human Rights Commission
NHRI	-	National Human Rights Institution
NLR	-	Nigeria Law Report
NYCC	-	Nigeria Supreme Court Cases
NWLR	-	Nigeria Weekly Law Report
ORS	-	Orders
PBUH	-	Peace Be Upon Him
PT	-	Part
SC	-	Supreme Court
SCNJ	-	Supreme Court of Nigeria Judgment
SERAP	-	Socio-Economic Rights Accountability Project
STD	-	Sexually Transmitted Diseases
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nation
UNDOC	-	United Nation Document
VVF	-	Vesico Vaginal Fistula
WRN	-	Weekly Reports of Nigeria

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ABSTRACT

This research is entitled “A Study of Domestic Implementation in Nigeria of the Concept of Gender Equality Under International Law”. The Research started by way of introduction by explaining that the Nigerian societies are patriarchal in nature. The researchstudied domestic implementation in Nigeria of the concept of gender equality under international law. The sources of information used in this research are relevant justification of this research is that despite the availability of the various laws at the different levels (that is international, regional and domestic) there still exist to a large degree of unequal treatment between the female and male in the society. In the light of this, the objective of this research is to identify the adequacy as it is. Thus, in the course of this research, it was found (among others) that failure women (CEDAW) as principal instrument on this subject matter necessitated the wrong practice as it is. Finally, this research was concluded by recommending that domestication of CEDAW a necessity for the government and other relevant stakeholders as a basis for combating inequity in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Backgroundto the Study

Nigeria society like most societies in the world is patrilineal and patriarchal. Although, the level of this patriarchy may differ in relative terms from Nigeria one community to another. The question of the "universal" (equal) or 'relative' (contingent) character of the rights declared in the major instruments of the human rights movement has been a source of debate and advocacy from the beginning when the movement's started. The contest between these positions look on renewed vigour as human rights movement slowly developed and reneged on making specific provision on gender issues.[1] There have also been diverging theories on the sovereign autonomy of a state to follow it own paths in this matter. For example, the universal theory of human rights claims that the rights to equality and equity enshrines in international treaties must be applicable all over the world in the various domiciliary legal system, even in societies that are fundamentally cultural, religious and or customary.[2] In those arguably patriarchal societies such as Nigeria (and in sub-Saharan African in general), laws, rooted in customs and traditions often discriminate against women.[3]

These discriminatory trends against Nigerian and African women are violations of the fundamental human rights against discrimination, a right recognized in a number of core international human rights instrument. The status accorded to women relative to men is a low one. Such status difference almost and or always translates into unequal recognition and

[1] Steiner J and Alston P (2000) International Human Rights in context: Law, Politics and Moral p. 312
[2] Ibid. p 161
[3] Elizabeth D. and Birgit E. (2010) "Securing Land Rights for Women" 4 Vol. 1 Journal of Eastern African Studies p.91 @ 98.

treatment of the two sexes in various ways. Quite often, this inherent prejudice has meant discrimination and disadvantages against women in various spheres of human endeavours.

The Nigerian communities being patriarchal societies believe that the traditional role of a woman is that of a child bearer, home keeper, comforter, and food provider for husband, children and at large presupposes that the propagations of the male as the superior sex for purpose of politics, participation and power relation including family and social decision making. Nigerian women constitute the majority of the peasant labour force in agricultural sector, while most of the others occupy bottom of occupational ladder and continue to channel into services and domestic occupation.Politically, Nigerian women are negligible and undermined force with little political involvement.[4]

In most Nigerian communities, women have no right to land, inheritance of family property and equal opportunity. For instance, some Igbo customary law rules carry the practice further that, when a father or a husband dies, it is purported that only the son(s) have the right to inherit him while the daughter(s) and wives are treated as some forms of chattel.[5]Whileunder Islamic law, a daughter or wife is given the right to inherit her father or husband but her share of the inheritance is half of her male counterpart.[6]

It should be noted at this juncture that the rights given to Nigerian women had been properly examined in the decided case of *OnyiborAnekwe and Anor vs. Mrs. Maria Nweke*[7] where the Supreme Court held that Nigerian customs which disinherit women are repugnant to natural justice, equity and good conscience and should therefore not be allowed to stand. The

[4]Omonubi, M.M (2003) Gender Inequality in Nigeria, Spectrum Books Ltd. Ibadan, p.65
[5]Asika vs. Atuanya (2008) 17 NWLR (pt 1117) p. 286
[6] Q4 verse 11
[7] (2014) LPELR 22697 (SC)

Supreme Courtalso held in the case of *Uko vs. Iro*[8]that any law or custom that seek to relegate women to the status of a second class citizen, thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the garage and should be consigned to the dustbin of history.

On the international scene, gender equality is also on the increase.By virtue of such increase in awareness and campaign in realizing or bridging the gap between the two sexes,many conventions and treaties were drafted, enacted and adopted by various international organizations and countries respectively. These international convention and treaties include Universal Declaration of Human Rights (UDHR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to mention but a few. It is of great importance to state that Nigeria is signatory to virtually all international instruments that encourage equality between the two sexes.

Despite the fact that Nigeria took a bold step in the year 2006 when it adopted and passed that Nigeria Policy on women,there are still questions on whether the prominence and the proliferation of human rights laws in Nigeria have achieved the desired level of gender justice and equity that is the balanced protection, participation, respect and fulfillment of the fundamental human rights of women in Nigeria and the implementation of the international instruments. Thus, it is against this background of inequity that this research works sets out to examine the legal regime for the concept of gender equality in international law in relation to its domestic implementation in Nigeria and proffer solution and suggestion on how the implementation of the international instrument will be fully realized.

[8] (2001) 2 NWLR (pt.723)p. 196

1.2 **Statement of the Research Problem**

A principal problem here is that generally, the attainment of equitable practice between both sexes is a difficult task in Nigeria. For instance, the female folk are seen as subordinate to the male folk in all sphere of life. For example, when it comes to the issue of inheritance, the female are not entitle to the same share with their male counterpart. In the eastern part of Nigeria, female are notentitled to any form of inheritance and they are seen as part of what to be inherited if they are wives of the deceased. However, recently the Supreme Court held that Nigerian customs which disinherit women are repugnant to natural justice, equity and good conscience should therefore not be allowed to stand.[9]However, the Supreme Court in its judgment encourages equity in inheritance issue in that part of the country but this undoubtedly a difficult task to be achieve in Nigeria. Thus, this goes a long way that in practice the theory is not in correlation in Nigeria, hence the concern for this work.

Economically, women participation in economic development is restricted to a particular limit in Nigeria. For instance, there are some employments that do not encourage the concept of gender equity an example is the Nigerian Police Force whereby a married women cannot be employed and this particular clause it stated categorically in Article 118 of the Police Regulation. The Regulations further narrow the responsibilities of the Women Police.[10]Indeed, aPolicewoman who intends to get marry most sought permissionso that she can get married and also an unmarried policewoman who get pregnant shall be discharged from the force.[11] Also, the Labour Act[12]specificallySections 54 and 55 provide for the

[9]OnyiborAnekwe and Anor vs. Mrs. Maria Nweke (2014) LPELR 22697(sc)
[10] Article 121-123 of the Nigeria Police Regulation
[11]Article 124-128 of the Nigeria Police Regulation
[12] Cap L1 LFN, 2004

employment of women. However, Section 55 which provides for night work specifies some employment where women will be allowed to work.This particular section is discriminatory because there are other employment that requires night work in which women are involved.In practice however, women are trying to earn a living in order to meet their family needs. Often these women become victims of sexual harassment by their male bosses either in the public or private sector.[13] Thus, the representation of women in paid employment in Nigeria is very low compared to their male counterparts, hence the concern for this work.

Politically, women emancipation in National development is also undermine. It must be noted that the law is not gender bias on who occupies certain office but in practice certain offices has been made forbidden for women. For instance, presidential and gubernatorial offices are forbidden of women in Nigeria and this is as a result of cultural or religious belief where is it is stated that a woman cannot be the head of a society.[14]

Socially, the educational attainment of women is also restricted despite the importance of formal education; there has been almost virtual deprivation of female education in Nigeria.The education of female has been seen as a secondary factor compared to that of her male counterpart because of the erroneous belief of the parents in some areas that giving a female education means throwing money away as she will cease to be part of the family once she gets marry and this has accounted for nearly 53% of girls that are out of school.[15]A problem of this nature prompts the research of this kind.

[13] Banda, F.H (2005) Women, Law and Human Rights, An African Perspective Portland Oregun, p. 169

[14]Sada, I.N. "Shariah and the Right of Muslim Women n Nigeria. A. Report Prepare for Special Programme on Women in the North under the Access for Justice Programme" Department of International Development (DFID), Abuja. July 2004 p.25

[15] Gender in Nigeria Report (2012) ' Improving the lives of Girls and Women in Nigeria" p. 29

The foregoing shows that gender equity that flows between treatmentsof both sexes in Nigeria is a difficult task in which this dissertation seeks to address even though the constitution which is the ground norms provides in section 42 against non-discrimination.

1.3 **Aim and Objectives**

This research aims at examining the legal regime for the concept of gender equality in international law in relation to its domestic implementation in Nigeria subject to local circumstances and the existing laws on the subjects matter. In this regard, the objectives of the research are as follows:

a. To examine the adequacy or otherwise of the existing legal framework on the subject matter at both domestic and international level.
b. To examine the efficacy of the existing law in relation to the practical implementation.
c. To examine the factors militating the effective implementation of instruments if any.
d. To proffer viable measures for the improvement of the instruments

1.4 **Scope of the Research**

This research covers the legal regime for the study of domestic implementation in Nigeria of the concept of gender equality under international law. However, since Nigeria do not live in isolation and because some of these problems occur generally, throughout the world, the discussion of this research will consider what is obtainable in some other parts of the world if possible how they impact into Nigerian situation.

1.5 Research Methodology

Doctrinal research method is adopted for this research. Therefore, the research is library oriented, using material derived from both primary and secondary sources. The primary sources include statutes and judicial decisions while the secondary sources include books, journals, articles and newspapers and internet materials both at international and national level.

1.6 Significance of the Study

This research is relevant to humanity as it affects the lives of men, women and children. The domestic implementation of gender equality if properly done will promote peace, harmony, equity and social justice in all aspect of life. It will provide a level playing ground for men, women, boys and girls child socially, economically and politically, therefore, its importance cannot be emphasis.

1.7 Literature Review

In an effort to secure materials towards the actualization of this research work, we realized that many scholars have written many books and articles on the subject matter of this research. There have been various opinions and analyses from different scholars as regards the issue that is gender equality in Nigeria and at the international level; while some are interested in equality in the workplaces, family, political arena etc. some are concerned with the legal enforceability or otherwise of this concept. They have tried to explain this phenomenon from various parameters ranging from economic, social, political and human relations.

In spite of the contributions made by scholars on this research topic, there still exist some loopholes and lacuna in their works. For instance, Ezeilo, J. N. in her work[16] examined the rights of women in Nigeria women and went further to provide measures as contained under the CEDAW, to combat such discrimination. The work also examined the rights and duties imposed on the states by CEDAW, obliging them to embark on policies to eradicate discrimination against women, in order to pave the way for women to enjoy their human right as laid down under the CEDAW.

The author went further to examine factors constituting barriers to women advancement in Nigeria. The factors are grouped into economic, political, legal, social and cultural. The work concentrated on the rights and duties under CEDAW alone, as they relates to women's rights. It however failed to examine other legislative rules protecting and advancing women's rights in Nigeria.

Nasir, J. M.[17] discussed extensively the constitutional and other legislative provisions that guaranteed the protection of women's rights in Nigeria vis-à-vis the weaknesses of such provisions which in turn hindered the advancement of women's rights in Nigeria. She reiterated the extent to which these provisions have protected the interest of women in the society concerning the religious, traditional and cultural norms that govern Nigeria and as it seems to have affected the rights of women in Nigeria.

[16]Ezeilo, J. (2001) Women and Children's Right in Nigeria, Women's Aid Collective (WALCOL), Lagos
[17]Nasir, J. M. (1998) Women's Right in Nigeria. In Muhammed, T. and Muhammed, L. (ed.) Individual Rights and Communal Responsibility in Nigeria, National Human Rights Commission, Abuja

Otaluka, A. O.[18] in her work "protection of women's rights under the law" observed that women in Nigeria suffered the same inequalities like their counterparts in other parts of the world. She observed that African women do not have a share in the economic, political and social progress commensurate with members of capabilities. This status, she stated, was conditioned by certain traditions and religious which are dominant in the society.

She went further to examine the various reasons leading to inequalities between men and women in Nigeria. She also observed that the attitudes of women to their traditional roles give an impression that the women see their role as domestic and social as opposed to economic as well. She looked at the rights of women to employment and their capacity to contract under the law. She suggested various ways to better the lot of women but however limited her contributions to only two rights, and failed to mention other important rights, which affect progress and development of negatively. She also did not deal extensively with the international Conventions and their impacts on Nigerian laws vis-à-vis the equal rights of women with their male counterpart.

Ladan, M. T.[19] in his book discussed the protection of women's rights in international human rights and humanitarian laws. He discussed about equality and non-discrimination against women. He expatiated the issue of non-discrimination based on sex. He also discussed the issue of violence against women, international mechanisms for women's rights protection, the rights of women upon arrest and while in detention.

[18]Otaluka, A. O. Protection of Women under the Law with particular reference to Nigeria, in Kalu, A. and Osinbajo, Y. (ed.) Women and Children under the Nigeria Law, Lagos, Vol.6, Federal Ministry of Justice Law Review, undated

[19]Ladan, M. T. (2004) Materials and Cases on Public International Law, Ahmadu Bello University Press Limited, Zaria

John, E. N. in his work the World of African Women[20] exposed the status of the African in the traditional society. The work examined the various activities of African women; it discussed the traditional African marriages, divorce, economic and philosophy on education. It discussed the position of African women in the pre-colonial, colonial and some aspects in the post-colonial Africa. The author examined further, the migration of African women from the rural to the urban region. It could be discerned from the book that African women had rights before colonization and that more rights were accorded them after independence. Nevertheless, the book did not show whether those rights are adequately guaranteed and protected as stipulated by various laws in operation after independence and it failed to proffer solution and recommendation or make observation as to the future of the African women's rights.

Akumadu, T. in her work, "Beast of Burden, A Study of Women's Legal Status and Reproductive Health Rights in Nigeria" [21] discussed immensely the problems and advancement of women's rights in Nigeria. She examined the discriminatory burdens against women reproduction and particularly the problems placed on them by traditions and religions practices to make marriage work and at the expense of women. She also dwelt on the problems encountered by the girl child and forced marriages, widows' inheritance and many other burdens placed on women. The author, however, concentrated on domestic and matrimonial aspect of inequality against women while she failed to look into all other sphere of life where women are suffering inequality with their male counterpart.

[20] John, E. N. (1980) The World of the African Women, Scacecron Press Inc. London
[21] Akumadu, T. (1998) Beast of Burden: A Study of Women's Legal Status and Reproductive Health Rights in Nigeria, Civil Liberty Organization, Lagos

Banda, F. H. in her work,"Women, Law and Human Rights:An African Perspective",[22] examined various discrimination suffered by African women and went further to examine various provisions contained under the CEDAW and African Charter for the Protection of Human Rights in Africa generally. As much as the work concentrated on CEDAW and African Charter, alone it failed to address the problems contained in other relevant legislative instruments. Furthermore, the book treated the problems in Africa generally and was not specific about the discrimination or inequality suffered by Nigerian women.

Ifemeje, S. and Ikpeze, O.[23] in their work "Global Trend towards Gender Equality: Nigeria's Experience in Focus", they dealt with domestic violence against women, the discrimination under customary law and also well discussed the issue of inequality in the workforce while some Nigerian legislation that are discriminatory too were discussed. They however failed to discussed that the 1999 Constitution of Federal Republic of Nigeria which is the grundnorm still embodied some Sections it in that are discriminatory.

Jaiyeola M.B[24] in her work "A Comparative Study of Women's Rights of Inheritance in Nigeria Under Islamic Law and some Customary Laws" she examined the rights of women in accordance to inheritance law, practice and tradition under Islamic law and customs. She limited herself to only to customary laws in Nigeria.

[22] Banda, F. H. (2005) Women, Law and Human Rights, An African Perspective, Portland Oregon, Oxford
[23]Ifemeje, S. and Ikpeze, O. Kuwait Chapter of Arabian Journal of Business and Management Review, Vol. 2, No.3, Nov. 2012
[24]Jaiyeola M.B. (2011) "A Comparative Study of Women's Rights of Inheritance in Nigeria Under Islamic Law and Law Customary Laws", unpublished Ph.d Thesis Submitted to Faculty of Law University of Ilorin.

She however failed to examine other rights of women that are of great importance to Nigerian women. She also failed by limiting herself to only just two customary laws despite the diversity nature of Nigeria.

Dauda, B.[25] in her work discussed some discriminatory issue against women with particular reference to employment. She highlighted some Nigerian legislation on employment discriminate against women right from the selection stage, to promotion stage, to entitlements and benefits to the retirement stage. She dwelt on the occupational employment of both men and women and arrived at the conclusion that men are more than the women folk in the formal sector of labour. The writer only concentrated on the inequality of gender in labour with failure to discuss the areas women are been discriminated against.

Odiaka, N. O.[26] in her work"The Concept of Gender Justice, and Women's Rights in Nigeria: Addressing the Missing Link". The paper examined the nature, scope and extent of human rights protection afforded to women under Nigerian domestic laws and under international law. It reflects on the key and emerging issues affecting gender justice and the rights of women directly or indirectly.

Abegunde, B.[27] in his work "Gender Inequality: Nigerian and International Perspective", examined the factors responsible for gender inequality against women. He discussed that the

[25]Daudu, B. Gender Discrimination in Employment: An Appraisal, Nigeria Journal of Labour Law and Industrial Relation, Vol. 1 (No.2), 2007

[26]Odiaka, N. O. (2013) "The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link", AfeBabalola University Journal of Sustainable Development Law and Policy, Vol.2 Issue 1.

[27]Abegunde, B. Gender Inequality: Nigerian and International Perspective, British Journal of Arts and Social Sciences, Vol. 17, No.1, 2014 or http://www.bjournal.co.uk//BJASS.aspx accessed on 20/4/2016, 11:50pm

patriarchal system operates in virtually all the Nigerian communities, which made women to be regarded as second-class citizens. The writer went on to enunciate that women are the most poorest between the two sexes of human race. The writer however, failed to discuss some areas that are common in virtually all the Nigerian societies and at the international level.

Sani, H.[28] in her book, "Women and National Development: The Way Forward", examined various aspects of the society which relates to women. She discussed about the participation and involvement of women in politics, employment, education, development, etc which are relatively low compared to the male counterpart. The author however, failed to discuss the inequality or discriminations Nigerian women faced on all spheres ranging from employment, violence, education, etc.

Olomojobi Y[29] in his book "Human Rights on Gender," Sex and the Law in Nigerian", examined gender in northern Nigeria, the right of women to the custody of children, women and sexual rights, sexual politics and Democracy and also Migration and trafficking of girls and women. The author however failed to discuss the inequality or discrimination general nor did he discuss gender equality at the international scene.

Abdulraheem N.M[30] in her work "Protection of Women's Rights under the Nigerian plural Legal System" examined the rights of women in Nigeria in accordance with the Nigerian

[28]Sani, H. (2001) Women and National Development: The Way Forward, Spectrum Book Limited, Ibadan
[29]Olomojobi Y (2015) Human Rights on Gender, Sex and the Law. Princeton & Associates Publishing Co. Ltd, Lagos
[30]Abdulraheem N.M (2010) "Protection of Women's Rights under the Nigerian Plural Legal System". Unpublished Ph.D Thesis Submitted to Faculty of Law University of Ilorin Nigerian.

legal system. She however failed to discuss gender equality of women generally at the international and regional scene.

Ladan M.T. in his workthe protocol on the Rights of Women in Africa and the Islamic Perspective on Gender Equality and Justice.[31] The work discussed in the details the rights of women in Africa in accordance with the protocol on the rights of women. The author also discussed gender equality in marriage, divorce and inheritance under the protocol. On the Islamic perspective, the author did justice to gender equality by buttressing his argument with Quran and Hadith which were the main sources of law in Islamic law. He also went further by basing some of his arguments on the provisions of other sources of law in Islamic law. The author made helpful suggestion where he stated that advocates can lobby government to reform national laws and policies that hinders women's right under the protocol. Nevertheless, the author having done justice to gender equality in marriage, divorce and some other aspect under the Shariah, the work did not discuss the issue of custody under the Shariah in some ages of the children of a divorced marriage which can be solely that of the mother.

Abdullahi, R, Ali A and Hamid S.A in their work "Gender Equality, Islam and Law"[32] discussed that gender equality is not a new concept and Islam preaches equality of human persons. They discussed further the verses of the Quran that encourage equality of human beings. Their discussion from the Islam law perspective discussed some verses of the Quran that made men the head or superior than women and they further based their argument on the

[31]Ladan M.T. (2006) "The protocol on the Rights of Women in Africa and the Islamic Perspective on Gender Equality and Justice". A paper presentation at a seminar organized by solidarity for African Women's Rights (SOAWR) A coalition of Human Rights (NGOs) during African Union Summit at Ahfad University for Women, Khartoum, Sudan.

