PROTECTION OF WOMEN AGAINST DISCRIMINATORY LAWS, POLICIES AND PRACTICES IN NIGERIA: AN APPRAISAL

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LLM/LAW/33952/2002-2003
LLM/LAW/08970/2008-2009

BEING A THESIS SUBMITTED TO THE FACULTY OF LAW, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE

JUNE, 2011

DECLARATION

I declare that this thesis entitled "Protection of Women Against Discriminatory Laws, Policies and Practices in Nigeria: An Appraisal" is a product of my research work. It has not been presented in any previous application for a higher degree.

The information derived from literature had been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at any university.

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CERTIFICATION

This thesis entitled Protection of Women Against Discriminatory Laws, Policies, and Practices in Nigeria:An Appraisal meets the regulations governing the award of the degree of Master of Laws LL.M Degree of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

In sweet memory of my late parents

Alhaji (Chief) Suarau Olaide Ajetunmobi

and

Chief (Mrs.) Bisola Adebimpe Ajetunmobi

ACKNOWLEDGEMENTS

My gratitude first and foremost goes to the Almighty God who made it possible for me to pursue this programme to its end.

With humility, I appreciate very sincerely the efforts of my Supervisors Dr. (Mrs.) J.A.M. Audi and Dr. A.I. Bappah. Their commitments to seeing me through were unparalleled. From the depth of my heart, I am grateful.

The realization of this goal is a product of encouragement I had from my friends and senior colleagues like Dr. A.A. Agom, Barr. Femi Arigbede, Barr. A.J. Suleiman, Mr. Akin Okinbaloye, Lady Eunice Adeojo, Barr. (Mrs) L.A Bello to mention a few.

I am equally indebted to my computer operator Mal. Ahmed Isma'il who worked tirelessly day and night to ensure that this thesis becomes a reality.

Finally, I thank my husband Barr. Akinyemi Oshuntoye for his encouragement, interest and love, though it is difficult to thank a part of me.

To my boys, Olufemi and Olanrewaju, I appreciate you guys for reminding me all the time that there was work to be done on the thesis. May your years be long.
To the Almighty God be all the Glory.

ABSTRACT

Human rights are rights that have come to be guaranteed over time, to all men and women, irrespective of race or creed. These rights extend to even the unborn, in certain circumstances. However, in many societies, women are subject to discriminatory tendencies in the form of laws, policies and practices that derogate from their human rights, simply became of their gender.

Many international instruments have been put in place to stem these negative tendencies, especially through the works of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (I.L.O)

In Nigeria, for instance, women tend to suffer inequalities in the social, political , economic and cultural fields. This is notwithstanding the fact that there are formal provisions on the statute books that guarantees equality to all before the law.

As the 'grundnorm,' all the Constitution made for Nigeria with their fundamental rights provisions envisage equality of all citizens, whether male or female. The Thesis finds that the envisaged equality is at best formal and not actual, even though the country is a party to international conventions and instruments that provide for equal enjoyment of human rights by both genders.

Some laws, cultural practices and traditions have been fingered in restricting and derogating from the enjoyment of basic rights by women. This thesis sets out to

identify derogations from women's rights, its effects and proffer suggestions on how to curtail these gustative tendencies, with particular reference to Nigeria.

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ABBREVIATIONS

- ACHPR: African Charter on Human and People Rights.
- CIRDDOC: Civil Resources Development and Documentation Centre
- CEDAW: Convention on the Elimination of all forms of Discrimination Against Women.
- CRC: Convention on the Rights of the child
- FGM: Female Genital Mutilation
- GADA: Gender and Development Action
- ICC: International Criminal Court
- ICESCR: International Covenant on Economic, Social and Cultural Rights.
- ILO: International Labour Organization
- LFN: Laws of the Federation of Nigeria
- MDGs: Millennium Development Goals
- NGO(S): Non-governmental Organization(s)
- UDHR: Universal Declaration of Human Rights 1948
- UN: United Nations
- UNESCO: United Nations Educational, Scientific and Cultural Organization
- UNTFEM: United Nations Development Fund for Women (Nigeria)
- UNIC United Nations Information Centre (Nigeria)
- WACOL: Woman Aid Collective
- WHO: World Health Organization

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND TO STUDY

Women are connected to other human beings through the biologically based activities of pregnancy, breast-feeding and heterosexual intercourse[1]. However, throughout history, women have had to struggle against direct and indirect barriers to their self-development and their full participation in social, political, economic and cultural activities of different societies.