[32]www.rahanatu/20/womenlawmakaysian.accesson16october201710:15am.

issue that Islamic law is a divine law that preaches equality of human being. On the aspect of the law, their discussion is based on the Malaysian Islamic family law, some important aspect of family law such as marriage, divorce the polygamous native of men. The writers only concentrate on Malaysian Islamic family to discussed the topic of their work, they however failed to discussed beyond the territorial scope of Malaysian because the issue of gender equality, Islam and law is beyond the limited scope they discussed.

Danladi, K.M. in his work[33] discussed the rights of women and children in accordance with Islamic law. He highlighted some basic rights women and children enjoyed generally and as well discussed the rights they enjoyed individually. He did explained what human rights encompassed generally and he stated categorically that human rights under Islamic law is what is known to be divine law. The writer having done justice to the pic of his work, it be argued that he limited himself to the rights of women and children under Islamic law without recourse to the issue of gender equality both conventionally and traditionally.

The Constitution of Federal Republic of Nigeria 1999[34] is the ground norm of all laws in Nigeria. The constitution however enshrined in Chapter 2 fundamental objectives and directive principles of state policy and Chapter 4 deals with fundamental rights. The constitution however, provides that every citizen is equal and no citizen should be discriminated against based on sex, religion, tribe, language, etc.

[33]Danladi, K.M (2006) "Islamic Law Mechanism for the Protection of Women and Children Right: "A Unique Approach". Journal of Islamic and Comparative Law Centre of Legal Studies, Institute of Administration, Ahmadu Bello University, Zaria, vol. 27.
[34] Cap C20 LFN 2004

However, the same constitution have in some sections of it that are discriminatory in nature against women in one way of the other and any law that is inconsistent with the constitution is said to be null and void which simply means the constitution is also discriminatory. Convention on the Elimination on All Forms of Discrimination against Women (CEDAW)[35] provides laws that will make women to realize the move for gender equality. The Convention states clearly that discrimination against women in all form should be eradicated and all states parties should encourage gender equality in all spheres. The Convention however, failed to make it compulsory for all state parties those signatories to domestic the Convention into their municipal laws. The Convention also failed to provide any section that will make the implementation and enforceability of its provision achievable.

From the above literatures reviewed, there is no doubt that the learned authors have giving useful insight into the subject of this research. However, other emerging developments as well as issue affecting the sanctity of gender equality in international law with particular reference to Nigeria were not adequately taken care of. For instance, some Nigerian legislation that embraced discrimination or inequality against women is not properly dealt with. To this end, the research analysis available materials from both primary and secondary sources with a view of aiming up with findings and recommendations that would only not bridge this lacuna but most importantly, improve the sanctity of gender equality.

[35] Adopted 18 Dec, 1979 entered into force 3 Sept. 1981, G. A. Res. 34/180 UN GAOR, Supp (No.46), UN DOC. A/34/46 at 193 (1979)

1.8 Organizational Layout

This work is made up of five chapters. Chapter one gives a general introduction to the work. It outlines the statement of the problem, the objectives of the research, the scope, and methodology, significance of the study, literature review and organizational layout.

Chapter two is titled appraisal for legal regime for gender equality in international law. It discusses international and regional instruments on gender equality. The legal regime include International Bill of Human Rights, CEDAW, Convention on the Rights of the Child, African Charter on Human and Peoples' Right to mention but a few.

Chapter three centers on the legal regimes for gender equality in Nigeria. It discusses the domestic laws in Nigeria that encourages gender equality and the instrument for the enforcement of gender equality in Nigeria.

Chapter four concentrate on the domestic implementation of gender equality in Nigeria. This chapter discussion centers on gender equality situations, cases and scenarios in Nigeria. It further discusses the institution responsible for the implementation of CEDAW and other women treaties in Nigeria which is the main focus of this work.

Chapter five, as the last embodies summary, finding under which observations from the whole discourse in this research will be enumerated while recommendations thereto be made and the work ends with a conclusion.

CHAPTER TWO

LEGAL REGIME FOR GENDER EQUALITY IN INTERNATIONAL LAW

2.1 Introduction

There is a wealth of international instrument on human rights, women's rights and as well on gender equality. This chapter examines the international human rights instruments, how these international instruments evolved, their legal status, contents and extent of state parties' obligations and importantly how the instrument deals with gender equality in one way or the other.

In examining international framework and relationship to a state, we have four situations or categories namely: legal norms ratified and domesticated, legal norms ratified but not yet domesticated, legal norms signed but not yet ratified and norms that do not require signature or ratification – usually not legally binding. Our focus for this discussion will be the first and second types of situation and reference will be to the fourth category that is specific to gender equality and women will also be made.

International instruments as used here include treaty and non treaty based instruments, usually referred to as declarations. These are rights that are declared but are not law.[36] The major distinction is that a treaty is legally binding on state parties while declarations are not, but nevertheless provides general principles, guidance or policy framework on the subject matters it covers. Most of the international human rights treaties accordingly emerged from Declaration of Human Rights. The treaties discuss under this chapter include International

[36]John S. G. (1996) Dictionary of International Human Rights Law, the Scarecrow Press. Inc. London pp. 2-4

Covenant on Civil and Political Rights (ICCPR).[37] International Covenant on Economic, Social and Cultural Rights (ICESCR).[38] Convention on Elimination of All Forms of Discrimination against Women (CEDAW)[39] and the protocols to any of the treaties where applicable. Generally, protocols are meant to amend, supplement or clarify multi-lateral treaties.

2.2 The International Bill of Human Rights

The Universal Declaration of Human Rights otherwise known as UDHR is the first ever proclamation in an international instrument on the right and the freedom of men and women. It is seen as the expression of a general standard on human right and the spring board for other human right instruments. It is called universal because it addressed itself "to every state and every person"[40] UDHR came into existence through no legal force in 1948[41], as it is not a legally binding treaty. However, this ground breaking declaration gave impetus to the two legally binding instruments formulated and adopted by the United Nations General Assembly in 1966 namely the International Covenant for Economics, Social and Cultural Right (ICESCR) and International Covenant for Civil and Political Rights (ICCPR). The UDHR, ICESCR and ICCPR altogether formed what is known as International Bill of Rights – the bedrock for all other human rights norms which, to date, have exceeded fifty in numbers in terms of standard setting or normative framework for human rights protection. The International Bill of Human Rights, which represents the corner stone of the UN Human Rights standards, is the most authoritative and comprehensive in terms of rights contained

[37] Adopted 16 Dec, 1966 entered into force on 3rd January, 1976
[38] Adopted 16 Dec, 1966 entered into force on 3rd January, 1976
[39] Adopted 18 Dec, 1979 entered into force on 3rd September, 1981
[40] Emacora N.T. (1993) International Human Rights, Documents and Introductory Notes, Vienna Law Book in Europe p. 14
[41] It was adopted n 10th December, 1948

therein[42]. The International Bill of Human Rights covers the so-called "first generation" of civil and political rights as well as the "second generation" of economic, social and cultural rights.

The ICCPR and ICESCR combine civil, legal, economic and social rights that spans across generations of rights and elaborates on corresponding rights contained in the UDHR in greater detail and with full legal force[43]. It has been observed; the two Covenants have a similar structure and, in some articles, adopt the same or very similar wording. The preambles of both instruments recognize the interdependence of all human rights, stating that human rights ideal can only be achieved if conditions are created whereby everyone may enjoy his or her economic, social, cultural, civil and political rights.[44]

The rights protected by the International Bill of Human Rights cover a wide spectrum and with respect to women whereas all the provisions prima facie apply to them, there are some provisions that are specifies that require special mention. For example, all the three provisions on right to equality and discrimination[45], Article 23 of ICCPR is significant in not only recognizing the right of men and women of marriageable age to marry and found a family but recognizing that no marriage shall be entered into without the free and full consent of the intending spouses. It further enjoins State Parties to the present covenant to take

[42]Emacora N.T op-cit p. 17
[43]Articels 1,2,3 of the ICCPR and Article 4,5,6 of ICESCR and Article 7,8,9 of both convenants
[44] The United Nations Human Rights Treaty System – fact sheet No. 30 published by the office of the United Nations High Commissioner for Human Rights, 2005 p. 7
[45]Article 2(2) of UDHR and Article 2(2) and 2(1) of both convenants – ICCPR and ICESCR. Closely related to this is the right to equality before the law and recognition as a person before the law and equal protection of the law including equal enjoyment of human rights – Article 6 and 7 of UDHR, Articles of both convenants and Article 14,16 and 26 of ICCPR.

appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during and at its dissolution.[46]

In addition, the right to work without discrimination including the right to equal pay for equal work was entrenched to check blatant discrimination, which women face in job search, remuneration and promotion and thus promotes gender equality[47] in work force of the state parties. In addition the right to social security, adequate standard of living, right to health and education recognized in the ICESCR are key economic and social rights of particular significance to women because they all promote gender equality.

Furthermore, Article 4 of ICCPR also mentions rights that cannot be derogated from. Both Covenants provide for mandatory state reporting procedure. Therefore, all state parties including Nigeria are under obligation to submit periodic reports on the measures they have adopted which give effect to the rights recognized in the respective Covenant indicating the progress made in the enjoyment of these rights as well as factors and difficulties affecting implementation of these rights. These reports are examined by the respective committee in public meetings in the presence of governmental representatives. The international monitoring of ICCPR is by the Human Rights Committee, a quasi-judicial body made up of 18 independent experts while the committee on Economic, Social and Cultural Rights was set up to monitor implementation of ICESCR[48].

[46] Article 23 of ICCPR generally.
[47] Article 7 of the ICESCR
[48] Res. /1985/17 ECOSOC established the committee on Economic, Social and Cultural Rights

A major distinction between the two Covenants is the inclusion of the principle of progressive realization. This has led to disparity in enforcement and implementation arrangements between ICCPR and ICESCR because of the notion that it does not carry immediate obligations and its implementation should be progressive and programmatic. Interestingly, there has been a major shift in attitude since the committee on Economic, Social and Cultural Rights was established to carry out the function of monitoring implementation of the covenant's provisions.

The committee on Economic, Social and Cultural Rights examine the reports of state parties and closely scrutinize them. The committee constructively dialogue with the government to ensure that the principle of progressive realization is not used by the governments to evade their obligation to take concrete positive steps targeted towards full realization of rights entrenched in the Covenant.

2.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Protocols

The United Nations in recognition of the diversity of women's conditions and a manifestation of its commitment to the principle of equality, adopted the Convention on Elimination of All forms of Discrimination against Women (CEDAW)[49] otherwise known as the Women's Convention, to eliminate discrimination against women on the ground of sex and promote gender equality. This Convention was ratified by the Nigerian Government more than two decades ago.[50] The Convention reinforces the provisions of existing

[49] Adopted by the United Nations General Assembly Resolution 34/180 on 18 December 1979 (1249 U.N.T.S. 13) and it entered into force on 3 September, 1981

[50] Nigeria government ratified CEDAW on 13th June, 1985

international instruments designed to combat the continuing discrimination against women[51]. It identifies many specific areas where there has been notorious discrimination against women, i.e. as itrelates to employment, marriage and the family, political rights. In these and other areas, the Convention spells out specific goals and measures that are to be taken to facilitate the creation of a global society in which women enjoy full equality with men and thus full realization of their guaranteed human rights[52].

The Women's Convention is watershed. It is a landmark in the history of the UN and Women's Rights and a major international instrument in the prohibition of discrimination against women. CEDAW is the major international instruments on women and main focusof this discussion of this work. The Women's Convention sets out in more details what is meant by the prohibition of sex discrimination from the perspective of equality of women and men.[53] Article 1 stated that:

> The term 'discrimination' against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect of 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 political, economic, social, cultural, civil or any other field.

This definition is comprehensive and as has been observed by Meron that "the Convention treats the principle of equality both as a binding obligation and as a goal. The equality

[51] The preamble of the CDAW made references to the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women including also the resolutions, declarations and recommendations

[52]Discrimination against Women.the convention and the committee, fact sheet No. 22 United Nations 1794, p. 4.

[53] For a detailed chronology of the women's convention, see Tatarina, T. (1993) women and Human Rights, Zed Books Ltd, London.

contemplated is not just de jure, but de facto as emphasized in Article 4."[54] Article 1 covers both intended and unintended consequences of discrimination. By proscribing practices which have the effect of discrimination against women, the Convention guards against the use of facially neutral criteria as a pretext for discrimination. The prohibition of unintentional discrimination is necessary to achieve systematic change, because policies undertaken without discriminatory motive may perpetuate inequalities established by prior acts of purposeful discrimination. The inclusion of unintentionally discriminatory practices or policies within the prohibitions of the Convention appears to be both appropriate and necessary. The definition of discrimination against women does not prohibit certain distinction perse, but only when they have the purpose or the effect of denying women the enjoyment of human rights and fundamental freedoms on basis of equality with men.[55]

Three vital characteristics of the definition of "discrimination against women" in article 1 of CEDAW have been underscored:

a. The article refers to effect as well as purpose, thus directing attention to consequences of governmental measures as well as the intentions underlying them.
b. The definition is not limited to discrimination through "state action" or action by persons acting under colour of law as are the definitions of many rights such as the definition of torture under the Convention against Torture.
c. The definition's range is further expanded by the concluding phrase or any other field.[56]

The expansion of the definition of discrimination against women by the phrase 'or any other field' will bring under its regulation both public and private actions. Obligations of state parties to implement the principle of equality between men and women is clearly stated in

[54]Meron, T. (1986).Haman Rights Law – Making in the United Nations, Clarendon Press, Oxford. P. 58
[55] Ibid p. 60-61
[56] Steiner, H and Alston, P (2008) International Human Rights in context, Oxford University Press, Oxford p. 184

CEDAW to include adoption of appropriate legislative and other measures to eliminate the legal basis for discrimination by revising laws and civil, penal and labour codes.[57] Furthermore, Article 3 defines the appropriate measures in all fields which should be taken to implement the policies set out in article 2.[58] In article 5, State parties undertake to take all appropriate measures to modify the social and cultural patterns and conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on ideas of inferiority or the superiority of either of the sexes or on stereotyped roles for the men and women. Equality in education, employment and labour rights, access to health facilities, finance and social security are all protected.[59] The last two articles of the substantive provision of CEDAW that recognizes women's equality in legal and civil matters[60] are of special importance and in family law.[61]

Article 17 of CEDAW established a committee on the Elimination of Discrimination against Women (hereinafter referred to as the CEDAW Committee) for the purpose of considering the progress made in the implementation of CEDAW. The Committee is made of twenty-three experts nominated by State parties in accordance with stated guidelines. Members elected must be of high moral standing and competent in the field covered by the Convention.

[57] Article 2 of CEDAW
[58] Discrimination Against Women: The Convention and the Committee, United Nations, fact sheet No. 22 op. cit.
[59] Articles 10, 11, 12 and 13 of CEDAW
[60] Article 15
[61] Article 16

Article 18 requires State parties to make periodic reports about legislative, judicial, administrative and other measures which have been adopted to give effects to CEDAW within one year after ratification by State concerned[62] and thereafter at least every four years whenever the Committee so request. The report of the State parties may indicate factors and difficulties, the degree of fulfillment of obligations under the present Convention.[63] Further, by article 20, the Committee meets for a period not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the Convention.

The major and a very controversial question require attention relates to the sanctions against violators of women's rights embodied in the Convention. Is it the State that has jurisdiction to give redress for violations? Will the State machinery be disposed to give redress where the adversary is the State? This was a major defect in CEDAW, which did not give an individual right of complaint unlike most international instruments, in which the supervisory mechanism made allowance for individual communication.

Furthermore, the Convention has the weakest implementation and enforcement mechanisms of any human right Convention; it lacks of provision for individual petition, the Committee charge with the supervision and implementation of the instrument is generally less well endowed than any of its counterparts, and the number of reservations of the Convention substantive provisions are the highest of any international human rights.

[62] Article 18 (a)
[63] Article 18 (b)

Despite these lacunas, Nigeria still ratified the document in its entity without any reservation whatsoever. Furthermore, skepticism about the usefulness of the reporting system often seen as self-serving, abstract, legalistic and insubstantial[64] continue to trail the enforcement procedure through reporting. The enforcement of the Convention at national level consists only of a reporting procedure in which the Committee on CEDAW reviews country reports on the status of women and engages in constructive dialogues with representative of reporting countries.

Optional protocol to the convention on the Elimination of Discrimination against women[65]

The adoption of the Optional Protocol to CEDAW has served to strengthen the Convention and filled one major lacunae identified in the Convention, that is lack of mechanisms for individual complaints. Article 1 establishes the competence of the committee to receive and consider communications under the Protocol for State parties to CEDAW who additionally ratifies the Protocol. The Optional Protocol to CEDAW provides for a communications procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals, with their consent, unless it can be shown why that consent was not received[66]. According to the admissibility criteria of communications before a complaint is considered, the Committee must determine that all available domestic remedies have been exhausted and the complaint is not, nor has been examined by the Committee or has been or is being

[64]McGoldrick (1994).The Human Rights Committee, Clarendon Press. Oxford p. 79

[65] Adopted 6 October, 1999 by UN General Assembly Resolution 54/4 and opened for signature on 10 December, 1999. It entered into force on 22 December, 2000. Nigeria ratified it on 22 November, 2004

[66] Article 2 of Optional Protocol to CEDAW

examined under another procedure of international investigation or settlement.[67] Article 6 establishes the communication procedure, while article 7 outlines the process of complaint consideration. The opt-out clause permits State parties at the time of ratification of the Optional Protocol to refuse to recognize the competence of the Committee to initiate and conduct an inquiry as established under article 8 and 9. Also, a State party can withdraw from the Protocol by written notification to the Secretary – General. Withdrawal will not impact any communications submitted prior to the effective date of withdrawal.[68] State parties are to ensure the protection of those submitting communications.[69]

2.4 The Convention on the Rights of the Child (CRC) and its Protocols

The Convention on the Rights of the Child (hereinafter called "the CRC") was unanimously adopted by the United Nation General Assembly in 1989[70] and opened for signature and ratification or accession in New York on 26 January, 1990. The CRC came into force on 2 September, 1990.

Whether the unprecedented number of states that had so rapidly ratified the CRC indicates the universal support for the principle enshrined therein and the political will and commitment of State parties to implement its provisions remains a vital question, which this work would not pretend to answer. With near universal ratification, expectations are high and the focus should definitely shift to implementation of the Convention. Nigeria has ratified

[67] Ibid Article 4
[68] Article 19
[69] Article 11
[70] United Nations General Assembly Resolution 44/25 of 20 November, 1989.

this Convention,[71] which has enormous impact on the status of girl children a pointer to the status of women thus, underscoring the importance of the inclusion of the CRC in this discussion. Just like CEDAW that is specific to women, the CRC is specific to children but unlike CEDAW, it is very comprehensive in detailing rights of children in its fifty-four (54) article provision.[72] The articles of the CRC are divided into three main components, the preamble, which sets out the obligations of the State parties to the Convention; and the procedural part (part II and III), which includes the implementation provisions that define how compliance with the convention is to be monitored and fostered and set out the conditions under which it comes into force.

Article 1 defines a child as a person under the age of 18 years unless the law applicable to the child majority is attained earlier. The four general principles entrenched in the CRC are: the principle of non-discrimination,[73] the best interest of the child,[74] the right to life, survival and development[75] and giving due weight to the views of the child in situation affecting the child.[76] In terms of substantive rights recognized, it spans through civil, political, economic, social and cultural rights.[77] State parties commit themselves to take all action including national, bilateral and multilateral measures to prevent the abduction, the sale or traffic in children for any purpose or in form.[78]

[71] Nigeria government ratified it on April 19, 1991
[72] It has been described as the first treaty to deal comprehensively with the rights of a specific group of people.
The United Nations Human Right Treaty System Fact Sheet No. 30
[73] Article 2 of the CRC
[74] Article 3 of the CRC
[75] Article 6 of the CRC
[76] Article 12 of ibid
[77] Articles 13,14,15,16,17,24,26,27,28,29 and 30 of ibid
[78] Ibid Article 35

The optional protocol underscored the fact that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behavior, harmful traditional practices, armed conflicts and trafficking in children.[79]

Like most human rights treaty monitoring bodies, State parties to the Convention undertake to submit to the Committee on the CRC, through the Secretary General of the UN, reports on the measures they have adopted which give effect to the rights recognized in the convention and on progress made on the enjoyment of those rights within two years of the entry into force of the convention for the state party concerned and the thereafter for every five years.[80] Of course, the Committee on the rights of the child takes into consideration the two optional protocols and do demand that State parties to the convention that are parties to them make report concerning that too.

In Nigeria, in response to the government's obligations to promote and protect children's rights, the Child Rights Act was enacted by the National Assembly in 2003. Although, this is not a whole sale domestication of the Convention but it is definitely of higher threshold, the only problem that is apparent and still contentious is whether it does have a national application given the existing constitutional powers of both the federal and the state

[79] The preamble to optional protocol to the CRC on the sale of children, child prostitution and child pornography

[80] Article 44 (1) of the CRC

government to make laws.[81] Meanwhile, there is a clear lack of political and economic will be implement the CRA or the CRC in reality. In other words, Nigeria government is not leaving up to its obligation to protect, respect, enforce and fulfill children's rights. However, in comparison, unlike women, the issue of children is receiving far better attention from all concerned.

2.5 Convention and the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children

The discussion under this section will focus on two major treaties on trafficking namely the Convention for Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others, 1950[82] and the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, 2000[83] these treaties unlike CEDAW apply to all persons vulnerable to trafficking and forced prostitution[84]

Human trafficking is as old as slavery itself and the 1950 Convention recognize that prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of human person and endanger the welfare of the

[81] Children matter is neither in the exclusive or concurrent legislative list. It is regarded as part of residual list of which the National assembly has no legislative power. This has resulted in about 23 states of the federation of Nigeria re-enacting the Act as a state law just like in the case of children and young persons law.
[82] It was adopted on 21 March 1950-96 U.N.T.S. 271, entered into force July 25, 1951
[83] Adopted by GA Reg. 25, annex II, U.N. GAOR, 55th Sess., Supp No. 49, at 60 UN. Dec. A/45/49 (Vol. I) (2001), entered into force Sept. 9, 2003. This Protocol was open to all states for signature from 12 to 15 December 2000 in Palemo, Italy, and thereafter at United Nations Headquarters in New York until 12 December, 2002.
[84] Article 6 of CEDAW – states parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

individual, the family and the community[85]. Although, the Convention is not self executing like the typical human rights treaties, it nevertheless shows a clear intent to punish persons who traffic in human beings and exploit prostitution of others too. The significance of this not so elegantly drafted convention as also paled in view of a more recent Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. Nigeria government has ratified the later instrument unlike the earlier ones.[86]

The 2000 protocol is a real attempt to enact an international legislative framework that is universal in nature and addresses all aspects of trafficking in persons, especially trafficking of women and children. It underscored in its preamble the fact that effective action to prevent and combat trafficking in persons, requires a comprehensive, international approach in the countries of origin, transit and destination that will target measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking including by protecting their internationally recognized human rights.[87] The protocol supplements the United Nations Convention against Transnational Organized Crime although it is a specific international instrument for the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children.[88]

Succinctly put, the purposes of this protocol are:

a. To prevent and combat trafficking in persons, paying particular attention to women and children
b. To protect and assist the victims of such trafficking, with full respect for their human rights; and

[85] See the preamble to the Convention for the Suppression of the Traffic in Persons and of the exploitation of the prostitution of others, 1950
[86] Nigeria government ratified it on June, 28 2001 and has taken considerable steps to combating trafficking
[87] Articles 5 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the prostitution of others, 1950
[88] Article 1 (1) of the Protocol to the convention

c. To promote cooperation among State parties in order to meet those objectives.[89]

According to the protocol, "trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[90]

The protocol lays emphasis on strengthening training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should take into account the need to consider human rights, child and gender sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.[91] According to article 6 each State party shall in appropriate cases and to the extent possible under its domestic law provide assistance to and protect the privacy and identity of victims of trafficking in persons. This rehabilitative and re-integrative assistance include: appropriate housing; counseling and information, in particular as regards their legal rights in a language that the victims of trafficking in persons

[89] Ibid: Article 2
[90] Article 3 of the Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitutions of others, 1950
[91] Article 10 (2) of the protocol

can understand, medical; psychological and material assistance; employment, educational and training opportunities.[92] The Protocol stipulates that each State party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in person.[93] There is also a provision in connection with the status of victims of trafficking in persons in receiving states to the effect that they should be granted stay to remain either on temporary or permanent, basis in appropriate cases.[94]

In addition to the Convention and Protocol, the United Nations office of the High Commissioner on Human Rights (OHCHR), in 2002[95] came up with the recommended principles and guidelines on human rights and human trafficking, which provides practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. According to Mary Robinson, under whose leadership it was adopted "their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions".[96] These principles are based on four main components: the primacy of human rights, preventing trafficking, protection and assistance, and criminalization, punishment and redress. The principle situate the human rights of trafficked persons at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.[97]

[92] Article 6 (3) of the protocol
[93] Article 6 (4) of the protocol
[94] Ibid: Article 7
[95] Recommended principles and guidelines on human rights and human trafficking E/2002/68/Add.1
[96] OHCHR, Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking (New York and Geneva: United Nations, 2002) p. 2
[97] Ibid p. 3

Importantly, it posits that strategies aimed at preventing trafficking shall address demand as a root cause and that States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.[98]

From the above, it is deducible that there are responsive measures being taken by the international community[99] to combat trafficking recognized as one of the fastest growing areas of international criminal activity that inappropriately affects women and girls. Since the Palemo Protocol is not self-executing, State parties are expected therefore to take action to transform rights and obligations contained therein.

2.6 The Rome Statute of International Criminal Court

There are about 40 International instruments on law of War (this includes binding and non binding treaties, declarations, rules, guidelines and regulations on laws of War) beginning in 1856 and culminating in the Rome Statute 1998 that established a permanent International Criminal Court.[100] The Rome Statute of International Criminal Court (ICC) was adopted[101] on 17 July, 1998, and it came also force on July 1, 2002[102]. It was ratified by Nigeria on the 27 September, 2001. It came about as a response to unimaginable atrocities committed in conflict situations that deeply shock the conscience of humanity, affecting millions of

[98] Ibid principle 4 and 5

[99] Nigeria has responded as part of international community by adopting extensive legislative framework – the trafficking in persons (Prohibition) law, NAPTIP Act 2003 as Amended in 2005 as well as setting up a National Agency for Protection against Trafficking in Person (NAPTIP). The commonwealth Countries collectively are similarly taken action – see BEST PRACTICE – Report of the Expert Group Strategies for combating the Trafficking of women and children (commonwealth secretariat, London.

[100] By the United Nations, Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

[101] Ibid

[102] In accordance with Article 126 of the Rome Statutes.

children, women and men who have been victims. The preamble to the ICC recognized that such grave crimes threaten the peace, security and well-being of the world. The International Criminal Court (ICC) seats at The Hague and its jurisdiction is limited to the most serious crimes of concern to the international community as a whole and it is complementary to national criminal jurisdictions.[103] The Court has jurisdiction with respect to the following crimes:

a. The crime of genocide
b. Crimes against humanity
c. War crimes; and
d. The crime of aggression.[104]

The "crime against humanity" is defined as such when enumerated acts under Article 7 are civilian as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. It includes sex and gender based crime such as: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.[105] Other crimes against humanity are:

a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation or forcible transfer of population;
e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
f. Torture
g. Enforced disappearance of persons;
h. The crime of apartheid; and
i. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

[103] Paragraph 10 of its preamble emphasizing that the International Criminal Court established under this statutes shall be complimentary to National Criminal Jurisdiction
[104] Article 5 (1) of the Rome Statutes
[105] Ibid : Article 7 (1) g

"Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. Two other gender, specific crimes listed in Article 7 (2) (g) "persecution" means the intentional and severe deprivation of fundamental rights contrary to article 7 (2) (c), "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

Persecution against any identifiable group or collectively on grounds of gender amongst other[106] form part of crime against humanity and for the purpose of this statute, it is understood that the term "gender" refers to the sexes, male and female, within the context of society[107]. It is pertinent to print out that the definition of gender in Rome Stature has been heavily criticized for being too restrictive, absurd and for blurring the distinction between gender and sex by collapsing both to mean the same, thereby failing to recognized that gender is socially construed upon contingent set of assumptions about male and female roles and different from biological sex that is given.

Furthermore, there are three types of gender specific provisions contained in the Rome Statute. The provisions explicitly recognized abroad spectrum of sexual and gender violence as crimes of the most serious nature; the procedural and structural provisions for the proper

[106]Other prohibited grounds are on political, racial, national, ethnic, cultural, religious gender as defined in paragraph 3, other grounds that are grounds that are universally recognized as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court.

[107] Article 7 (3) of the Rome Statute

investigation and prosecution of gender violence cases; and the provisions to include women and experts on violence against women in staff of the ICC.

Having considered the first aspect dealing with sexual and gender crimes explicitly defined as violence and crimes of most serious nature, the research examines the procedural and structural provisions intended to enhance investigation, prosecution of gender based violence cases while protecting the victims through psycho-socio support and assistance.

Article 54 recognized gender sensitivity in investigating certain crimes and imposed duties on the prosecutor to take appropriate measures to ensure the effective investigation and prosecution of crime within the jurisdiction of the court, and in doing this, it respect the interests and personal circumstances of victims and witnesses including age, gender as defined in article 7, paragraph 3 and health and take into account the nature of the crime in particular where it involves sexual violence, gender violence or violence against children.[108] The court shall take appropriate measures including hearing in camera to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses especially in cases that involves sexual or gender violence or violence against children. In so doing, the court shall have regard to all relevant factors, including health, age and gender.[109] The prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[108] Article 54 (1) (b) of the Rome Statute
[109] Article 7 paragraph 3, see Article 68 (1)

The gender sensitivity character of the Rome Statute is reflected further in provision on staffing, which stipulates that in selecting Judges, State parties must also take into account the need for a fair representation of female and male judges[110] and also to include judges with legal expertise in the area of violence against women and children.

2.7 **African Regional Instruments Protecting the Rights of Women**

In terms of human rights and gender equality development, the African continent has come of age as well and can now boost of a sizeable number of human rights instruments, some of them are the first of its kind to be adopted by any regional mechanism outside the UN multilateral human rights treaties[111]. Among the major instrument are; the African Charter on Human and People's Rights, 1981, African Charter on the Rights and Welfare of the Child, 1990 the Protocol to the African Charter on the rights of Women in African 2003 and Solemn Declaration on Gender Equality in African 2004.

2.7.1 The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples Rights otherwise called the Banjul Charter[112] was ground breaking because it was the first human rights instrument to be adopted by African region. Although, it came thirty-one years after the regional equivalent in Europe[113],

[110] Ibid: Article 36 (8) (a) (iii)

[111] The protocol to the African charter on Human and Peoples' Rights on the Rights of Women in Africa is an equivalent example of peace setting in Regional Approach to promoting and protecting Women's Rights. It is a regional equivalent of CEDAW.

[112] The Africa Charter on Human and People's Rights was adopted on 17 June 1981 and it entered into force on 21 October 1986.

[113] The European convention on Human Rights was adopted and signed on 4 November 1950 and entered into force on 3rd September 1953.

and twelve years later in time than the American convention on Human Rights,[114] it was nevertheless significant given the Africa's shattered history of colonial rule,post independence intra/inter States wars and long military rule that became synonymous with gross human rights abuses especially of civil and political rights. Whether this landmark instruments did succeed in changing the thinking and practice about human rights is highly debatable and such investigation may not be the central focus of our discussion herein. In terms of substantive rights, the African charter in some interesting ways is a radical departure from standard human rights texts.[115] For example, it creates duties[116] and responsibilities for rights beneficiaries as well. The provision cut across all the generations or categories of rights.[117]

Furthermore, it recognizes individual rights as well as groups and communal rights thereby reinforcing its African roots and unique approach that coincides with the continents worldview and particularities – cultural, religious, political and otherwise. As has been observed, "the African Charter on Human and Peoples' Rights should reflect the African conception of human rights," and "should take as pattern the African philosophy of law and meet the needs of Africa.[118]

[114] The American Convention on Human Rights was adopted on 22 November, 1969 and it came into force nearly a decade later 18 July, 1978

[115] Even the title of the charter, which included "people" marks out as "people oriented" or "people centred rights"

[116] Article 27, 28 and 29 of the African Charter

[117] Ibid: Article 19 and 20

[118]Okere B.O (1984) "The protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: a comparative Analysis with the European and American Systems" HRQ 6 p. 145

The African Charter followed the established prototype in human rights standard setting of recognizing the principle of equality and non discrimination.[119] Importantly, Article 2 and 3 enunciating these principles are among the unrestricted rights that is the right to freedom from discrimination and equality before the law.[120] Article 6 provides that "Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." The right to effective remedy[121] is also recognized. The economic, social and cultural rights includes: right to work under equitable and satisfactory conditions and to receive equal pay for equal work,[122] right to health and education[123] were equally protected. While all its articles apply to men and women,[124] Article 18(3) is of particular relevance to women and children as it stipulates that "the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions." This is a very significant provision as far as women's human rights are concerned.[125]

According to Oji Umozurike in his work, stressed that it is doubtful, if article 18 by itself makes treaties like the CEDAW, Convention Against Discrimination in Education and the

[119] Opcit Article 2 and 3
[120] Ibid: Article 18. The Charter provided for four disadvantaged group women, the aged, children and the disabled
[121] Ibid : Article 7
[122] Ibid: Article 15
[123] Ibid: Article 16 and 17
[124] It is pertinent to observe that the language used in the Charter is very masculine and far from being gender sensitive and thus a departure from international human rights instruments that mostly use gender neutral language
[125] Article 18(4) stipulates that the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or more needs.

convention on the Rights of the child applicable per se without separate ratification, any less than Article 34 of the UN Charter requiring States to settle their disputes by refereeing them to the International court of Justice imposes an obligation to accept the jurisdiction of the court without first of all ratifying or acceding to the optimal clause". It follows that treaties are not without more, binding on the parties but that the principles and basic obligations created should guide member States in dealing with those groups of people.[126]

We would rather submit that article 18 should be given purposive interpretation in the light of other provisions of the charter[127] and despite the provisions of article 17(3) that obligate States to promote and protect the morals and traditional values recognized by the community. The African Charter guarantees virtually all the established civil and political rights. There are two groups of rights – those that maybe restricted and those that must not. The restrictions are not by way of derogations as in numerous human rights treaties but by claw-back clauses.

The Charter established the African commission on Human and Peoples' Rights, hereinafter called "the Commission", to promote human and peoples' rights and ensures their protection in Africa.[128] Article 31, deals with membership and equality of persons to be appointed as members of the commission emphasizing that they must be high independent experts with proven moral integrity and that will serve in the commission in their personal capacity. The mandate of the commission was outlined in Article 45 and some of its functions include to

[126]Umozurike O. (1979) The African Charter on Human and Peoples' Rights, Martins Nijhoff Publishers, the Hague p. 58
[127] Article 60 and 61 of the African Charter
[128] Ibid: Article 30

promote human and peoples' rights and in particular: to collect documents, undertake, studies and researches on African problems in the field of human and people's rights, organize seminar, symposia and conference, disseminate information, encourage national and local institution concerned with human and people's rights and should the case arise, give its views or make recommendations to government and to cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' right amongst others.

2.7.2 African Charter on the Rights and Welfare of the Child[129]

This Charter is the second major human rights treaty in the African continent and the first regional treaty on the rights of the child was adopted by the then organization of African Unity (OAU)[130] on July 11 1990 and it came into force November 29, 1999 nearly a decade after and was ratified by Nigeria government on 23rd June, 2001. The charter in its preamble reinforced the belief that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind including on the basis of sex or other status.[131] the charter is divided into four main parts and part 1 ideals with substantive rights, 2, 3 and 4 deals with the establishment and organization of the committee on the rights of the child and welfare of the child,[132] mandate and procedures of the committee[133] charged with supervision of the implementation of the charter and other miscellaneous matters[134] the

[129] Adopted and opened for signature 11 July, 1990 and it entered into force 29 November, 1999
[130] OAU Doc. CAB/LEG/24:9/49-1999
[131] This translated to the principle of non-discrimination in article 3 of the African Charter on the Rights and Welfare of the Child
[132] Ibid: Article 32 to 41
[133] Ibid: Article 42-45
[134] Ibid: Article 46-48

substantive rights covered in 31 articles provide for the protection[135] and participation rights. A child, which expression of course includes the girl child was defined as human being below the age of 18 years[136]. It can be argued albeit effectively that the charter is of higher threshold than UN convention on the Rights of the Child, 1989 as it dealt with subject that the later shed away from. For examples Article 21 stipulates that:

> 1. State parties to the present charter shall take all appropriate measures to eliminate harmful social and cultural particles affecting the Welfare.
> a. Those customs and practices prejudicial to the health or life of the child; and.
> b. Those customs and practices discriminatory to the child on the grounds of sex or other status.
> 2. Child marriage and the betrothal of girls and boys shall be prohibitions and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18years and make registration of all marriages in an official registry compulsory.

The article is of particular importance to the girl-child, who is subjected to discriminatory practices on grounds of sex, customs and religion. It seeks to protect such girls from harmful traditional practices such as early marriage and betrothal. According to article 1(3) any custom tradition, cultural or religions practices that is inconsistent with the rights, duties and obligations contained in the present charter shall be to the extent of such inconsistency be discouraged," special measures to promote equal access and opportunity for education of girl-children were also recognized.[137]

[135] Children are protected from child labour, child abuse and torture harmful social and cultural practices, sexual exploitation, drug abuse, trafficking and against apartheid and discrimination amongst others
[136] Article 2 of the African Charter on the Rights and Welfare of the Child
[137] Ibid: Article 11 (3) (e)

Furthermore, State parties are obliged to provide special treatment to the expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law shall inter dia be imprisoned with their children,[138] children were also assigned responsibilities, some quite onerous, that it has become highly debatable whether given their age, physical and mental immaturity as well as lack of economic wherewithal they will be in a position to effectively discharge.[139]

2.7.3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[140]

This protocol is supplementary to the African Charter on Human and Peoples' Rights and came into existence by virtue of its Article 66 that provides for special protocols or agreement if necessary to supplement the provision of the charter. The journey to the adoption of the protocol on the Rights of women in Africa, hereinafter called the Maputo protocol was a long one that took several years to accomplish.[141] The Maputo protocol is a landmark instrument that advances women's right and gender equality in the continent and a reaffirmation of some articles of the African charter on Human and People's Rights that prohibits discrimination against women and also called upon states parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions.[142] According to Maputo protocol,

[138] Ibid: Article 30
[139] Ibid: Article 106
[140] Adopted by the Conference of Heads of State and Government in Maputo-Mozambique 11 July 2003 and it came into force on 25 November 2005.
[141] The resolution adopting the recommendation of the African Commission on Human and Peoples' Right requesting OAU to elaborate a protocol on the Rights of Women in Africa was adopted at the Thirty-first Ordinary Session of OAU in Addis Ababa, June 1995-see AHG/Res. 240 (XXXI); whereas the protocol finally came into existence in 2003 about eight years after the resolution.
[142] Article 2 and 18 (3) of the African Charter

"Discrimination against women" means "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.[143]

Article 2 to 25 deal with substantive rights and remedies[144] for the violations of women's human rights recognized under the protocol. The protocol shares some similarities with CEDAW, especially with regards to definition of discrimination and action towards elimination of discrimination. These include prohibition of all forms of violence against women and requiring State parties to take appropriate and effective measures to enact and eradication of all forms of violence against women as well as establish mechanism and accessible services for effective information, rehabilitation and reparation for victims of violence against women and mapping out adequate resources for that purpose.[145] The protocol introduces new rights absent or not elaborated in the African charter and the CEDAW are: right to peace,[146] protection of women in armed conflicts,[147] sexual and reproductive rights,[148]and right to food security.[149]

State parties undertake under this protocol to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard, they

[143] Article 1 of the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
[144] The right to effective remedy is guaranteed in Article 25 while Article 8 is on access to justice and equal protection before the law and this shall include effective access by women to judicial and legal services, including legal aid
[145] Article 4 (a-k) of the protocol
[146] Ibid: Article 10
[147] Ibid: Article 11
[148] Ibid: Article 12(c) and 13(c)
[149] Ibid: Article 15

shall include in their national constitutions and other legislative instrument, if not already done, the principle of equality between men and women and ensure its effective application and furthermore, integrate a gender perspective in their policies decisions, legislation, development, plans, programmes and activities and in all other spheres of life.[150] As has been observed, "The protocol could serve as a blue print for African governments, engaged in revising their national constitutions and in passing new equality legislation, to incorporate a more fulsome recognition of women's right in these documents."[151] The African Court on Human and Peoples' Rights which has come into existence will play a vital role in the interpreting of the protocol. Of course, African Commission will continue to play a role in the implementation of the Maputo Protocol and adjudication of cases arising therein[152] according to the provision of the African Court Protocol, State parties undertake to comply with the judgment of the court in any case to which they are parties and to guarantee its execution.[153]

It is pertinent to observe that Nigeria ratified the Maputo Protocol on 16th December, 2004[154] and to that extent is a State party and therefore bound by all the provisions of the protocol. Obviously, significant portions of our national laws are not in conformity with this protocol although Nigeria's 1999 constitution prohibits sex discrimination, discrimination against women abound in law and in practice. For example, medical abortion in cases of sexual assault, rape and incest is not permissible under Nigerian law and the right of women to

[150] Ibid: Article 2 (1) (a and b)
[151]Rebouche, R. "Labour, Land and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women", Harward Human Rights Journal, Vol. 19, p. 236.
[152] Article 6 of the protocol establishing the African Court on Human and Peoples' Right provides that court may consider cases or transfer them to the commission.
[153] Article 29 and 30 of the protocol
[154]Article 26 of the protocol on Implementation and monitoring

nationality as envisaged in article 6 of the protocol which includes: "a woman's right to retain her nationality or to acquire the national her husband"[155] and the recognition, that a man and woman shall have equal rights, with respect to the nationality of their children are not protected.[156] With respect to inheritance, there is no national law that gives Nigerian women equal right of inheritance. The right of a widow to inherit from the estate of her deceased husband will often depend on the type of marriage contracted and customary laws. Some parts of Nigeria deny women and girls the right to inheritance as articulated in article 21 of the protocol.