Discrimination against women starts at birth, in the discriminatory practice of 'son preference'. A leading Non-Governmental Organization (NGO) in Nigeria, the Civil Resources Development and Documentation Centre (CIRDDOC)[2] describes it as: "the practice whereby the male child is given preferential treatment over the female child. The male child gets all the attention, with time he is the one sent to school, while the girl child remains at home" [3]

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1. West, R.(1988). Jurisprudence and Gender. In: Freeman, MDA , *Loyd's Introduction to Jurisprudence Seventh Edition* (London: Sweet and Maxwel Limited , England, pp. 431-437
2. CIRDDOC, based in Enugu Eastern Nigeria; is one of the many NGO's active in the field of advancement and protection of woman rights in Nigeria.
3. CIRDDOC Public Education Series No. 12 (2002): Tribunal on Violations of Human Rights in Nigeria, P.14

Some Igbo customary law rules carry the practice further; when a father dies, they purport that it is only the son (s) that can inherit, the daughter(s) are treated as some form of chattel[4]:

On the international stage, discrimination against women has been noted and acknowledged. Thus, the Universal Declaration of Human Rights by the United Nations in 1948 asserts in its preamble, the "inherent dignity and of the equal and inalienable rights to **all members of the human family"**[5]

As such, women human rights have been described both as rights that women have by virtue of being human, and as rights specific to women. It is therefore worth noting that in some circumstances, women suffer human rights abuses in a specific form, related to their being females. [6]

The assertion of rights presume their existing or probable violation and a desire to remedy or prevent violation[7]. As these rights relate to women, they have given rise to gender studies, women movements and the concept of feminism.

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4. Mojekwu vs Mojekwu (1997) 7NWLR (Pt 512) p. 283

5. Emphasis supplied

6. Ilumoka, O. A. (1994) "African Women's Economics Social and Cultural Rights – Towards a Relevant Theory and Practice". In Cook, J. Rebecca (ed) *Human Rights of Women: National and International Perspectives* (USA., University of Pennsylvania Press, 1994) pp. 307-325 at P.311

7. Ibid p. 307

According to Peterson and Runyan[8], no woman is born and not all women embrace the concept of feminism. How one becomes a feminist varies with each individual, but the impetus for developing what has been termed "feminist consciousness" often arises, when a person experiences a contradiction between who that person thinks she is and what her particular society wants her to be. Feminist consciousness may also arise out of a contradiction in the opportunities a particular society professes to offer to an individual and what that individual experiences.[9]

In industrially advanced countries, for example, women are typically told that, under the law, they have equal opportunities to compete for political and economic power. In practice, however, indirect or structural barriers to full political and economic participation reduce most women's rights and choices. On the other hand, in more traditional societies, especially those that experienced some form of colonial or neo-colonial rule, colonially imposed laws and certain cultural and religious traditions combine to deny equal opportunities to women, even under the law[10].

The experience in India for instance, has been lucidly described by Kirti Singh.[11] She asserts that while the constitution adopted at (Indian) independence contained articles mandating equality and non-discrimination on the grounds of sex, several laws that clearly violate the

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8. Peterson, Y. S. and Runyan A.S. (1993). *Global Gender Issues*. West view Press, Colorado, USA, p.166
9. Ibid p.167
10. Ibid p.167
11. Singh, K.(1994).Obstacles to Women's Right in India In Cook, J.R (Ed) *Human Rights of Women: National and International Perspectives* U.S.A, University of Pennsylvania Press, 1994, PP 375-396

proclaimed principles continue to exist, especially in the area of personal laws or family laws[12] These laws broadly deal with[13]:

- Marriage and divorce;
- maintenance;
- guardianship;
- adoption;
- wills;
- intestacy and successions;
- joint family; and
- partition.

Singh maintains that prior to Indian independence, the British colonial masters followed a policy of retaining and not repairing, the family laws applicable to Hindus, Muslims and Parsis .Family laws were therefore extremely backward at the time of independence in 1948[14]. She is of the opinion that the Indian state made no effort to change these laws or introduce new legislation in conformity with constitutional principles. Singh concludes flatly, that: " The most significant barrier to women's rights in India, therefore, is a hostile state that is not actually interested in giving them any rights"[15].

With time, there has developed different schools of thought on feminist jurisprudence or feminism. Cain[16] offers a useful categorization into liberal, radical, cultural and postmodern feminism.

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2 Ibid, p. 375
3 Ibid, p. 378
4 Ibid, p. 380
5 Ibid, p. 376
6 Cain, A.P (1990). Feminism and the Limits of Equality. In: Freeman, M,D,A pp. 1149-1157

A somewhat similar distinction is made by Peterson and Runyan[17] into liberal feminists, radical feminists, socialist feminists and postmodernist feminists. We need not go into the details of what these categorization or classification entails. Suffice it to say, however, that the earliest theme of feminist thinkers about law was equality with men. For liberals, equality amounts to equal opportunities, Radical feminists focus on differences between women and men, and support affirmative action to challenge inequalities. Cultural feminists also emphasize difference but view it more positively. Post modern feminist, found most often in academic circles, also want to see an end to women's oppression in all spheres. In addition, postmodernists are critical not just of gender dichotomies and categories but also of the concept of gender itself [18].