It was argued that CEDAW enjoyed widespread ratification by African states, while same cannot be said of the protocol emanating from the continent with its own African uniqueness and blazing a trial.[157] This discussion would be concluded by re-echoing what Banda, F. said in relation to monitoring and implementation of the Maputo protocol that:

> It is clear that the African protocol is comprehensive in it coverage of the impediments that have hitherto affected women's ability to enjoy their rights and also units prescriptions for fixing them. Articles 8 (on access to justice) and 25 (on remedies) reinforce States obligations to ensure that the machinery is in place to enable women to challenge violations of their rights. However, the fact that women in the world over continue to experience widespread violations of their rights and to be the less educated with little access to political, social or personal power within the community and home, suggests that the vision of a discrimination-free life for the African woman is still remote:.[158]

[155] Ibid: Article 6 (g)
[156] Ibid: Article 6 (h)
[157] Banda, F (2006) "Blazing A Trial: The African Protocol on Women's Rights comes into force", Journal of African Law, 50, 1 p. 72-84
[158] Ibid p. 84

2.7.4 Solemn Declaration Gender Equality in Africa[159]

This Solemn Declaration reaffirms all commitment to gender equality as enshrined in the All Principal Constructive Act[160] and several other regional and international instruments that place emphasis on the principle of equality and non-discrimination. This declaration coming soon after the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) has helped to sustain the momentum and call for action in advancing gender equality and women's empowerment within the continent. The preamble recalls the decision on gender party taken at the inaugural session of AU Assembly of Heads of State and Government in July, 2002 in Durban, South Africa.

The election of five female and five male Commissioners during the Second Ordinary Session of the Assembly in Maputo, Mozambique, 2003 noted with satisfaction the AU decision on gender parity, which it considered a his achievement that does not yet exist in any other continent or regional organization. It is observed that the major challenges and obstacles to gender equality still remain and combating them would require concerted and collective leadership and efforts from all of us including networks on gender and development.

The Solemn Declaration adopted a 13 paragraphs agreement to take action which includes: accelerating the implementation of gender specific economic, social and legal measures aimed at combating the HIV/AIDS pandemic ensuring the full implementation of UN

[159] This was adopted by the Heads of State and Government of Member states of the African Union during its meeting at the Third Ordinary Session of the Assembly in Addis Aboba, Ethiopia, from 6-8 July 2004-see Assembly/AU/December-12 (III), Rev. 1

[160] Paragraph 1 of the Solemn Declaration on Gender Equality in Africa, 2004

Resolution 1325 and effective; Participation and representation of women in peace process and to appoint women as special envoys and special representatives of the African Union.[161] Other issues recognized include ensuring the active promotion and protection of all human rights for women and girls including the rights to development by raising awareness or by legislation to guarantee women's land, property and inheritance rights including their rights to housing; as well as taking specific measures to ensure the education of girls and literacy of women, especially in the rural areas to achieve the goal of "Education for AU" (EFA)[162]

The Solemn Declaration has its short comings especially by focusing less attention on formal and substantive equality and dwelling more on HIV and other diseases thereby unintentionally feminizing HIV and AIDS and also watering down, what should have been at the core of the declaration like bridging the de jure and defacto discrimination though gender mainstreaming and gender budgeting as well as building institutional capacity for sustainable gender work. It is worthy to observe that the entry into force in 2005 of the protocol to the African Charter on Human and Peoples' Rights to the Rights of Women in Africa remains a positive and significant outcome of the Solemn Declaration and a realization of an objective for which it clearly set out in paragraph 9. No doubt, the Solemn Declaration is a work in progress and the objectives set therein cannot be achieved at a go. Thus, memberStates of the AU commit themselves to report annually [163] on progress made in terms of gender mainstreaming and to support and champion all issues raised in this Declaration, both at the national and regional levels, and regularly provide each other with updates on progress made

[161] Ibid: paragraph 2
[162] Ibid: paragraph 6-8
[163]Nigeria has made its initial report in compliance – see Nigeria's Initial Country report to the African Union on the Implementation of AU Solemn Declaration on Gender Equality in Africa, the report covered the period 2004-2006 and published by the federal Ministry of Women Affairs, June.

during the Ordinary Sessions of the organizations.[164] Finally, the chairperson of the African Union Commission is requested to submit, for consideration, an annual report on measures taken to implement the principle of gender equality and gender mainstreaming, and all issues raised in this Declaration both at the national and regional levels.[165]

2.7.5 **Conclusion**

The plethora of international and regional instruments on women's human rights discussed in this chapter shows that both the UN and AU as forums for international and regional standards setting in human rights/women's rights have come of age in advancing gender equality and women's empowerment. The gap between a reality and practice is not due to international inaction in the area of women's rights; but inaction in terms of responsiveness to violation of women's rights and providing effective remedy to victims of rights violations. The UN standard setting role is clear, however much remains to be done in terms of concretizing the rights and international response and national implementation of these standards. The ensuring chapters will begin to specifically and closely examine how far Nigeria, as an active participate in this evolution of international and regional levels, has gone in ensuring domestic implementation of these instruments in order to ensure its enjoyment by the female citizens.

[164] Op cit paragraph 12
[165] Ibid: paragraph 13

CHAPTER THREE

LEGAL REGIME FOR GENDER EQUALITY IN NIGERIA

3.1 Introduction

In a legal system such as Nigeria's where there is a variety of "sources" of law,[166] the rule of recognition is correspondingly more complex and the criteria for identifying the law are multiple. These include, in order of hierarchy, a written constitution, enactment by the legislature, customary law, Islamic/Sharia laws and judicial precedents. The constitution and the legislative enactments are the primary rules of recognition while customs and judicial precedents are secondary rules of recognition and maybe deprived of their status as law by statute. The 1999 Constitution of the Federal Republic of Nigeria is the supreme law and it expressly proclaims its superiority while making it clear that any other law that is incompatible with it shall to the extent of its inconsistency is null and void and unconstitutional.[167]

This chapter examines the constitutional and other legislative enactment such as the Violence against Persons Prohibition Act, 2015, the Gender and Equal Opportunities Bill as well as some legislative instruments that contains discriminatory clauses against women.

3.2 The 1999 Constitution of Federal Republic of Nigeria.

The 1999 Constitution of Nigeria contains provisions which on the surface maybe presumed to be promoting gender equality. The presumption becomes doubtful however, when the

[166] Obilade, A. O. (1979) The Nigerian Legal System, sweet and Maxwell, London p. 55-56
[167] Section 1 (3) of the 1999 constitution of Federal Republic of Nigeria

provisions are considered in the light of the several limitation clauses contained in the constitution. The attempt by the constitution to promote gender equality can be gleaned from two major chapters to wit: chapter II, which deals with the fundamental objectives and directive principles of state policy; and chapter IV provides for fundamental rights respectively.

3.2.1 The Fundamental Objectives and Directive Principles of State Policy

The fundamental objectives and Directive Principle of State Policy are contained in the 1999 Constitution of Federal Republic of Nigeria, particularly sections 13 to section 24. However, we shall be discussing the one that relates to this work. Be that as it may, section 13 of the Constitution provides that: "It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this chapter of this constitution".

Section 15 of the Constitution deals with political objectives generally while 15(2) provides that "national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, states, ethnic or linguistic association or ties shall be prohibited." Going by this constitutionally provision, it is deducible that both the male and female gender are equal when it comes political rights, duties and responsibilities because the section states that discrimination will not be encouraged based on sex. Chapter two of the Constitution in section 16 (1) (b) gives every citizen social justice and equality of status and opportunity, when it comes to economic objective. This implies that any Nigerian irrespective of sex will be accorded equal status and opportunity once he or she meets up with the requirement in case of the economic objectives and policies.

Furthermore, section 17(2) (a) of the constitution provides that "every citizen shall have equality of rights, obligations and opportunities before the law" while section 17 (3) (a) and (e) deals with gender equality in terms of employment section 17 (3) (a) provides that "all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate to secure suitable employment; 17(3) (e) stipulates that: "there is equal pay to equal work without discrimination on account of sex or any other ground whatsoever". This particular section thus provide that every Nigerian citizen irrespective of his or her sex are equal before the law and that every citizen too will be treated equally when it come to employment and remuneration. Section 18 (1) of the Constitution provides for equal and adequate educational to all Nigerian citizen irrespective of his or her sex.

Furthermore, it will be of great importance at this juncture to state that many writers have written that the provision of chapter two of the 1999 constitution are not justifiable based on section 6(6) (c) of the constitution. However, some provision of the same constitution has converted the directive principles of state policies into justifiable rights. For instance section 4 (2) of the constitution provides that:

> The National Assembly shall have power to make laws for the peace, order and good governance of the federation or any part thereof with respect to any matter included in the Exclusive legislative list set out in part 1 of the second schedule to this constitution.

Also item 60(a) of the second schedule to the constitution provides that "the establishment and regulation of authorities for the federation or any part thereof (a) to promote and enforce the observance of the Fundamental Objective and Directive Principles contained this constitution". Reading the two constitutional provisions together make it clear or shed more

light on the enforceability or justifiability of chapter two of the 1999 Constitution. Additionally, the African Charter on Human and Peoples Rights,[168] which Nigeria has ratified and transformed to a municipal legislation makes the provisions of chapter two enforceable.[169]

This is because some rights stipulated in the charter such as the right to work under equitable and satisfactory conditions and equal pay for equal work[170], the right to enjoy the best attainable state of physical and mental health[171] and the right to education,[172] respectively has corresponding provisions in chapter II of the Nigeria Constitution 1999. Particularly, the directive that the state shall ensure that, conditions of work are just and humane and there are adequate facilities for leisure and for social, religious and cultural life,[173] that "there are adequate medical and health facilities for all persons; that there is equal pay for equal work without discrimination on account of sex or any other ground whatsoever,[174] and to eradicate illiteracy.

3.2.2 Fundamental Rights

Section 42 (1) of the 1999 Constitution of Federal Republic of Nigerian, provides as follow:

> A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall be reason only that he is such a person:-
> (a) Be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities,

[168] African Charter on Human and People Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004
[169] SERAP vs. Federal Republic of Nigeria and Universal Basic Education Commission case No. ECW/CCJ/APP/08
[170] Article 15 of the African Charter
[171] Ibid: Article 16
[172] Ibid: Article 17
[173] Section 17(3) (b) of the Nigerian Constitution 1999
[174] Ibid section 17 (3) (d) and (e)

ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

(b) Be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.

The above provisions indicate a clear intention by the constitution to abolish all form of discrimination in Nigeria, including sex discrimination. But this must not be taken for granted in the light of the qualifications to the provisions contained in section 42(3) of the constitution. That section provides that "nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces of the Federation or a member of the Nigeria police force or to an office in the service of a body corporate established directly by any law in office in Nigeria".

This qualification has had the effect of not only reinforcing and strengthening existing discriminations against women in several statutes but has also thrown up another form of discrimination concerning the actual state of origin of a married woman for the purpose of political appointment. Under the Police Act,[175] for instance, section 118(g) prohibits the enlistment of married woman into the Police Force and some other section of the Act did not encourage gender equality.[176] The rules in section 118 to 127 of the Police Act do not apply to male police officers. They are therefore, in contravention of Nigeria's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which provides that:

[175] Cap. P. 19, LFN, 2004

[176] Section 118, 121, 124, 125 and 127 of the Police Act

> State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women, the same rights in particular, (a) the right to work as an inalienable right of all human beings; (b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.[177]

Nigeria, having ratified CEDAW, has an international obligation to ensure full compliance of the Convention with its domestic legislations. More importantly, Nigeria is obliged under CEDAW,[178] to take appropriate measures, including legislation, to modified or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

In spite of the limitation clause in section 42 (3) of the Constitution, Nigeria courts have been forthcoming in their reliance on section 42(1) of the constitution to discredit and delegitimize customary practices which tend to discriminate against women, particularly in the area of inheritance right. Thus in *Ukeje vs. Ukeje*,[179] the Court of Appeal held, that an Igbo native law and custom disentitling a female child from sharing in her deceased father's estate is void as it is in conflict with the provisions of section 42 (2) of the 1999 constitution of the federal Republic of Nigeria. In *Uke vs. Iro,*[180] the Court of Appeal also reiterated that rights of all sexes are protected under the constitution and as such "any law or custom that seeks to relegate women to the status of second class citizens, thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the garbage and should be consigned to history".

[177] Article 11 of CEDAW
[178] Ibid: Article 2 (f)
[179] (2001) 27 WRN 14 CA 31
[180] (2001) 11 NWLR 196 pg. 202

A conclusion that can be drawn from the foregoing discussion of the Constitution and gender equality is that, while the Nigerian Constitution grants every person the right to freedom from discrimination, it nevertheless contains its own biases against women in the area of citizenships and in preservation of existing inequalities in Statutes under its limitation clauses. For example, section 42 (3) has the effect of legitimizing discrimination on ground of sex in certain establishment such as the Armed Forces.

3.3 **Violence against Persons (Prohibition) Act**[181]

The Act otherwise known as the VAPP Act was signed into law in 2015 and it contains provision which on the surface seems to promote gender equality and protect violence against persons generally. The question here is of what significance is the Act to this research? The Act has great importance to this research because it embraces equality between persons that both sex, old and young in the following areas such as domestic or private relationship, public and economically, it protects every citizen when it comes to the issue of crime. The Act defines violence thus: "violence means any act or attempted act, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life in peace time and in conflict situations."[182] The definition is all embracing as it captures every form of scenario imaginable which include violence against men, women, children, political violence et cetera.

[181] Signed into law on the 25th of May, 2015
[182] Section 46 of Violence Against Persons (Prohibition) Act, 2015

Furthermore, being a national law, its provisions extend overarching protection against violence though out the country. This is a significant development because of the previously patch nature of law against violence, particularly gender-based violence. For instance, only few states have specifically legislated against domestic violence in the past. The states include Lagos, Ebonyi and Jigawa to mention but a few while few other states also legislated against female genital mutilation that is Edo and Cross Rivers, a few others have developed legislation prohibiting traditional harmful widowhood practices for example Anambra, Cross Rivers while only Ekiti State has developed legislation prohibiting all gender-based violence. The violence Against Persons (Prohibition) Act "VAPP Act provides more comprehensive, national coverage against violence.

Importantly for the purpose of violence against women, the Act among other things prohibits female circumcision/female genital mutilation (FGM)[183] forceful ejection from home[184] and harmful widowhood practices.[185] It also prohibits abandonment of spouses, children and other dependents without sustenance,[186] battery[187] and other harmful traditional practices.[188] The Act has stated the punishment to be meted on any person who violates the law based on the circumstances and manners the offences are committed.

In addition to the stringent punishment of perpetrators of act of violence the VAPP Act has some welcome developments. For instance the VAPP Act provides compensation for victims

[183] Section 6 of the Violence Against Persons (Prohibition) Act, 2015
[184] Ibid section 9
[185] Ibid section 15
[186] Ibid section 16
[187] Ibid section 19
[188] Ibid section 20

and protection of their rights.[189] In addition to the fundamental human rights stipulated in the constitution victim of violence, have their rights protected under the Act. They are also entitled to compensation for harm done to them or to family members or for any loss incurred as a result of the violence by the perpetrators. The Act set up a regulatory or implementation commission which will ensure the full implementation of the VAPP Act.[190] Also, Act also makes provision for the establishment of a special trust fund for the victims. The fund is to provide all forms of needed assistance to victims of violence in terms of legal fees, shelter, rehabilitation et cetera. In spite of the numerous measures in the VAPP Act, to protect violence against persons and also women in particular, section 47 of the Act limited its application only to the Federal Capital Territory, Abuja which simply implies that unless only the Act is domesticated by other states of the federation before they can be enforceable and implemented.

To this end, the VAPP Act is an act that encourages and promotes gender equality in the sense that it treats all human beings irrespective of sex equally and still prohibits some traditional practices and customs that are against equality of human beings.

3.4 The Child Rights Act[191]

The Child Rights Act which shall be further referred to in this work as the CRA was passed into law in July, 2003 to further protect the right of the child and promote equality among the children that is the boy-child and the girl-child. The CRA defines a child in accordance with the United Nations Convention on the Rights of the Child, 1989 as "a person under the age of

[189] Ibid section 37
[190] Ibid section 44
[191] Cap C. 22, LFN 2004

eighteen years".[192] The CRA prohibits any forms of discrimination merely by reason of a child belonging to a particular community or ethnic group or by reason of a child's place of origin, sex, religion, political opinion or the circumstances of birth.[193]

Section 15 of the CRA makes educational rights compulsory for every child. This implies that both girl-child and boy-child have equal right to education irrespective of their sex and it thus promotes gender equality. The section went further to strength gender equality of the girl-child in respect of education where it provides that if: "a female child becomes pregnant, before completing her education she shall be given the opportunity after delivery, to continue with her education, on the basis of individual ability"[194] Sub-section 6 implies punishment on parents and guardians that fails to comply with the main section. From this particular section, the concept of gender equality is being promoted and encouraged.

The CRA went further to declare null and void any marriage with a child whether the child consented or not to the marriage.[195] Section 23 imposes a heavy fine of N500, 000 or imprisonment for a term of five years on conviction for a person who "(a) who marries a child, or (b) to whom a child is betrothed, or (c) who betroths a child".

The CRA being the law that promotes equality between a girl-child and boy-child is applicable only in the Federal Capital Territory when it was passed to law but some states

[192] Section 277 of the child rights Act, 2003
[193] Ibid Section 10 (1) and (2)
[194] Ibid Section 15 (5)
[195] Ibid section 21

eventually passed it into law and it became effective in these states while some state up till now has not domesticated CRA into law and thus its ineffectiveness in those states.

3.5 **Gender and Equal Opportunities Bill**

The Gender and Equal Opportunities Bill was re-introduced on the floor the Nigerian Senate by Sen. BiodunOlujimi on the 15th of June, 2016 after the first one failed. The Bill re-introduced on the 15th June, 2016 has been passed on the 29th September, 2016 for second reading by the Senate. The Bill seeks to give effect to certain provisions of the 1999 Constitution (as amended) such as chapter II and IV which deal with Fundamental Objectives and Directive Principles of State Policy and the Fundamental Human Rights.

It is important to state at this juncture, that the Bill at second reading on the 29th September, 2016 was opposed because some Senators observed that some of the Bill's provisions were contrary to some of Nigeria's traditional and religious practices. While some of the law makers were of the view that its provisions were inconsistent with some provisions of the Constitution and in fact superfluous as the Nigeria constitution already guarantees freedom against discrimination.

Section 1 of the Bill provides for the purpose of the Bill. The section reads

> The purpose of this Bill is to give effect to:
>
> (a) Chapters II and IV of the 1999 constitution of the Federal Republic of Nigeria;
> (b) The international Covenants on Human Rights which affirm the principle of non-discrimination and proclaims that all humans are born free and equal in dignity and rights, and that everyone is entitled to all the rights set out

without distinction of any kind including distinction based on sex;

(c) Certain provisions of the Convention on the Elimination of All Forms of Discrimination against Women, and the Protocol to the African Charter on the Rights of Women in Africa.

The Bill went further to prohibit Discrimination[196] and promote equality.[197] With particular reference to section 3 of the Bill it provides that:

> Every organ or agency of government, public and private institution or commercial or corporate body in Nigeria shall:
>
> a. take all appropriate measures, including regulatory policy, fiscal and administrative measures, to ensure the full development and advancement of all persons, especially young women and girl children, for the purpose of guaranteeing to them the exercise and enjoyments of human rights and fundamental freedoms on a basis of non-discrimination and equality of all persons;
> b. accord to women, children and other persons equality before the law including;
> i. give guaranteeing women equal rights to conclude contracts and administer properly
> ii. treating women equally with men in all stages of proceedings in courts and tribunals;
> iii. ensuring that no rule, regulation, agreement, protocol, contract or other public or private instrument of any kind with a legal effect restricts, limits or in any way discriminates against any person in terms of legal capacity.
> iv. ensuring that no practices of any law enforcement agency or body restrict or limit the legal capacity of women to undertake surety or recognizance on behalf of any person;
> v. desisting from denying or limiting any privilege, respect, advantage or benefit due or accruable to any woman only on the basis.

Adoption of temporary special measures to eliminate discrimination is address by a section in the Bill[198] Section 5 address the issue of modification of socio-cultural practices. The Bill

[196] Section 2 of the Gender and Equal Opportunities Bill, 2016
[197] Ibid section 3
[198] Ibid Section 4

went further to address elimination of discrimination in political and public life,[199] education,[200] employment,[201] journals of marital status[202], health[203] and socio-economic grounds.[204]

The National Human Rights Commission is vested with the powers to enforce and implement the provisions of the Bill.[205]

The Bill if eventually passed into law, will also give effect to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on the Right of Women in African amongst others.

3.6 National Gender Policy

In 2006, the Federal Government of Nigeria adopted the National Gender Policy, which was subsequently published by the Federal Ministry of Women Affairs and Social Development as a framework for promoting and protecting women's rights in Nigeria.[206] The adoption of the Gender Policy is of national importance and major development in the struggle for women's rights and equality. This National Gender Policy replaces the National Women's Policy.[207]The National Gender Policy is discussed in details in this section as it shows the way forward for achieving the Millennium Development Goal 3 on gender equality and women's empowerment. The National gender Policy is on three-fold comprising the policy

[199] Ibid section 6
[200] Ibid section 7
[201] Ibid section 8
[202] Ibid section 9
[203] Ibid section 10
[204] Ibid section 11
[205] Ibid section 15
[206] Federal Ministry of Women Affairs and Social Development, National Gender Policy (2007) Abuja.
[207] The National Women Policy was adopted in 2001

context and Rationale; policy framework as well as policy strategies and institutional framework.

a. Policy Context and Rationale

The policy began by noting that "Nigeria is a highly patriarchal society, where men dominate all spheres of women's lives[208]. The result is that social relations and activities of Nigerian men and women are regulated by patriarchal systems of socialization and cultural practices which elevate and support the interest of men above those of women. The ensuing inequality manifests itself in every aspects of Nigeria's national life whether the issue of constitutional rights, means of livelihood, gender roles and division of labour, economy, health and HIV/AIDS, legal and human rights, agricultural, gender-based violence, justice and law enforcement etcatera.

On constitutional rights, the policy notes that in spite of the provisions of the Nigerian Constitution 1999 on the rights to freedom from discrimination on ground of sex, the fact is that the cultural factors which underpin the discrimination or inequalities remain firmly in place and unshaken by cosmetic changes on the superstructure. On gender justice, the policy opines that women lack equal access to justice and are worst hit during civil disturbances because of their vulnerability. In the area of agriculture, the policy comments that in spite of the dominance of women in agricultural activities; they have access to less than 20% of agricultural resources due to pervasive public policies that tend to be little their contribution. Women also suffer gender-based violence, wife battering, rape, genital mutilation and trafficking for sexual exploitation, all of which is a reflection of unequal power relationship

[208] Ibid pg 3

between men and women. On the means of livelihood, the policy holds that men dominate the high income earning activities to the extent that about 76% of civil servants are men while 24% are women and women holds less than 14% of total management level positions.[209] On gender roles and division of labour, the policy identifies role ascription as the underlying factor for women inability to pursue their career aspirations. In effect, gender-based norms ascribe to women the responsibility for household or domestic chores such as child rearing, cooking, cleaning and so on. On the economy, the huge inequality in income earning activities engaged in by men and women finally results in the feminization of poverty. Even in the field of information technology women are finding it difficult to bridge the digital divide because of their low income capacity and lack of access amongst other. It is in this context of these glaring disadvantages suffered by women that the policy makers are challenged to come up with a policy framework to empower women and help the country to overcome poverty and uneven development which combine to undermine its fledgling democracy.

b. Policy Framework

The framework of the gender policy comprises the goal, objectives and targets.[210]The main goal of the policy is to achieve a just and egalitarian society devoid of all forms of discrimination and in which every individual and social group has equal opportunities to attain his or her or its full potentials and where humans, social, financial and technological resources are efficiently and effectively deployed for sustainable development. The objectives of the policy are several. They include ensuring that Nigerian laws, legislative

[209] Ibid p. 4
[210] Ibid pp-16-21

processes, judicial and administration system are compatible with the principle of gender equality and women empowerment encapsulated in regional and global Conventions. Such Conventions include the Protocol to the African Charter on Human and People Rights and CEDAW. The policy also creates a framework of gender sensitivity in both public and private sector; adopt gender main streaming methods appropriate for the macro-policy framework of the country at any given point in time. The policy objectives are also to attain a minimum level of representation for women in the political, social and economic life of the country in order to promote equal opportunities, embark on shared responsibilities projects as a means of developing the capabilities of both men and women to utilize economic and political opportunities aimed at achieving gender equality and women's empowerment; and embark on education and sensitization of stakeholders on the importance of gender equality and women empowerment to national development.

Ambitions targets were set within the policy framework. Prominent among target are; the removal of all gender-based barriers including land tenure and low access to credit and outputs which affects women in agriculture. Also, elimination of all harmful cultural, religious and social gender-based practices which reproduce gender inequality by the year 2020; the achievement of equity and equality in employment opportunities and eliminate all discriminatory and abusive practices against the employment of women in the public and private sectors of the economy. The policy targets adoption of measures, quotas and mechanisms critical for increase of the number of women in political offices, party organs and public life by pursuing 35% affirmative action in favour of women to bridge gender gaps in political representation. On maternal mortality, the policy target is reduction of maternal

mortality rates by at least 35% and reduction of the gender burden of communicable diseases by improving reproductive health care services.

Although, the policy listed some strategies for achieving the goals; it remains to be seen how, given the lived realities of women in Nigeria, that the policy targets would be achieved of course with political, economy will and accountability by government to gender equality and women's empowerment much would be achieved to change women's statuses for better in Nigeria.

c. Policy Strategies and Institutional Framework

The strategies enlisted by the policy include policy partnership and programme reforms, information, communication and value re-orientations, capacity building and skills development, legislation and human rights protection, economy reforms and financial accountability, research, data and evidence based planning; as well as monitoring and evaluation respectively.[211]

Policy partnership and programme reforms include redefining partnership arrangements and re-designing service delivery and other programmes for the government and its partners. It is also involves restricting the Ministry of Women Affairs and Social Development and the establishment of a Gender Equality Opportunities Commission and repositioning of the National Centre for Women Development.

[211] Ibid pp. 23-24

Legislation and human rights protection entails the review of laws and legislation strengthening of legal institutions, body of jurisprudence, structure and procedures as a means of mainstreaming and sustaining the principles of gender equality.

3.7 Nigeria's Obligation to Women's Rights Law Based on Customary International Human Rights Law (CIHRL) and Law of Treaty

Nigeria obligation to ensure, protect and respect human rights in general and women's rights in particular, originates from Customary International Human Rights Law (CIHRL) based on the theory of "Dualism". The theory stipulates the fact that, the rules of system of international law and national or municipal law exists side by side, and neither can overrule or affect the other.[212] However, when it comes to international human rights law, any national law that is not in line with Customary International Human Rights Law (CIHRL) is automatically overruled by the later, and the former cannot be used as excuse for non-compliance by states concerned.

Moreover, the law of treaties also stresses that a treaty is binding on member states once they give consent to it by signature, and or ratification, which is very important except the rules of the treaty is that of customary law, in which case it is self executing and automatically incorporated.[213]

In fact, in the case of *Abacha vs. Fawehinmi,*[214] it was ruled that in the case of human rights, the Decree by Military Government in Nigeria cannot override the African Charter when it

[212] Shaw, M. N (2003) "International Law Fifth Edition Cambridge: Cambridge University Press p. 122
[213] Ibid. p. 187
[214] (2002) 4 SCNJ p. 400

comes to human rights matters, hence court has jurisdiction to hear the case.[215] This according to Egede is out of desire to protect Nigerians from human rights abuse by the then Military Junta, and also to guarantee that the country abide by its international obligation to international human right law[216] based on dualism, and dualist effect of the section 12 (1) of the Nigerian constitution.

Sequel to the above, and since it is generally accepted that women's rights are human rights, and international human rights belongs to the group of customary international law, implementation of CEDAW therefore essentially becomes obligatory for ratifying member states irrespective of their constitutional or legal provisions on international treaties. Moreover, according to Shaw; it is a general rule in the international system that "it is no defense to a breach of an international obligation to argue that the state acted in such a manner because it was following the dictates of its own municipal law."[217] Hence, failure to enact into law by the legislature is not an excuse for non-implementation of an international treaty such as CEDAW to which Nigeria is a party.

In addition, according to the Judge in the Lockerbie's case, it is important to note that a constraint to act posed by national law was no defense to non-compliance with an international obligation.[218] Shaw further emphasized that lack of a particular provision neither its presence even in the Constitution of a state or its legal system is not an excuse to disregard an international obligation.[219] Therefore, as a matter of fact, states are obligated

[215]Egede, E (2007) "Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria." Journal of African Law, Vol. 51, No. 2
[216] Ibid p. 253
[217] Shaw, M. N (2003) "International Law Fifth Edition Cambridge: Cambridge University Press" p. 124
[218] Ibid. p. 126
[219] Ibid p. 127

generally to conform with the rules of international law, failure of which they will bear full consequences, whether it is the executive, legislative or the judiciary that breach the obligation.[220]

To this end, Nigeria as member of the UN, AU, and ECOWAS among others, it is also a party to many international conventions and treaties especially on human rights, it therefore as a matter of obligation to the law of treaties owes responsibility to uphold and comply with these laws by implementing CEDAW.

Moreover, Nigeria naturally acceded to the UN's Universal Declaration on Human Rights 1948 after gaining independent; also Nigeria ratified the International Covenant on Economic and Social Rights 1966 and the International Covenants on Civil and Political Rights. The African Charter on Human and People's Rights 1981. The Nigerian government also signs and ratifies the Protocol to the African Charter on the Rights of African Women in 2003 and 2004 respectively.[221]

Nigeria therefore, by ratification owes the duty and responsibility in line with the law of treaties to adopt measures and legislature at the domestic level to enable fulfill its obligations to all the above and other international treaties and conventions.[222] Regrettable however, the 2012 reports by the Amnesty International reveals that Nigeria is still among those states where the rights of women is not adequately protected and violence against women is still going on with impunity in the society.

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[220] Ibid p. 128

[221] Williams, S (2004) "Nigeria, Its Women and International Law: Beyond Rhetoric" Human Rights Review, Vol. 4, No. 2 p. 229

[222] http://www.ochr.org/EN/professionalinterest/internationallaw.aspxaccessed on 8:15pm 22 August, 2017

Therefore, the extent to which CEDAW and other women's rights laws is beneficiary to individual women in any country including Nigeria will depend on upon the will of the state to implement it rules within the domestic legal system.[223]

Conclusion

The discussion in this chapter has shown that there is limited protection of women's rights and gender equality under Nigeria legal system. There are very little legislation with county wide application that are relevant to gender equality and much fewer states of the federation have enacted state legislations that are of significance to women. The 1999 Constitution only states and narrated gender equality were on paper but such as not being put in practice, specific attention and mention must be made therefore of women even if to re-state the important fact that women too like men should enjoy their human rights as constitutionally recognized without any distinct which thus promote gender equality.

[223] http://www.amnesty.org/en/region/nigeria/report-2012.section 15-11

CHAPTER FOUR

GENDER EQUALITY IN INTERNATIONAL LAW: A CASE STUDY OF DOMESTIC IMPLEMENTATION IN NIGERIA

4.1 Introduction

In this chapter, we discussed the effects of international human rights law at domestic level, the consequences of being a party to an international treaty and how such treaty influences the national legal systems and administration. The different methods for domestic implementation of international law and obligations to wit: the transformation and incorporation theories will be considered. Particular attention shall be focus on two specific international and regional treaties that are of special relevance to women in Nigeria namely: The CEDAW and the Maputo Protocol on the Rights of Women in Africa, both of which Nigeria has ratified and therefore expected under international law to implement as a State party. Since international human rights treaties are largely intended for internal application, it would be pertinent to consider the domestic effects of such treaties at municipal level and the extent subject of those rights enjoy or are able to enforce and claim rights therein. The efficacy of human rights treaties will depend to a large extent on application of its provisions in national legal system.

4.2 International Human Rights Implementation Mechanism

The status of individuals in international law has been changed by the international human rights law, which concerns itself with protection of the rights of individuals rather than States. Since, human rights treaties regulate not inter-state relations, but rather relations of State and their own citizens; an individual is no longer “object” but rather a “subject” of

international law. This shift in paradigm gave rise to a total new approach of applying international law at municipal level between individual against the State or in a horizontal manner between two private citizens. Implementation is a major problem in making the system of international protection of human rights effective at national level, hence the skepticism, about international law's dependence on the will of nation states. To be clear, a treaty becomes binding on States upon ratification and deposit of instruments thereof. However, application at municipal level may depend on the Constitutional system of a particular State. Each State is left free by international law to make its own Constitutional arrangement for the exercise of its treaty making power.[224] As has been stated, international law determines the validity of treaties in the international legal system which determines the status or force of law which will be given to a treaty with that legal system.[225] The opinion that "international supervisory procedures and national measures with the aim of giving effect to human rights standards" [226] is popular among lawyers, jurists, scholars and commenter's.

It is pertinent to state that various human rights treaties contain implementation procedures for realizing rights guaranteed and for monitoring and evaluating performance by states bound by the treaty. It is important to reiterate that parties that do not sign and ratify a particular treaty in question are not bound by its terms. However, customary rules, which are basically states practices recognized by the community at large as laying down patterns of conduct that have to be compiled with, do not require any formal ratification.[227]

[224]Harris D.J (2004) Cases and Materials on International Law, 6th edn. Thomson, Sweet and Maxwell, London
[225] The Treaties Making Procedure Act, 1993 No. 16 Cap. T 20 LFN, 2004
[226]Boven V. T. (1991) "The International System of Human Rights: An Overview," in a Manual on Human Rights Reporting, New York p. 4
[227] Shaw M. N. (1991) International Law 3rd edn. Cambridge University Press, Cambridge p. 6

In respect to implementation of international human rights law, we do have treaty and non-treaty based approaches. At the level of United Nations, most treaties require state parties to make initial and periodic reports through the Secretary General of the UN on the measures they have adopted which give effect to the rights recognized in those human rights treaties. The International Covenant on civil and Political Rights, the covenant on Economic, Social and Cultural Rights, the Convention on Torture, the Convention on Elimination of All forms of Discrimination against Women; and the Convention on the Rights of the Child amongst others contain procedures for such reporting.

At the regional level within the AU framework, the African Charter established the Commission on Human and Peoples Rights that is charged with implementation of the Charter.[228] The Commission considers reports from states parties in pursuance to article 62 and it is also mandated to receive communication from states,[229] individuals and NGOs[230] alleging violations of the Charter's provision. The recommendations and activities of the commission are forwarded on an annual basis to the Heads of States of the African Union that ultimately decides what measures to use to enforce the commission's decisions or recommendations in cases involving violations of the Charter's standards.[231]

Also, an African court on Human and Peoples Rights has been established to deal with questions of interpretation of the Charter, give advisory opinion to state parties on request as

[228] Article 30 and 45 of the African Charter
[229] Ibid Article 47
[230] Ibid Article 55 and 56
[231] Under Article 46 of the Charter, the Commission has the power to use any appropriate methods of investigation into allegations of human rights abuses.

well as adjudicate cases concerning state parties for alleged violations of charter's provision.[232] The African Court and Commission established under the Africa Union are institutions concerned with ensuring the protecting human right and promoting gender equality both under the charter and the Maputo Protocol on the Rights of Women in Africa.[233]

Human Rights treaty monitoring bodies are established as part of institutional arrangement for the implementation of international human rights. These takes the forms of committees comprising of a certain number on independent experts from ratifying state parties to perform supervisory roles and examine state reports and recommendations to the General Assembly through the Secretary General, ECOSOC or the Human Rights Council.[234] The reporting system serves as a forum for conducting a comprehensive review of the measures taken to harmonize national law and international law.Reservation has been made about the usefulness of this procedure, which is often seen as self-serving, abstract, legalistic and insubstantial.[235]But, as has been observed:

> It is an opportunity to reaffirm a government's commitment to respect the human rights of its own citizens and to reassert that commitment in the domestic political forum. It is an opportunity for domestic stock-taking and for the adoption of measures to remedy and short comings which have been identified. And it is an opportunity to proclaim to the

[232] See the protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Right, 1998. This Protocol came into force in 2004 and the Court has been inaugurated since 2006.

[233] Article 2 of the Protocol that established the court dealt with the relationship between the court and the commission

[234] These include: The Human Rights Committee on Economic, Social and Cultural Rights, the committee on the Elimination of AU Forms of Discrimination Against Women, The Committee on the Rights of the Child and Committee on the Convention Against Torture.

[235]MacGoldrick, D. (1994) The Human Rights Committee, Co. Clarendon, Oxford, p. 79.

> international community that the government concerned is serious about its international commitment.[236]

Another treaty-based procedure for enforcing international human rights law is laid down in individual position mechanism. The four bodies competent to receive and consider in a quasi-judicial manner communication, from individuals who claims to be victims of human rights violations are: the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)[237]. The Woman Rights Committee is the most developed and experienced in dealing with individual communication. It is pertinent to observe that the system of individual position is optional, mere ratification of the treaties alone does not empower the four bodies to scrutinize petitions from individuals alleging violations by a state party. According to the Optional Protocol to CEDAW, no communication shall be receives by the Committee of it concerns a state party to the Convention that is not a party to the protocol[238]. The committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief[239]. The Optional protocol to the Covenant on Civil and Political Rights allows individuals to petition the Human righsts Committee alleging violations. However,

[236] Alston, P. (1991) "The Purpose of Reporting" in Manual on Human Rights Reporting New York P. 13-14
[237] The CEDAW Committee Receives and Considers Communications by Virtue of the Optional Protocol to the Convention on the Elimination of Discrimination Against Women. See articles 1 and 2. This Optional Protocol to CEDAW was Adopted 6 October 1999 and it came into force December 22nd 2000. Nigeria ratified on the 222nd November 2004
[238] Article 3 of the CEDAW Optional
[239] Ibid: Article 4

just like in the case of CEDAW-op, before a communication is admitted certain requirements must be fulfilled; most importantly the individual must have exhausted local remedies[240]

The individual petition or communication mechanism guarantees real enforcement of individual rights at the individual level. Despite the fact that its decisions are not binding, it has great influences on the municipal legal system.[241] However, it must be acknowledged that the most effective way to implement human rights is through action within the municipal legal system. Thus, most human rights treaties request that parties incorporate relevant obligations into their domestic law and provide appropriate and effective legal remedies. This is regarded as obligation of "means" or obligations to "transform" the treaty's provisions into domestic law. Such obligations to "transform" is contained in article 24 of CEDAW, which stipulates that "State parties undertake to adopt all necessary measured at the national level aimed at achieving the full realization of the rights recognized in the present Convention".

Similarly, Article 26 of the African Charter Protocol on the Rights of Women in Africa provides that "State Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter indicate the legislative and other measures undertaken for the full realization of the rights herein recognized.[242]

The UDHR places an obligation on state parties to provide domestic remedies to ensure that everyone has the right to an effective remedy by the competent national tribunals for acts

[240] Ibid: Article 5
[241] Ezeilo J (1994-1997) "Influence of International Human Rights on African Municipal Legal System". Nigeria, Enugu. Pp50-87 Article 8 of UDHR
[242] Article 25 of African protocol

violating the fundamental rights granted to him/her by the Constitution or by law.[243] Under article 2(3) of the CCPR, states parties undertake to provide a right to effective remedy. Article 25 of the Maputo Protocol on the Rights of Women obliged state parties to (a) provide for appropriate remedies to any woman whose rights or freedom, as herein recognized have been violated; (b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by law. This is regarded as "obligation of result" in other words, obligations "respect and ensure" the treaty provisions in practice. This is the rationale for the requirement that domestic remedies be exhausted before international procedures are initiated to investigate alleged complaints of human rights violations. International human rights can also be enforced at the interstate level where a state party claims that another state party is not fulfilling its obligations. However, state party against whom such a complaint is made, must accepted to be bound by such interstate procedure.

Other non-treaty-based enforcement mechanisms at international level can be brought through a variety of ways. The General Assembly has power under Article 13 of the UN charter to initiate studies and make recommendations regarding, inter alia, human rights. The most important procedures which have been established within the UN is the former Commission on Human Rights and its Sub commission on prevention of Discrimination and Protections of Discrimination and Protection of Minorities, which has now transformed to the Human Rights Council in the new UN architecture following changes in 2006. The procedures are quite complex but mention must be made of procedure for specific situations which derived competence from ECOSOC in 1970-the special procedure mechanism is being

[243] Article 8 of UDHR

used for undertaken country visits, reporting to the Human Rights Council and the General Assembly on the situation of human right with regard to that government particular mandate as well as receiving allegation letters against government and investigating and communicating with the government in respect thereof.

In conclusion, it is important to state the role NGOs play in implementation of international law because some human rights treaty bodies accept alternatives reports from NGOs. Further, NGOs can initiate procedures in response to human rights violations in particular countries.

4.3 **Legal Framework for Treaty Transformation in Nigeria**

We have discussed that implementation of human rights laws at domestic level invariably depends on the national Constitution. Thus, at state or national level, we talk about the relationship between international law and municipal law in several different ways. It could be a dualistic system in which case international law and municipal law are seen as two distinct systems of law without a hierarchy and thus domestic law may be applied contrary to the rules of international law.[244]

The theory of "incorporation" posits that a treaty can become part of domestic law by incorporation, according to Virginia Leary; the status of treaties in national law is determined by two different Constitutional techniques – "legislative incorporation" and "automatic incorporation". This is similarly expressed by the positivist – dualist as the doctrine of transformation. According to this theory, before any rules or principle of international law can have any effect within the domestic jurisdiction, it must be expressly and specifically

[244]Trendex Trading Co. Ltd vs Central Bank of Nigeria (1977) QBp529

'transformed' into municipal law by the use of the appropriate Constitutional machinery, such as an Act of Parliament. The doctrine of "Transformation" can be classified into: "automatic transformation" and "legislative incorporation". Automatic transformation does not have recourse to any Constitutional procedure. It is automatically "transformed" or "incorporated" into municipal law; unlike legislative incorporation that would require an act of parliament by way of enacting a legislation that will domesticate the international treaty to become applicable.

In the United Kingdom, as in most subs Saharan African states that adhere to the common law system, an international instrument requires specific legislation in order for it to become effective domestically. In other words, a treaty is not part of English law unless it has been incorporated into the law by legislation[245]. Thus, ratification of treaty has no formal effect on the internal order, although the state is bound by it internationally.[246] Furthermore, the Treaties Making Act[247] in it section 3 (1) classified treaties into three types namely:

a. Law making treaties, being agreements constituting rules which govern interstate relationship and co-operation in any area of Endeavour and which affects the legislative powers of the National Assembly;
b. Agreements which impose financial, political and social obligation on Nigeria or which are of scientific or technology import;
c. Agreements which deal with mutual exchange of cultural and educational facilities

[245] Treaties relating to war or forming part of customary international law do not need an intervening Act of legislation before they can be made binding upon the citizens of the country

[246]Article 26 of the Vienna Convention on the law of Treaties provides that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"

[247] 1993 No. 16 Cap. T20 LFN, 2004

According to section 3(2) (i) (a), of the Treaties Making Procedure Act, the treaties or agreements specified in paragraph (a) of subsection (1) of this section need to be enacted into law.[248]

From the above stated, a treaty becomes enforceable at the domestic level once incorporated into legislation[249]. In the case of *Abacha and others vs. Fawehimi*, a landmark case with regard to enforcement of treaties by domestic courts, the Supreme Court of Nigeria was called upon to interpret the status of the African Charter on Human and People's Rights, a treaty incorporated into the national law by status vis-à-vis the country municipal laws including the Constitution.[250] That case determines the judicial status of a treaty in municipal law that has been incorporated into a domestic or municipal law.

Unlike legislative incorporation, the theory of "Automatic incorporation" or "transformation" does not require further legislative implementation. Statesin which this theory is applicable, treaty provisions are considered as self-executing. An example of "automatic transformation" or incorporation" that is self-executing can be found in the United States Constitution. Article VI section 2 which provides that: "…. All treaties made with the authority of the US shall be the supreme law of the land and the judges shall be bound thereby, anything in the Constitution or laws of any states to the contrary notwithstanding".[251]

[248] Ibid International Human Rights Treaties falls under that category.

[249] Higgs V. Minister of National Security (2000) 2 LRC 656,

[250] The Charter was incorporated into municipal law in Nigeria by virtue of the African charter on human and Peoples' Right (Ratification and Enforcement) ant 1983.(cap A9 laws of Federation of Nigeria, 2004.

[251] It is only self-executing treaties that operate automatically

Having dealt with the "incorporation theories" the next important issue to consider before we conclude this discussion is the attitude of courts or state administrators towards human rights treaties which may have been ratified but not yet incorporated into the municipal law. Can such a treaty be invoked in the domestic courts by an individual whose rights have been violated?[252]

In Nigeria, the decided case of *Abacha and other VS. Fawehinmi*[253] supported or answered the questions above where the learned justice of the Supreme Court held that "Authorities abound today wherein a municipal or domestic court is at liberty to apply and enforce a treaty." He cited numerous judicial examples from Nigeria and other common wealth countries and he concluded that:

> From the above plethora of judicial authorities, its crystal clear today that treaties may create rights and obligations not only between member states themselves, but also between citizens and the member states, and between ordinary citizens themselves. It is therefore clear that the over-implication of the word treaty in terms of ordinary contract as the terms is understood in municipal law and as submitted by the learned counsel for the appellants, is very restrictive and unacceptable. Furthermore, counsel submissions that a treaty does not bind individuals not being parties to the treaty nor is a treaty subject of municipal law that can be challenged in municipal court is unsupportable.

In short, the law as to the effect on domestic law of international human rights treaties or Conventions and instruments declaring them is undergoing a constant evolution, and the tendency is towards domestic application, with or without incorporation, the African Charter's provision in articles 60 and 61 on applicable principles allowing for inspiration to be drawn in interpreting the charter's provision from other international instruments of the UN and its specialized agencies to which parties to the Charter are member: it also gives

[252]Ibidayo VS. Lufthansa Airways (1997) 4 NWLR (pt.498)

[253] (2002) 3 LRC P. 296

consideration of legal precedents and doctrine from international Conventions and norms that will aid dynamic construction of the charter not just by the commission and the new African Charter's Court but also at domestic level particularly where the charter's standards have been incorporated and /or transformed to a national legislation like Nigeria.

4.4 Assessment of Domestic Implementation of CEDAW and the Protocol

This part of the study seeks to assess and analyze the extent to which the Nigerian government has confirmed to its obligations to implement CEDAW and the protocol on the Rights of Women in African. Both documents have been ratified and therefore Nigeria is under obligation to promote, protect, respect, enforce and fulfill its provision so that women in Nigeria, beneficiaries of those rights would enjoy the full realization of those rights. The pertinent questions to ask remains to what extent are the provisions of the CEDAW and the protocol incorporated or reflected in the domestic laws or legal system of Nigeria?

Is Nigeria accountable to its female citizens, the ultimate beneficiaries of these rights adumbrated in both treaties? In appraising the implementation of both treaties, the following issues were raised and considered in general and in no particular order. How far is Nigeria from realizing the goal of CEDAW and the protocol? Have these women's rights instruments succeeded in making women's de jure equality a reality. If not, why and finally, what are the possibilities of achieving these laudable objectives of CEDAW and the protocol in Nigeria? It is worthy of mentioning that the implementation of CEDAW is monitored by the Committee on the Elimination of Discrimination Against Women (CEDAW). The committee

mandate and the administration of the treaty are defined in the articles 17 to 30 of the Convention.

The two instruments, that is the women's Convention and its protocol are singled out for an in-depth analysis because both are legally binding on Nigeria as a state party. The two instruments are the most specific international instruments on women's human rights, they are founded on five major principles that underline the formulation of specific women's human rights standard[254]and finally both effectively cover when together Convention of Elimination of all Forms Discrimination against Women read. Furthermore, Nigeria has been relatively consistent in sending its reports as required under Article 18 of CEDAW and has been engaging in the CEDAW committee meetings and programs. The important concern of ours at this juncture, is to find out what in reality is the situation of Nigeria women-a-vis CEDAW and the protocol and for us to achieve this, work considers the following aspects or areas vis-a-vis the economic right, legal right, political right, social and cultural right, health and reproductive Rights to mention but a few, finally, an examination of how CEDAW committee has engaged with Nigeria government with respect to its treaty obligations under that Convention.

This work examine the relevant provisions of these two treaties concerning each thematic discussion and there from consider laws, policies and programmatic action of the government towards implementation, evaluate the legal status of women, identifying gaps and proffering solutions where necessary, the instruments shall be discussed conjunctively rather than

[254] These principles are (i) the principles of dignity (ii) the principles of universality (iii) the principles equality and non-discrimination (iv) the principle of indivisibility and inter connectivity of right and (v) the principle of state responsibility

separately, for convenience purposes and to avoid repetition because CEDAW has been more in use and the Committee on CEDAW has done more work. The CEDAW has also been in existence for nearly four decades unlike the protocol that came into force just recently in 2005, barely twelve years in force. Notwithstanding its few years in force, the real potential of the Maputo protocol cannot be underestimated given the wide array of rights it recognized, which go even beyond the CEDAW standards,[255] and invariably of higher threshold. Again, the coming into existence of the African Court for Human and Peoples' Rights which it is hoped to further strengthen the application and interpretation of the protocol.

4.4.1 **Legal Rights**

We would like to observe from the outside that the use of this subheading is merely for convenience and does not presuppose that economic, socio-cultural and political rights are not legal rights for avoidance of doubt all the provisions of CEDAW and the protocol create legally binding rights and impose an obligation on state parties to ensure the protection of women's rights recognized therein. This section of the discussion will endeavour to assess implementation of the treaty standards, the Nigeria seventh and eighth periodic reports of Nigeria submitted to the Committee on CEDAW as they related to the provisions addressing legal capacity and status of women, non-discrimination on ground of sex, equality before the law access to justice, elimination of all forms of discrimination in law and in practice.

[255] It must be noted that what CEDAW lacks in terms of standard it has made up over the years through the Committee work especially the general Recommendations that General Recommendations that tends to explain the Convention Standards and obligations positive steps expected from state parties to implement that

Both the women's Convention and its protocol reiterate the principles of equality and non-discrimination and re-affirms faith in the dignity and worth of human person and in the equal rights of women and men, the two treaties define discrimination as follow:

> For the purpose of the present Convention --- the term "Discrimination Against Women shall mean any distinction, exclusion made on the basis of sex which has the effect of purposes of imposing 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 freedom in the political, economic, social, cultural, civil or any other field.[256]

The removal of discriminatory laws and obstacles to equality and calls for equal rights for women in all field are laid down in Article 1 and 3 of CEDAW. Article 2 essentially restates the agreement of the state parties to condemn discrimination by enacting national legislation where this has not been done, prohibit all forms of discrimination against women. The same Article 2 went further to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation and more importantly to take appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women.

In taking positive action to end discrimination states parties are encourage to adopt temporary special measures aimed at accelerating de facto equality between man and women.[257]Article 9 and 6 of the CEDAW and the protocol respectively recognize a women's right to nationality, empowering her to either retain her nationality or to acquire the nationality of her husband. Equal protection is also guaranteed to women in marriage

[256] Article 1 of CEDAW and article 1 (f) of the protocol
[257] Article 4 of CEDAW

including during separation, divorce and annulment of marriage.[258]Article 8 of the protocol and 15 of the CEDAW provide access to justice (Judicial and Legal Services) and equal protection before the law.

The next level at the juncture, having stated what amount to legal right as articulated in the two Conventions would be to assess the legal rights of women under the Nigerian law.

As far as Nigeria is concerned, the Constitution of the Federal Republic of Nigeria 1999 is the grand norm. The preamble of the Constitution states the resolution of the people of Nigeria to provide a Constitution for the purpose of promoting good government and welfare of all the persons in society on the principles of Freedom, Equality and Justice. The Constitution enacts its supremacy in section 1 (1) (3) and chapter IV contains fundamental human rights.

Section 42 deals with the right to freedom from discrimination. It protects a citizen of Nigeria, irrespective of the community, ethnic group, place of origin, sex, religion or political opinion from discrimination on the grounds that he or she is such a person. Section 42(1) provides for equality before the law irrespective of sex. Another relevant provision is Section 17 which states that "every citizen shall have equality of rights, obligations and opportunities before the law".[259] The poser to be addressed is whether the Constitutionality guaranteed

[258] Section 17(2) of the 1999 Constitution of Federal Republic of Nigeria

[259] Provision in section 42(3) actually departs from the intendment of prohibition of discrimination as discrimination can be maintained and in fact is maintained in practice in the employment of women in the armed forces and police

equality entrenched in Section 42 is adequate or is it merely a case of de jure equality and de facto inequality?

Furthermore, Section 42 is not adequate as inherent discrimination exists even within the Constitution itself.[260] It tends to preserve equal status only in relation to laws and as far practices, customs or other actions of the government. Despite this de jure equality provided in the Constitution, de facto discrimination has a proviso under section 42(3) to the effect that nothing in subsection (1) of the Section.

Also, under chapter III of the Constitution dealing with citizenship, the question of right to residency by registration is again discriminatory against women. Women are worse hit with regard to citizenship questions particularly women married outside their states of origin. They are neither accepted in their state of origin nor in the state of their husband. Whereas the Constitution claims to guarantee a citizen's right to freedom from discrimination in Section 42, some of its provisions are clearly discriminatory. Women, whether married or not, do not have equal rights with men to acquire, change or retain their nationality. Section 26 (2) (a) grants citizenship by registration to any woman married to a citizen of Nigeria but no such by registration privilege extended to any man married to a citizen of Nigeria.[261] In addition, Section 29 (4) (b) dealing with renunciation of citizenship recognizes any woman who is married to be of full age. There is no similar provision regarding a man. This latter provision encourages child marriages. Again, what is the purpose of lowering the age for an issue as serious as denunciation of citizenship?

[260] As such does not discharge the duty/obligations imposed by CEDAW as required under Article 2 (b)-(g) and article 3 of the protocol

[261] Section 26 (2) (a): "any woman who is or has been married to a citizen of Nigeria" and there is no equivalent for a Nigerian woman married to a foreign spouse

There is also the phenomenon of "Indigene ship or indignity" that works to deny women rights and equal opportunities in both their state of origin and assumed husband state. In worst case scenario, it renders woman stateless as they are rarely considered for political position unless they are married and also come from the same state as their husband. The discrimination in the Constitution are not only contrary to the nation of equality entrenched in Section 42 but in clear breach of some provision of CEDAW and the protocol as enumerated above. The adopted National Gender Policy of 2006 in respect to the Constitutional right of women acknowledges that:

> Despite a general commitment to the principle of non-discrimination as enshrined Section 42 of the 1999 Constitution of the Federal Republic of Nigeria, Nigeria falls short of the desired result of giving males and females equal opportunities to advance ---- Evidence about that several negative aspects of gender relatives---- and gender biases in rights and entitlements, remain pervasive in Nigeria.[262]

Furthermore, a cursory look at the criminal laws in Nigeria that is the criminal/penal or evidential rules shows that similar discrimination in law against women still exists. For instance, under the Criminal Code, an offence of indecent assault on males is a felony punishable with three years imprisonment while a similar offence of indecent assault on females under sixteen years of age is made a misdemeanor for which the punishment is a statutory maximum of two years imprisonment.[263]Also, the Panel Code in section 55 permits wife beating as long as it does not amount to the infliction of grievous hurt.

[262] National Gender Policy, Federal Ministry of Women Affairs and Social Development, Federal Republic of Nigeria, 2007 p.3
[263] Section 222 of Criminal Code Act, Cap c28 Laws of Federation of Nigeria(LFN), 2004

Other discrimination in administrative bureaucracies include the insistence of the department of immigration that a married women must obtain the consent of her husband in writing before she can be entitled to apply for passport which is clearly inconsistent with the provisions of the Constitutions.[264] Undoubtedly, these administrative practices that are discriminatory against women arose from the low status accorded to women under customary law where women's unequal status with men is strongly manifested. For instance, some customs and traditions in Nigeria deny women inheritance rights, property ownership, custody of children to mention but a few.

However, from the foregoing discussion, Nigerian government has through various programmes and opportunities in one way or the other make sure that CEDAW is implemented in the country. The Nigerian parliament at different levels has continued to make laws to firmly curtail all offensive practices against women an example of this development in recent time is the passing into law the Violence against Persons (Prohibition) Act, 2015. This Act was signed into law on 25th of May, 2015 and it sought to abolish obsolete laws relating to matters such as rape, assault, domestic or private violence and as well covers the public violence. One of it aims is to improve upon similar provisions on violence as contained in Nigeria's Criminal and Penal Code. Also, there is another bill which has passed second reading of the senate and awaiting to be passed into law. The Bill is titled "Women Empowerment and Gender Equality Bill, 2015". This Bill is sponsored by Senator BiodunOlujimi. This particular Bill if passed into law will promote gender equality in all areas which include equal roles, duties, responsibilities, representation and full on equal enjoyment of rights. The Bill is to incorporate, domesticate and enforce selected aspects of

[264] This was a subject of litigation in the case of IyallaAmadi vs. DG, Nigeria Immigration Service (NIS)

the UNCEDAW. Also, various states had passed into law the Gender and Equal Opportunities. Also, the HIV/AIDS anti-Discrimination Act, 2014[265] makes it illegal to discriminate against people based on their HIV status with this Act, the rights and dignity of people especially women will be protected. The Nigeria Law Reform Commission herein after referred to as NLRC has done some recommendation for some laws that needs to be repealed. An example of these Laws include section 55 of the Penal Code, section 55 of Labour Law, Section 124 of the Police Act and Section 360 of the Criminal Code to mention but a few. Some states of the federation have also made various laws that combat with discrimination against women. For examples, Lagos state had passed into law in 2007 Lagos State protection of people living with HIV and affected by AIDS Law 2007, Edo State Female Circumcision and Genital Mutilation (Prohibition) Law No 4 of 1999, Ekiti State Gender Based Violence (Prohibition) Law 2011, Imo State Gender and Equal Opportunities Law No 17 of 2007, Enugu State HIV/AIDS Anti-Discrimination and protection Law, 2007. There are various policies that promote the elimination of discrimination against women. Some of these policies include National Workplace Policy on HIV/AIDS, April 2005, National Gender Policy, 2006, Gender Policy for the Nigeria Police Force 2012, Jigawa State Gender Policy Action Plan and Ekiti State Gender Policy, 2011 to mention but a few.

The judicial role played by the judiciary too is a good development in ensuring full eradication of all forms of discrimination against women in Nigeria. Judicial activism has been applied in number of decided cases on gender issue in order to depart drastically from obnoxious customs that obstructs women's progress and full development. For instance, the case of *Dr. PriyeIyallaAmadi vs. Director General of the Nigeria Immigration Services and*

[265] Signed into law on 11th Feb, 2015

Ors[266] was a celebrated case whereby the court upholds that Nigerian women should not be discriminated against in all ramifications. In the above cited case, the Federal High Court in Port-Harcourt Held that the action of the Nigerian Immigration Service on the insistence of a written consent of the husband of the Plaintiff/Applicant before an international passport can be issued for the wife (Women) when no similar condition is applicable to the men was discriminatory and a violation of Section 42 (1) (a) of the 1999 Constitution and Article 18 (3) of the African Charter on Human and People's Rights.

Also, the decision of the Supreme Court in the case of *OnyiborAnekwe and Anor.vs. Mrs. Maria Nweke*[267], the court held that Nigerian customs which disenchant women are repugnant to natural justice, equity and good conscience and should therefore not be allowed to stand. The Supreme Court also declared in the *Lois ChituruUkeje vs. Mrs. Gladys Ada Ukeje*that "no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate." Consequently, the Igbo customary law which disentitles a female child from partaking in sharing of her deceased father estate is a breach of Section 42 (1) (2) of the Constitution of the Federal Republic of Nigeria, 1999 a Fundamental Rights provisions guaranteed to every Nigerian. The Non-governmental organizations are not left out in ensuring that all forms of discrimination against women are curbed. Some of them have doubled up their efforts as monitors of the government and whistle blowers when they notice improper conduct from government or other angles.

Conclusively, the right to freedom from discrimination as provided for in Section 42 of the 1999 Constitution is a legally protected interest which every women is entitled to irrespective

[266]Vanguard Newspapers-Law and Human Right June 12, 2009 http://www.Vanguardnggs.com. accessed on 16th August, 2017, 9:10am
[267] (2014) LPELR 22697 (SC)

of her tribe, religion and state of origin. Nigeria also needs to include in its Constitution a definition of discrimination that will conform to the definition in both CEDAW and the protocol that it has ratified.

4.4.2 **Economic Rights**

Article 11 of CEDAW calls for non-discrimination in the field of employment and pay, and guarantee job security in the event of marriage and maternity. It also stresses the social services needed, especially child care facilities to enable parents to combine family obligations with work responsibilities and participation in public life. Section 42 of the Constitution prohibits discrimination on grounds of sex. One of the social objectives of the state as enshrined in the Constitution is to ensure that all citizens have equal opportunity is to secure adequate means of livelihood as well as adequate opportunities to secure suitable employment[268]. The Labour Act[269] offers women in the formal sector some degree of protections. Section 53 to 56 of the Labour Act deals specifically with women and the rights protected therein are maternity leave[270], prohibition from night work[271], and the employment of women in underground work[272]. Maternity leave for a period of twelve weeks is available in the public sector and it is granted with payment of 50 percent of the basic wages provided the women concerned have been continuously employed by the particular employer for at least six months immediately prior to her leave.[273]

[268] Section 17 (3) (a) (h) of the 1999 Constitution of the Federal Republic of Nigeria
[269] Cap L1 LFN 2004
[270] Section 54 of the Labour Act
[271] Ibid section 55
[272] Ibid section 55, excepting women holding positions of management and do not perform manual work
[273] Ibid Section 53 (c), recently phenomenon in practice is that women are paid 100% basic wage instead of the 50% stipulated by the Act. On the other hand, majority of the women do not benefit, because they are involved in informed sector

In addition, a nursing mother is entitled to take two half hour breaks each day during working hours to care for the child. The Act provides against the loss of employment during the maternity leave period.[274] However, there is a provision that "no employer shall be liable in his capacity as employer; to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement."[275] In Articles 5 of CEDAW, state parties are urged to see maternity as a social function and to ensure women appropriate services in connection with pregnancy. [276] Again, it is also contentious whether the provisions prohibiting from underground work or night work is not inherently discriminatory despite the excepted grounds.[277] This provision is discriminatory on the basis of sex, is contrary to Constitutional provision, and so should be void to the extent of it inconsistency. Women should be treated the same as men and should be placed on equal status and given equal opportunity.

There should be no justification for instance, where a woman with a degree in Mining Engineering will be disqualified and the job given to a man merely because she is not male. It also contradicts Section 42 of the Constitution and amounts to a denial of one's right to work and freely choose a profession. Women do not need protection that smacks of discrimination and affects their economic status. What they need is a safe working environment not prohibition from either working at night or underground in the mining sector. This also flies in the face of CEDAW and protocol's definition of discrimination as any distinction, exclusion or restriction made on the basis of sex which has the purpose or effect of nullifying or impairing the enjoyment or exercise of rights on a basis of equality of men and women, of

[274] Ibid section 53 (4)
[275] Ibid
[276] Articles 5 (2) and 12 (2) of CEDAW, also Articles 13 (1) and 14 (2) of the protocol
[277] Ibid

human right and fundamental freedoms in the political, economic and social etc. In this case, the consequence of Section 55 and 56 application of the Labour Act would impair women's right and freedom in the economic sphere.

Prima facie, one could say that the employment law in Nigeria has been genderized but a close examination reveal disparities between theory and practice. In reality, women are still discrimination against in law and practice relating to employment. There is no gender equality of job opportunities in Nigeria as envisaged by CEDAW for instance; the Federal Government which is the biggest employer of labour encourages job segregation and discrimination by its conduct.

In the private sector, women are discriminated against in top management position. Gender stratification within the overall economy and private sector of managerial staff stood at 86% male to 14% female. In terms of Agricultural work women constitute majority almost 70% yet their land ownership is put at 10%.[278] The rural women, the poorest of the poor have been gravely neglected and still lacks basic infrastructure and because women are educationally disadvantaged, they do not have same job opportunities as their male counterpart. It is noted in the Beijing Platform of Action that:

> Women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources, including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision making process. Poverty can also force women into situation in which they are vulnerable to sexual exploitation.[279]

[278] Nigeria's Initial Country Report to the African Union on the Implementation of all solemn Declaration on Gender Equality in Africa. Ministry of Women Affairs, June 2006 p -27

[279] Paragraph 51 of the Beijing Platform of action, 1995 p.30

Article 14 (1) of CEDAW obliged states parties to take into account the particular problems faced by the rural women and the significant roles which rural women play in the economic survival of their families including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. Furthermore, under this article, government should undertake to ensure that rural women have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.[280]

Women overpopulate the informal sector where they etch out a living with purchasing power of nearly three times lower than that of men.[281] In the formal sector, women are still struggling to catch up with men that have long dominated that sector. In the judiciary, over 70% of women are in the lower bench and less than 30% in the higher bench. Thus, they are over represented at the lower bench as magistrates and under represented at the higher bench as judges especially of court of Appeal. In fact, the Supreme Court has been exclusively staffed by sex (Men) until 2005 when the first female justice of Supreme Court was appointed.[282] Gender inequality is not unconnected with women's lack of access to education and training.

Furthermore, in the area of remuneration there is no equality. Tax law and its administration demonstrate this. In particular, the practice in many workplaces especially in the public sector discriminates against woman as husbands are given children and wife allowances

[280] Article 14 (2) (g) of CEDAW
[281] The National Bureau of Statistics put the percentage of women involved in the informal sector 87%
[282] The second female justice of supreme court in Nigeria was appointed in 2009 by president Ya'adua

without women enjoying such children and husbands' allowances. Such practice is reflection of the deep rooted socio-cultural belief that men are the heads of household, which no longer tenable in the light of modern socio-economic changes, which has given rise to high phenomenon of female headed household.[283] The protocol obliged state parties to ensure the equal application of taxation laws to women and men.[284] Similarly, the Constitution of Nigeria provides for equal pay for men and women for work of equal worth.[285] In the same vein, ILO Equal Remuneration Convention, 1951[286] obliges government to protect equality as between sexes in matter of wages and salaries.

It is our submission that women are deprived of the right to family benefits which they are entitled to under CEDAW and the protocol. Moreover, such law as it is found in the Income Tax Management Act and Tax administrative practice tend to perpetuate the dominant ideology in a patriarchal society, that men are heads of family and therefore have the right or responsibility to earn and maintain their families. Women contribute to the economy and to combating poverty through both remunerated and unremunerated work at home, in the community and in the workplace. The empowerment of women is a critical factor in the eradication of poverty.[287] There is no doubt that gender equality is an economic issue that needs to be addressed within Constitutional and legal framework.

The 1999 Constitution of Nigeria provides that:

[283] In the case of Lindsay vs. united kingdom, 9 EHRR, (1986) p .555
[284] Article 13 (j) of CEDAW
[285] Section 17 (3) (e) of the 1999 Constitution of Federal Republic of Nigeria
[286] Adopted on 29th June 1951 and entered into force 23rd May, 1953
[287] Paragraph 49 of the Beijing platform of action 1995 p.30

> Nothing in sub-section (1) of this section[288] shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces of the federation or a member of the Nigerian Police Force or to an officer in the services of a body corporate established by any law in force in Nigeria.[289]

In law and in fact, this is the only exception for discrimination in employment opportunities. However, the case is different in practice. For instance, rules and conditions of service for women police officers contains restrictions on marriage and this obviously is an interference with the right to private and family lives including the right to a decent livelihood.[290] It is clear from the above discussion that women do not have equal opportunity and access to employment.

Nigerian government in compiling with the provisions of CEDAW and the protocol that requires state parties to provide and encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and as well bridge the inequality gap made some efforts by conceptualizing what we can call Community Service, Women and Youths Empowerment (CSWYE) under the Subsidy Re-investment and Empowerment Programme (SURE-P) in which woman benefitted. Some other initiatives that aimed at promoting women employment include the Growing Girls and Women in Nigeria (G-WIN), the Youth Enterprises with Innovation in Nigeria (YOU WIN), the Young Women Economic Empowerment Programme (YWEEP), Agricultural Credit Guarantee Scheme Fund, Women's Fund for Economic Empowerment (WOFEE) and Business Development Fund for Women (BUDFOW). The aim of the above mentioned

[288] Section 42 (1) of the 1999 Constitution of the Federal Republic of Nigeria
[289] Ibid section 42 (3)
[290] Regulations 118-128 (Duties of women police) of the Police Act, Cap P LFN 2004

programmes is to help to understand peculiar needs and constraints of women generally in terms of employment and as well proffer solutions to the needs and constraints identified.

Despite the incentives and programmes, all the national efforts seem not to have reached their targeted audience. Women remain the poorest of the poor and feminization of poverty is real with increasing number of females heading households. Women are still marginalized within the existing economic structures; notwithstanding the provisions of the Constitution giving equal economic rights to them.[291] Women with disabilities suffer additional discrimination in accessing jobs and other opportunities for their survival and development. Nigeria has ratified the UN Convention on the Rights of Persons with Disabilities.[292] In addition, the protocol recognizes the rights of woman with disability to employment[293] and equally protects elderly women's right to livelihood[294] as well as state assistance to women in distress.[295]

4.4.3 Health and Reproductive Rights

Building on jurisprudence of international human rights normative framework especially the international covenant on Economics, Social and Cultural Rights (ICESCR),[296] that recognize the right of everyone to the highest attainable standard of physical and mental health, Article 12 of CEDAW mandates State parties to eliminate discrimination against women in the field of healthcare, ensuring on the basis of equality of men and women, access to health care

[291] Section 16 of the 1999 Constitution of Federal Republic of Nigeria
[292] Adopted on 13th December, 2006 came into force on 3rd May, 2008 and Nigeria signed on 30th March, 2007 and ratified on 24th September, 2010
[293] Article 23 (a) of the UN Convention on the Rights of Persons with Disabilities
[294] Ibid Article 22
[295] Ibid Article 24
[296] Article 12 of ICESCR; the UDHR in article 25(1)

services including those relating to family planning. Further, it enjoins States parties to ensure appropriate services to women in connection with pregnancy, confinement and the post-natal period, granting free services where necessary[297] as well as good nutrition during pregnancy and lactation. Also, provided are the rights to protection of health and safety in working conditions including the safeguarding of the function of reproduction.[298] State parties are obliged to ensure that rural women obtain access to adequate health care facilities, including information, counseling and services in family planning.[299]

These provisions in CEDAW on the right to health were expanded upon by the protocol, which has extensive provisions in its Article 14 titled health and reproductive rights, which obligates States parties to ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes: the right to control their fertility, the right to decide whether to have children, the number of children and the spacing of children the right to choose any method of contraception; the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS[300] and the right to have family planning education. Further, obligations on states parties include provision of adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas, establishing and strengthening existing pre-natal, delivery and post natal health and nutritional services for women during pregnancy and while they are breastfeeding. There is also a duty to protect the reproductive right of women by authorizing medical abortion in cases of sexual assault, rape,

[297] Article 12 of CEDAWo
[298] Ibid, Article 11(f)
[299] Ibid Article 14 (2) (b) and (h)
[300] Article 14 (e) of the protocol

incest and the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the unborn child.[301] It also prohibits all medical or scientific experiments on women without their informed consent.[302]

These provisions have brought to fore the inextricable link between promotion and protection of health and the promotion and protection of human rights and also the intersection of law, human rights and reproductive health and rights which have crystallized are international and regional levels. The World Health Organizational for example in its Constitution states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being method discrimination of race, religion and political belief, economic or social condition". Furthermore, it defined health as a state of complete physical, mental and social well being and not merely the absence of diseases and infirmity.[303] The International Conference and Population Development (ICPD) reaffirms the right to health and state responsibility to take all appropriate measures to ensure on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health.[304]

Reproductive health was comprehensively defined as:

> A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have

[301] Ibid Article 14 (2) (c)
[302] Ibid Article 14 (2) (h)
[303] The Constitution of the World Health Organizational was Charted at the International Health Conference held in New York, 19th -22nd June, 1945
[304] Principle 8 of ICPD doc

> the capability to reproduce and the freedom to decide if, when and how often to do so.[305]

Following there from, reproductive rights were articulated as certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individual to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.

Nigeria has through its adoption of the Regional Reproductive Health Strategy in April 1998 and the National Reproductive Health Policy in 2003 endorsed all the components except "the provision of safe abortion services" which is against the law.[306] Sexual and reproductive health is emerging as a specific concern in the context of increasing early sexual debut facilitating the spread of sexually transmitted infections including HIV/AIDS, unintended and unwanted pregnancies, unsafe abortions, maternal and neonatal mortality, increasing number of disadvantaged children in the community and the declining quality of life.

The fundamental objectives and directive principles of state policy provides that state shall direct its policy towards ensuring inter alia adequate medical and health facilities for all

[305] Paragraph 7.2 of ICPC - chapter VII on Reproductive Rights and Reproductive Health
[306] Section 228-230 of the Criminal Code and section 232-234 of the Penal Code

persons.[307] Obviously, this is inadequate to protect the right to health as adumbrated in the instruments examined above. Moreover, the National Policies such as the National Health Policy and Strategy,[308] National Adolescents Health Policy,[309] National Reproductive Health Policy, [310] the National HIV/AIDS policy and the National Gender Policy [311] provide a comprehensive framework for the creation of an enabling environment for appropriate action, provide the necessary impetus, guidance to national and local initiatives in all areas of health and reproductive rights.[312]

The Nigerian government through its health sectors introduced some incentives such as free maternal health services for pregnant women, introduction of mid-wives service scheme, the Emergency Transportation Scheme, launch of save One Million Lives by 2015 programme, passage of maternal and child health Initiative and Related matters Law (2008), establishment of more primary health care centre throughout the federation to mention but a few. These incentives are met to reduce high maternal rate, poor health infrastructure, poor access to family planning, high prevalence to malaria and HIV/AIDS.[313]

In spite of the above incentives and efforts majority of women are still endangered health wise, the women in the rural areas are the ones mostly affected with health issues which

[307]Obiajulu N (2008) " justifiability of the Rights to Health Care in Nigeria" Journal of African Law, Vol. 52 No. 1-42

[308] Adopted 1998 and 2004 respectively

[309] Adopted in 2003

[310] Adopted in 2001

[311] Adopted in 2008

[312]Atsenuwa A and Ezeilo, J. (2006) "Review of the Health Law Relating to Reproductive Health in Ezeilo J, (ed) Law, Reproductive Health and Human Rights, WACOL, Enugu p. 146 – 177.

[313]Seventh and Eighth Nigerian periodic reports of state parties submitted to the committee on the Elimination of discrimination against women, which was received by the committee on 7 October, 2015 p.51

include maternal mortality, malnutrition anaemia, HIV/AIDS also worsened the women's vulnerable health status.

4.4.4 Political Rights

The Convention on Elimination of All of Discrimination Against Women in Article 7 and 8 enjoins state parties to take all appropriate action to eliminate discrimination against women in the political and public life of the country, and in particular, shall ensure to women, on equal terms with the right to vote in all election and public referenda and to be eligible for election to all publicity elected bodies. The right of women to represent their governments at international level and to participate in the work of international organizations is equally guaranteed.[314] The Universal Declaration of Human Rights (UDHR) stipulates that everyone has the right to take part in the government of its country directly or through freely chosen representatives. The African Charter on Human and Peoples Rights not only reinforced these rights especially the right to freedom from discrimination but also expanded gender specific rights in its protocol on the Rights of women in African. Thus, the right to participation in political and decision making process is guaranteed and state parties are urged to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measure to ensure that:

(a) Women participate without any discrimination in all elections

[314] Article 8 State Parties shall ensure increased and effective representation and participation of women at all levels of decision-making

(b) Women are represented equally at all levels with men in all electoral processes; and
(c) That women are equal partners with men at all levels of development and implementation of state policies and development programmes.[315]

Article 3 and 4 of CEDAW encourages state parties to adopt temporary special measures aimed at accelerating de facto equality between men and women in the political, social, economic and cultural fields. Since Nigeria is a state party to both CEDAW and the protocol to the African Charter on the Rights of women,[316] it is under an obligation to take all appropriate measures to eliminate discrimination against women in the political and public life.

Under the Nigerian Law, women have the Constitutional right to participate in politics.[317] Further, the principles of state policy[318] stated as one of its political objectives promotion of national integration and prohibition of discrimination based on sex, status. According to section 77 (2) of the Constitution, "every citizen of Nigeria who has attained the age of 18 years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house shall be entitled to be registered as a voter for that election." In other words, women have the right to vote and be voted for.[319] Legally speaking, the Nigerian government has met the obligation imposed on her by virtue of international treaties it has signed and

[315] Article 9 of the Protocol to the African Charter on the Rights of Women in African
[316] Nigeria ratified this on 16th December 2004
[317] Section 40 of the 1999 Constitution of Federal Republic of Nigeria
[318] Section 15 of the 1999 Constitution of Federal Republic of Nigeria
[319] Section 106, 131 and 177 for the registration as a voter for election to the house of assembly of a state, the Presidency and the state governorship respectively

ratified that recognize civil and political rights, particularly, the right to participate in ones government through periodic elections.[320]

Furthermore, from what is tenable in Nigerian politics, the nature and degree of their involvement and participation show that women in Nigeria are politically marginalized and as such underrepresented in power. For instance, in 1999, 15 women were elected into the National Assembly, 3 women into the Senate out of 109 senators and 12 into the House of Representatives out of 360 members. State house of assembly had only 12 women in the 36 states of the federation. Then, out of 38 leaders of the legislative houses in the country only *Mrs. Margaret Icheen* of Benue who became the first women state speaker of the state House of Assembly. In 2003, recorded some increase as more women were elected into the National Assembly, 21 women were elected into the House of Representative, 4 women into the Senate and 38 women were elected into the state Houses of Assembly.[321] In 2007 there was some marginal gains by women into elective positions and gender audit of those elected into the parliament nationwide show that senate had 9 females out of 109 seats, House or Representative had 23 out of 360 while state houses of assembly elected women as against 38 in 2003.[322] Furthermore, 6 women were elected as Deputy Governors as opposed to two in 2003 however, the position of Governor still appears to be off limits for women so also that of Vice President and President. Despite, the fact that National Gender Policy advocates for 35 percent reservation for women in both elective and appointive positions yet women have

[320] Article 21 of the UDHR and also Article 3 of CEDAW

[321] Status of CEDAW implementation in Nigeria : A shadow Report Published by Women Aid Collective (WACOL) to the Un CEDAW Committee,

[322] CEDAW and Accountability to Gender Equality in Nigeria, A Shadow Report Published

not fared better in both elective and political appointments,[323] yet that benchmark has not been reached and the forecast does not portend that may be achieved in 2019 elections.

It is observed that all the political parties recognize the role of women in national development but they are still excluded from active participation in party policies. Even where women are involved in decision-making they are not allowed to participate in the national and state caucuses of their various parties. Women are either given the posts of woman/women leader or are part of other member of the excretive at the senatorial level.

In most parties, women are given roles as second-class citizens who can only assist the men and not lead the men. It is quite disheartening to note that even the major political parties in Nigeria do not recommend the 30% affirmative action let alone provide 50/50 equitable participation of women in party politics.

In examining gender and political reforms in Nigeria, one is inclined to submit that as far as politics and political reform in Nigeria are concerned gender and power balance on gender basic have never been on the front burner of national discourse. Rather, it has been how to balance power between the multi-ethnic groups "Larger and Smaller" majority and the minority estimated to be about 350 nationality groups within the nation state Nigeria. It is time we stopped and asked what about those that do not wish to be represented on ethnic, but on other forms of identification such as gender. The federal character principle enshrined in the Constitution encourages the scramble for power based on ethnic identity alone and the Constitutional provision that appointment should be made on the basis of

[323] Policy objective 5 (2.5.5) of the National Gender Policy

Indigeneshipreiterates. The poser here is how can we go beyond this narrow construction of Nigeria citizen based on ethnicity, which ethnic entrepreneurs have promoted to the detrimental of other forms of identification gender, class, identity, profession, residence and so on? For instances, there was how representation of women in the 2015 general election in Nigeria at all levels. Though the nation got its first ever female presidential candidate in person of *Comfort OluremiSonaiya* of KOWA party who was able to garner nominal votes. The women folk were however consoled with four Deputy Governors in the person of *OlurantiAdebule (Lagos), Mrs. YetundeOnanuga (Ogun), Dr. I PaliboBanigo (Rivers) and Cecilia Ezeilo (Enugu)*. There were eight female senators and 15 House of Representatives Members in all the National Assembly.[324] A few examples from Africa will show that Nigeria is laggard in terms of political development of its women folk.

The 26th South African Parliament consists of the National Assembly and the National Council of Provinces. The National Assembly has 180 of its 400 members as women.[325] The National Council of provinces is chaired by a woman. South Africa is the second highest ranked country in African which has 41.7% or 15 of its 36 ministers being female while Rwanda 11 of it 31 ministers as women. Cape Verde is the country that has the highest number of women occupying ministerial positions in Africa with nearly half of its 17 ministers being female. The National Parliament in Rwanda has gained over 50 percent representation of women. Today, Rwanda by virtue of affirmative action clause in its 2004 Constitution is the most balanced parliament in the world given the number of seats women

[324] Jimoh A, Women of the 8th National Assembly, Daily Trust Newspaper, Saturday June 6, 2015

[325] Ferreira, E. Chief Justice Shears in fifth parliament Mail and Guardian Saturday June 21, 2014 retrieved on 9 September, 2017, 12:35pm

occupies.[326] Even Ghana has done better than Nigeria in terms of promotion of gender equality agenda. As has been not the 1992 Constitution demonstrates the country's commitment to the rights of women by recognizing gender equality Article 17(1) and (2). Article 17(4) allows for affirmative action measures. In Article 35(5) and (6), the state has a duty to remove through law reform and affirmative action, all forms of discrimination. The 1992 Constitution in its Directive principle of state policy also enjoined the state to take appropriate measures to achieve reasonable regional and gender balance in recruitment and appointment to public offices.[327]

If a similar action is taken in Nigeria it will improve women's political participation both nationally and internationally thereby achieving the goals of CEDAW as provided in articles 4, 7 and 8 and article 9 of the protocol to the African Charter on the Rights of Women in Africa that enfranchised women, giving them the right to hold public office and take part in the formulation of policy.

In the end it behaves the government through executive, legislative and judiciary action to be accountable and ensure gender equality. In fact, the burden of state responsibility require that government take positive measures including affirmative action to redress systemic discrimination that impedes women's active participation in power and decision making positions. Unless this done, Nigeria women's political participation will continue to be low, making the possibility of implementation of article 8 and 9 of CEDAW impossible. Without

[326] IPU report on Equality in politics, A Survey of Women and Men in Parliaments: http:II www.ipu.org/PDF/puiblications/equality08.e.pdf. Accessed on September 9, 2017 at 4:22pm

[327] Open Society Initiative for West Africa, Ghana: Democracy and Political Participation 2007 pp31-33 and 35-37

strong and powerful women's institutions at all levels, main streaming women's concern in public politics and programmes will be effective.

4.4.5 Social and Cultural Rights

Several provisions of CEDAW aim at eliminating attitudes, conducts, prejudices and practices that are based on the alleged inferiority or superiority of either sex.[328] It also recommended temporary special measures to speed equality between men and women, and action to modify social and cultural patterns that perpetuate discrimination.[329] Social and cultural rights recognize in both CEDAW and the protocol that will be the focus of our attention include: right to education and training,[330] livelihood empowerment,[331] protection of rural women,[332] social infrastructure,[333] social assistance to vulnerable women[334] and right to participate in cultural activities.[335]

The patriarchal nature of most Nigerian communities relegates women to the background while men dominate the material base of the society and therefore control over female sexuality. There were clearly defined sex roles, while taboos ensure conformity with specified gender roles.[336] Again, certain provisions of the Constitution seem to have responded to the socio-cultural situation of women in Nigeria and section 18 and 42 of the 1999 Constitution on educational objectives and freedom from discrimination appear relevant

[328] Article 3,5 and 10 of CEDAW
[329] Article 4 of CEDAW
[330] Article 10 and 12 of CEDAW
[331] Article 15(a) of the protocol to CEDAW
[332] Article 14 of CEDAW
[333] Article 16 of the protocol to CEDAW
[334] Ibid: Article 13
[335] Ibid: Article 17
[336] Aina G, "mobilizing Nigeria Women for National Development: The Role of female Elites" African Economy History, 1991 – 93 pp. 4 - 5

to the issue right to education. However, article 15(1) of the Child Rights Act, (CRA) 2003 and the composure, free Universal Education and Other Related Matter, 2004 (UBE Act) have created a legally binding right to education for girl – children. Accordingly, CRA provides for free, compulsory education and universal basic education for children under 18 years of age and compulsory education is primary school education up to the level of junior secondary education.[337] The CRA proscribes punishment for parents who prevent a child who becomes pregnant, before completing her education shall be given the opportunity after delivery, to continue with her education, on the basis of her individual ability.[338] As already stated there is a problem with regards to the CRA applicability throughout the federation of Nigeria. It has been argued that since the matter of children are within the residual lists, the national assembly lack powers to legislate on that more so when it does not appear to amount to domestication of international treaties within the comtemplation of section 12 (2) of the Constitution that empowers the National Assembly to make laws for the federation or any part thereof with respect to matter not included in the Exclusive Legislative List for the purpose of implementing a treaty. There is no doubt that the CRA was intended to provide the Nigeria child the rights contained in treaties ratified by the Nigerian government namely: the United Nation Convention on the Rights of the Child (CRC), 1989 and the African charter on the Rights and Welfare of the Child (ACRWC) 1990.[339] In a bid to avoid the problem associated with the jurisdiction of the CRA, at least more than 21 states have adopted the CRA and made it a state law.

[337] Section 15 (1) of the CRA, 2003
[338] http://www.aacoalition.org/national_policy_women_htm_Accessedon30/8/2017
[339] Nigeria ratified both treaties on the 19th of April, 1991 and 23rd of June, 2001 respectively

Generally speaking in the sphere of education, the government has made a number of policies and strategies to ensure equal education of all citizens and in particular girls. There have also been increase in female enrolment but in a country where some preference ideology still dominates, male children are more likely to be sent to school than girls more especially in time of economic crisis. Felicia Onibon observed that poverty, early marriage, low value placed on girls education, unfriendly school environment, dearth of female teachers, distance from school and seclusion are major barriers to girls education in Nigeria.[340] In the area of informal education, the government established the National Commission for Mass literacy, adult and non formal education was set up in 1991 to eradicate illiteracy. The commission is yet to make an impact on the lives of women especially with persistent high level of female literacy[341].

Be that at it may, what women want is real progress in all endeavours to achieve gender equality and full integration of women in development and elimination of all forms of discrimination against them. In practice, not much has been achieved in changing cultural attitudes against women. The government admits that not much both in its initial report to CEDAW and the National Gender Policy. Though the Constitution guaranteed equal rights for all citizens regardless of sex, the issue then is bridging the gap between "de jure" and de facto" of the situation of the Nigerian women who have fallen short of the expectation as guaranteed in the Constitution.

[340]Onibon, F.I. "Gender and Education in Nigeria". A paper presented at a national stakeholders workshop on CEDAW and accountability to gender equality in Nigeria, organized by WACOL and Heinrich Boll foundation held in Abuja on 12th – 14th March, 2008 at p. 4

[341] CEDAW and Accountability to Gender Equality in Nigeria, A shadow Report

Consequently, one of the objectives of the national gender policy is to eliminate cultural beliefs and practices which due to ignorance or misconception, tend to dehumanize women and militate against their full development. As was noted earlier, Nigeria is a highly patriarchal society, where men dominate all spheres of women's lives. Women are in subordinate position (particularly at the community and household levels), and male children are preferred over the female.

Through the policy, the federal government undertakes to create structural and legal framework to allow the Nigerian women enjoy the rights stipulated by the United Nations Convention on the Elimination of All forms of Discrimination against Women, the African Charter's Protocol on the Rights of Women in Africa as well as the rights provided for in Nigerian Constitution and other legislations.

From the foregoing discussion, it is clear that many government structures exist already for the advancement of women. What is needed now is effective implementation of laws and policies which utilize these governmental structures. There should be constant policy evaluation that will feedback on a new policy formulation instead of a situation where we have policies upon policies without stocktaking. For example, the national women's policy was hardly implemented and evaluated before the new gender policy was instituted, the result of these policy somersaults is that the government and the governed are perambulating and doing sometimes same thing over and over without achieving the intended goals whether of gender equality, women empowerment or development in general.

4.5 Institutions and Processes Involve in the Implementation of CEDAW and other Women Treaties in Nigeria

As earlier stated, the Nigerian government ratifies without any reservation the Convention on the Elimination of all forms of Discrimination Against Women in 1985, while the optional protocol was also signed in 2000 and ratified in 2004 by the then Obasanjo Administrations.[342] Nigeria is also a signatory and party to other international and regional human rights and women's right instruments, having ratified, domesticate and implementing some of them such as the African Charter on Human and Peoples' rights, Protocol to the African Charter on Human and Peoples' Rights on the right of Women in Africa to mention but a few.[343]

However, the implementation of the landmark treaty on women that is CEDAW involves institution spread with the three organs of government; that is the executive, the legislature and the judiciary and even the civil society with political parties as well as Electoral bodies. Thus, some of these institutions from the executive side include; the Ministry of Women Affairs and Social Development, Federal Civil Service Commission, Federal Character Commission, and National Directorate of Employment (NDE). Others are, the National Assembly, the state Houses of Assembly, the courts, National Human Rights Commission as well as the Civil Society to mention but a few.

Nevertheless, the study discovers only little on the implementation of CEDAW in Nigeria especially on the part of government. This corroborates the fact that the country represents a dawdler state. To this end, the researcher only discusses the implementation processes

[342] http://www.aacoalition.org/domestic_cedaw.htm Accessed on 15/8/2017 at 8:30am

[343] http://www.africa-union.org/root/au/documents/reaties/text/protocol%20on%20the%20 Rights % 20 % 20 women.pdf Accessed on 15/8/2017 9:15am

involving the NASS, the Federal Ministry of Women Affairs, the Courts and the Civil Society or Women NGOs.

4.5.1 **The Parliament**

The National Assembly (NASS) according to section 12(1) of the Nigerian Constitution has the mandate to enact into law any treaty entered into by the Federal Government of Nigeria, for such a treaty to become enforceable and implementable in the country.[344] Section 12(2) also empowers the NASS to legislate for the federation or any part of it on matters that are not in the Exclusive Legislative list.[345] However, section 12(3) of the same Constitution stipulates that such laws made by the NASS has to be ratified by majority that is two-third of the state houses of Assembly in the country before they can present it to the president for his assent and for such law to enter force. With this, the implementation of any treaty actually begins with the NASS by enacting a law to give it a force with the exception of human rights treaties (though the Constitution is silent on this) such as CEDAW that falls within the confines of customary international human rights law. Unfortunately, though, the NASS is yet to enact the CEDAW bill into law, hence, its implementation is on a standstill but for the fact that it is a Customary International Human Right Law (CIHRL) treaty.[346]

Nevertheless, the NASS has enacted into law some enactment. For instance, the Violence Against Person (Prohibition) Act, 2015 which prohibits any forms of violence against person. The Gender Opportunity and equality Bill, which has passed second reading, NASS also enacted into law a bill on National Gender Policy 2006.[347] The National Gender Policy

[344] Chapter 2 Section 12(i) of the 1999 Constitution of the Federal Republic of Nigeria
[345] Chapter Viii, part iv, schedule 2 legislative power, part I Exclusive Legislative list of the 1999 Constitution of the Federal Republic of Nigeria
[346] Egede, E (2007) "Bringing Human Rights Home: An Examination of the Domestication of Human Right Treaties in Nigeria" Journal of African Law, Vol. 51, No. 2 p. 273
[347] http://www.aacoalition.org/national_policy_women.htm. Accessed on 16/8/2017

(NGP) is an improvement on the earlier ones that is National Policy on Women 2001. They are all based on the principles is CEDAW considering the fact that it all contain several sections that are taken from several articles of CEDAW, and in particular to fulfill Article 2, 4, 6 and 24 concerning special measures to actualize the policy measures in the document. Therefore, the NASS at least is playing a role in what Egede refers to as indirect implementation of Human Rights treaties not domesticated in the country.[348] Moreover, the NASS has passed into law the bill on African Charter, which according to Sope Williams, this also mean indirect incorporation of most provisions of CEDAW into Nigerian law through the African Charter by the NASS.[349]

4.5.2 The Executive

The Federal Ministry of Women Affairs and Social Development is a line ministry and institution under the Executive arm of government.[350] It was established in 1989 during the Military Administration of Ibrahim Babangida under Presidency as the office of the First Lady for his late wife Maryam Babangida, but became a full ministry in 1995 in line with the provision of CEDAW.[351] As part of its role in implementation of CEDAW, the ministry plays crucial roles in the drafting and presentation of the National Gender Policy bill in collaboration with the civil society to the NASS for enactment into law. In fact, objective number 4 of the policy categorically states that "incorporate the principles of 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." It will

[348] Egede E. (2007) op it.
[349] William, S. (2004) "Nigeria, its Women and International Law: Beyond Rhetoric" Human Rights Review, Vol. 4, No. 2, P. 234.
[350] http://www.womenaffairs.gov.ng.accessed on 17/8/2017 9:45pm
[351] Former First Lady Maryam Babangida popularize and glamorize the position of the women

nonetheless, take an empirical research, to examine the extent of the implementation and the achievement so far of the goals, objectives and targets of this policy. Another area the ministry is involving together with women NGOs in fulfilling the country's obligations to CEDAW is in the periodic reporting to CEDAW committee on the countries programmes, policies as well as achievements so far on the implementation of the Convention.

4.5.3 The Judiciary

The courts in Nigeria are not doing much with respect to implementation of clauses of CEDAW for reasons that this thesis will elaborate upon as obstacles later in this report. However, in few instances, the courts have indirectly applied international treaties that is, CEDAW that Nigeria acceded to but yet to domesticate to interpret relevant Nigerian law. Thus, in the case of*Mojekwu vs. Moyekwu, Justice Niki Tobi* of the Court of Appeal uses relevant clauses of CEDAW to interpret relevant Nigerian law and pass a judgment that the NrchiNwanyi custom is repugnant and must be stopped.[352]

4.5.4 The Civil Society

The civil society that is Women Non-governmental organizations. These are gender interest groups and activists have been involving in the implementation of CEDAW right from the onset, (especially those from the legal background) by playing crucial roles in preparing the bill to enact the document into Nigerian law which is still before the NASS.[353] Furthermore, the civil society is involved by way of legal representation, advocacy, awareness campaign, seminars and capacity building for women and men alike on issues relating to gender equality, discrimination, violence against women and so on.

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[352] (1997) 7 NWLR (pt. 336) p. 90

[353] Domestication of CEDAW at http://www.aacoalition.org/domestic_cedaw.htm.Accessed on 25/08/2017 at 10:15pm

They also collaborate with the Federal Ministries of Women Affairs and social Development as well as Justice, including the NASS on incorporating CEDAW into national law, development and enactment into law of the new National Gender Policy 2008.[354] They also take it upon themselves to monitor the implementation of the Convention and prepare report to CEDAW committee as alternative to Government report to balance the information for adequate picture and assessment of the country's performance. Some of these NGO's include; National Coalition for Affirmative Action (NCAA), Civil Resource Development and Documentation Centre (CIRDDOC), Women Aid Collective (WACOL) to mention but few.[355]

4.6 Obstacles against the Implementation of CEDAW and other Women Treaties in Nigeria

There are several factors or obstacles militating against the proper and successful implementation of CEDAW in Nigeria that limits the enjoyment by women the benefits of its provisions that is gender equality, non-discrimination, protection against violence and abuse among others. This study reveals that, apart from the lack of effective enforcement mechanism[356] on the part of the Convention itself, most of these obstacles are domestic rather than international; hence it is within the power of the country to address the menace.

4.6.1 Cultural and Religious Imperatives

[354] National Gender Policy at http"//www.aacoalition.org/national_policy-women.htm. Accessed on 30 August, 2017.

[355] http://www.2.ohchr.org/english/bodies/cedaw/docs/ngs/nigeriaNGOcoalitionpdf. Accessed on 30 August, 2017 10:45pm

[356] Egede, E. (2007) Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria. Journal of African Law Vol. 51 No. 2 p. 274

First among these obstacles is the issue of cultural and religious imperatives.[357] This is a major problem in the sense that, traditionally, Nigeria is a patriarchal society,[358] where women generally do not enjoy the same or equal rights with men in many cultures in Nigeria and even generally on Africa. Men are the custodian of cultures, so they determine the faith of women in both private and public sphere in the society, hence they traditionally see woman as property of men; wives whose major role is to bear children and obey their husbands in everything.[359]

Similarly, from the religious perspectives, Islamic cultures mostly practiced in the Northern part of Nigeria, including many other customs and traditions in other parts of the country, are generally discriminatory against women especially when it comes to inheritance.[360]

In the same vein, in the area of child-marriage (below 18 years) majority of the Northerners, resist the attempt by the authorities concerned to charge and prosecute a member of the National Assembly that was alleged to marry an underage girl of 13 years. The Islamic law and culture were used to support the campaign against government move, and the case was swept under the carpet. Hence, these are some of the considerations for not passing the bill on CEDAW by the National Assembly, and thus hinder proper implementation of its clauses in Nigeria until now by the executive or judicial institutions.[361]

4.6.2 Mixed Legal System

[357] Patriarchy under status of gender equality and situation of women in Nigeria under context and rationale for developing and adopting the National Gender policy at http://www.aacoalition.org/nationalpolicy_women accessed 30 August, 2017
[358] Ibid
[359] Ibid
[360] Ezeilo, J. (2006) "Feminism and Islamic Fundamentalism: some perspectives from Nigeria and beyond" Chicago Journals Vol. 32 No. 1 (2006) p. 42
[361] William, S. (2004) "Nigeria, its Women and International Law: Beyond Rhetoric" Human Rights Review Vol. 4, No. 2 p. 231

The legal system that Nigeria is operating is also a major barrier for the actualization of the implementation of CEDAW and other international treaties in Nigeria. These legal systems consist of the English Common Law inherited from the colonial rule, customary or traditional law and Islamic law otherwise known as the Sharia. Controversially, section 10 of the Nigerian Constitution regards the country as a secular state; hence, it prohibits adoption of any particular religious law or provisions in public life.[362] Moreover, as if that is not bad enough, the so-called law is very discriminatory against women to such extent that, when a women is convicted of extra-marital affairs, the man involved may not be charged at all,[363] whereas, even a popular saying agrees that it takes two to tango. This complexity in the legal system poses difficulty for courts in Nigeria to determine which one is to apply objectively in a case in the context of CEDAW, more so that, the NASS lack the courage to repeal or amend traditional laws, customs and practices that run contrary to human and women's rights.[364]

4.6.3 Lack of Political Will

Despite the fact that Nigeria is now under democratic rule since 1999, with the rhetoric of rule of law and good governance, politicians in the positions of authority and decision-making (dominated by men) lack the political will to take bold steps on adopting new laws and policies in the spirit of CEDAW. Moreover, they refuse to adopt temporary special measures necessary for proper implementation and integration of CEDAW to ensure gender equality, non-discrimination, women empowerment and so on. These measures can include: party quotas, reserve seats, establishment of special institution such as Equal Opportunity

[362] Ibid. p. 231
[363] Ibid p. 232
[364] Ibid

Commission, not limiting political posts at parties level to only women leader but must be able to contest any position both at parties level and otherwise.

4.6.4 Inadequate Funding and Corruption

There is a huge gap in the resources required and funding available for and allocated to institutions responsible for gender matters in most cases. This is due to the poor economic situation of the country on one side as a developing nation,[365] misappropriation of the little available resources, and corruption on the other parts of those saddles with responsibility in such institution.[366] Thus, they are not executing as planned most policies and programmes that are to ensure gender equality in education, health, women empowerment, eradicate or reduce violence against women and prosecute offenders. This also affects capacity-building programmes for personnel that are to work on the field in different context.

4.6.5 Lack of Awareness or Ignorance and Poverty

This is due largely to low-level education and illiteracy by mostly women in the society, which make them unaware of their rights and privileges under and before the law.[367] This is worst in the northern part of the country where religious dogmatism and intolerance made it difficult for women's rights activists to create the necessary awareness campaigns, rallies, seminars and so on and raise the level of awareness among the populace.[368] Based on this, women in particular are unable to demand for their rights and secure redress where and when their rights are being violated or denied.

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[365] William, S. (2004) "Nigeria, its Women and International Law Beyond Rhetoric" Human Rights Review Vol. 4 No. 2 p. 231

[366] Ezeilo, J. (2006) "Bringing Human Rights home: A Examination of the Domestication of Human Rights Treaties in Nigeria". Journal of African Law, vol. 51, No. 2 (2007) p. 263.

[367] William, S. (2006), opcit 233

[368] Ezeilo, J. (2006) Feminism and Islamic Fundamentalism; some perspectives from Nigeria and beyond.Chicago Journals Vol. Vol. 32 No. 1 p. 43.

4.7 Conclusion

This chapter has indeed provided us an insight into effect or overall impact of implementation or lack thereof with respect to international and regional instruments on women's right therein for its female citizens.[369] Article 2 (a) of both CEDAW and protocol obligates state parties to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake inter alia: "To embody the principle of the equality of men and women in their national Constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle."

Obviously, lack of domestication of both treaties creates real difficulties or challenges for its full domestic application and evidence of lack of accountability to gender equality under international law. The assessments of law, policies and practices in this chapter have shown that these rights as articulated in both CEDAW and the protocol are still outside the reach of Nigerian women. The domestic protection of these rights is inadequate and machinery for access to justice and remedies are limited in the light of several constraining laws including customary and Shariah.

The prospect of judicial enforcement of these treaties is bright based on the African Charter, which is now part of Nigerian law that obliges all state parties by virtue of its article 18 (3) "To eliminates every discrimination against women and to ensure the protection of the right women as stipulated in international declarations and Conventions." The chance of domestic

[369]Article 2 of both the Protocol and CEDAW. Also, see Article 24 of CEDAW and 25 and 26of the protocol

implementation becomes even higher when one reads article 60 and 61 conjunctively that recognize regional and international human rights instruments and African practices consistent with international norms on human and people's rights as being important reference points for the application and interpretation of the African Charter.

CHAPTER FIVE

Summary and Conclusion

5.1 Summary

This research work studied domestic implementation in Nigeria of the concept of gender equality under international law. The research realized or observed that the problem of gender inequity is a global one, and not peculiar to Nigeria. The aim of the work is to examine the concept of gender equality in international law in relation to its domestic implementation in Nigeria subject to local circumstances and the existing laws on the subject matter. In pursuing this aim, the work was divided into five chapters each examining issues related to the main topic of the research work.

Chapter One introduces the research work, and presented the statement of the problem, the aim and objectives of the research as well as its scope, significant and methodology. It also presents a review of literatures that is important to the work.

Chapter Two examined the legal regime for the concept of gender equality in international law. The provision of the Convention on Elimination of Discrimination against Women was examined. The rights and protection given to all human by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights as provided for at the international scene where also discussed. The chapter went further to examines the right granted to women on the regional sphere by examining the rights and equality of all human beings as provided for by the African charter on Human and Peoples' Rights and it stated that this particular Charter has being domesticated in Nigeria. The African Union Protocol to the African Charter on

Human and Peoples' on the Rights of Women in Africa is another Charter that dealt on the rights of African women which was examined under this chapter as well.

Chapter three examined the legal regime for gender equality in Nigeria. It examined the 1999 Constitution of the Federal Republic of Nigeria as it relates to gender equality. It discussed other laws and policies that relates to gender equality and these produce Violence against Persons (Prohibition) Act, the Child Right Act, Bill on Gender Equal Opportunities and National Gender Policy.

Chapter four examined the case study of domestic implementation of gender equality in international law as it relates to Nigeria. The chapter discussed some selected rights in doing justice to the domestic implementation of the international laws, the chapter also discussed some problems militating against the realization of the concept of gender equality in Nigeria.

Chapter five finally summarized the whole work from chapter one to four. It examined the findings made by the researcher and as well makes some recommendations. The research was however brought to an end by a conclusion.

5.2 **Findings**

The research realized that the problem of gender equality is an international one not peculiar only to Nigeria. These problems come in different sizes and shapes and each of the problems constitute a threat to the advancement and realization of domestic implementation of the concept of gender equality in Nigeria.

The paper however makes the following findings:

i. The research finds out that all the international conventions on gender equality are not enforceable in Nigeria due to local circumstances For example there is no specific

legislation for gender care in Nigeria which provides an opportunity for the activation of the international instruments. However, the present Violence against Persons (Prohibition) Act covers women but not specific.

ii. That customs and cultures are vehicles through which gender equity cannot be realized in Nigeria. This is because virtually all culture and customs are repugnant to natural justice, equity and good conscience by regarding or placing the position of women lower to that of their male counterpart. An example of such customs and tradition is the Igbo custom that still believes that women are part of what to be inherited when it comes to inheritance.

iii. That chapter two of the 1999 constitution of the Federal Republic of Nigeria particularly sections 15, 16, 17 and18 that provide for the selected rights discussed on this research falls under the non justiciable principles which are not enforceable in court of law. However, there is an argument combination of the provisions of section 4 (2) and item 60 (a) of the Second Schedule to the Excusive Legislature List of the 1999 Constitution of the Federal Republic of Nigeria will activate the non-justiciable chapter two to become justiciable but then it is believe that the strength of judicial activism is needed for the attainment of this position.

iv. The research also finds out that high level of illiteracy and lack of economic independence of women are the major challenges for the realization of gender equity in Nigeria. For instance, some cultures still belief that spending money on a female education is a waste of money because everything she has will be useless because she will only be control by a man either as a father or husband.

5.3 **Recommendation**

In view of the above findings, this research recommends the followings:

i. The Federal Government of Nigeria should endeavour to domesticate all international Treaties and Convention on gender equality in Nigeria so that they can be enforceable in Nigeria.

ii. The federal government should amend Section 12 and chapter two of the 1999 Constitution of the Federal Republic of Nigeria. Section 12 is the section that dwells on domestication of international instruments while chapter two covers the selected rights discussed in this research. Chapter two should be made justiciable on its own without making reference to another section or part of the constitution before it can be justiciable.

iii. There should be an awareness mechanism created for people, the law enforcement agents and the judiciary to understand that some cultures and customs are repugnant to natural justice, equality and good conscience and as such cultures and customs should be abolished and ceased to be followed or obeyed in the 21st century. The civil society organization should take the awareness to the people at grassroots levels.

iv. The federal, state and local governments should encourage girl child education as well as adult education at all levels to eradicate the high level of illiteracy among women. That is government at all levels should endeavour to take the education of female serious and important. Government is also urged to pay attention to the empowerment of women in order to achieve full realization of women's economic independence.

In conclusion, the concept of implementation in Nigeria need to be redirected through amendment of the existing legislations to reflect the concept of gender equality in addition to creating requisite awareness among the populace devoid of religious and ethnicity sentiments on the need to bridge the gap of illiteracy among the women folks.

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