It is important to note, however, that rights generally have never been absolute and universally applicable. In many of their struggles, for instance, African women have not necessarily acted in opposition to men as a group, even when they have organised against discriminatory practices perpetrated by males. These struggles have generally not taken the form of assertion of rights made by groups of women most affected, or by others acting on their behalf. Calls for justice and improved conditions of health, for example, have often been the basis for demanding change. Change has thus come with the organization and mobilization of women, in many cases, as a result of joint action by men and women[19]

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7 Peterson, Y. S. and Runyan A.S. op. cit. pp. 117-121

8 For a fuller description of the different Feminist Schools of Jurisprudence, see Peterson and Runyan, op. cit.

9 Ilumoka, O.A. op. cit. 319

On the contrary, the women's rights movements in Europe and America project the concerns of privileged, middle-class women who, because of their cultural affinity with and access to centers of power, are able to make their voices and concerns heard.[20]

One problem that feminist jurisprudence has had to contend with therefore, is the right of cultures to live according to their own value systems. How should a Western legal system respond, for example to polygamy? African women's struggles for human dignity and well-being in its own sphere, are located in the context of political, economic and cultural domination within an unjust international system of allocation of resources. Thus, for the large majority of women in Africa whose struggle for basic needs and subsistence (along side men) prevents them from changing their lives for the better, addressing the problem of poverty is a priority human rights issue.[21] Ironically, the economic policies that aid, abet and compound their poverty problems are expounded by U.N agencies and countries of the Northern Hemisphere, which have constituted themselves watchdogs against the violation of international civil and political liberties[22].

There is no doubt, however, that discriminatory tendencies exist, of which women are more often than not at the receiving end; in different ways, to varying degrees, within different cultures and value systems. It is against this background that the thesis sets out to consider some policies and practices which are detrimental to the full realization of women's right in Nigeria

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10 Ibid, p. 320
11 Ibid, p. 321
12 Ibid

1.2 STATEMENT OF THE PROBLEM

The problem is seemingly straight forward: there is a wide gap between the law in the statute books and the law in practice, between proclaimed constitutional principles and societal practices, between agreed international instruments and municipal legislative measures.

We may examine, for instance, the principles proclaimed in constitutions which is the grundnorm wherever it exists. Every nation-state has a constitution, since every country functions on the basis of certain rules and principles. Most constitutions thus affirm the right to non-discrimination on the basis of sex.

The Indian constitution for example, adopted in November, 1949 is no exception. That constitution has a "Fundamental Rights" chapter that guarantees various rights. The rights of special importance to women are contained in Article 14[23] and Article 15[24]

Article 14 provides that: "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India", while Article 15(1) expressly prohibits discrimination "on grounds only of religion, race, caste, sex, place of birth or any of them".

In addition, Article 16(2) mandates that: "no citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state"

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13 The right to equality

14 Prohibition against discrimination

A similar situation is found with the Nigerian Constitution. All the Constitutions that have been adopted for the Federal Republic of Nigeria firmly state the right to nondiscrimination on the basis of sex. The 1999 constitution, whose provisions are identical to that of 1979, provides in Chapter IV, the inalienable rights of all citizens irrespective of sex, creed or religion. Section 41 for instance; renders all laws including customary and religious laws, subsidiary legislation, regulations and official government practices that permit discrimination against women unconstitutional. Thus Pats-Acholonu, JCA[25] (as he then was) while delivering the judgment of the court declared that:

> The rights of all sexes are protected under the Constitution which is the organic law of the land, therefore any assertion or argument that a woman cannot give evidence in relation to title to land is oblivious of the constitutional provision which guarantees equal rights and protection to all sexes under the law.[26]

However, the same section (41) goes ahead to make the exception contained in subsection 3, relating to appointment in the public service, armed forces and the Police Force.

It is therefore no surprise that in the subsidiary legislation pursuant to the Police Act[27], it is stipulated that at enlistment, the marital status of a woman police officer most be unmarried[28]

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15 *Uke vs Iro* (2001) 11.NWLR (Pt. 723) p.196
16 Ibid, at p.202
17 Cap 19 LFN 2004
18 Regulation 118(g) of the Nigerian Police Act.

Furthermore, an unmarried woman police officer who becomes pregnant shall be discharged from the Force, and shall not be re-enlisted except with the approval of the Inspector-General of Police[29] The problem is starkly realized when it is appreciated that under the criminal statutes, abortion is a serious offence,[30] all of which tend to severely constrain a woman's sexual and reproductive choices, in an era of biting unemployment.

Police Regulation No.124 illuminates the discriminatory tendencies contained in the law, which reveals that what the Constitution gives by the right in s. 41 (1) is taken by the left in s. 41(3). This particular Regulation provides that:

> a woman police officer who is desirous of marrying must first apply in writing to the Commissioner of Police of the State Police command in which she is serving, requesting permission to marry and giving the name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character…[31]

The questions begging for answers are many. By what parameter did the Police as an institution of state become *'in loco parentis'* to an unmarried woman police officer? What happens where the husband 'approved' by the Police authorities is objectionable to the biological parents? Will the Inspector-General or the State Commissioner of Police mandate or delegate a (superior) Police Officer to give the 'bride' to the approved bridegroom? What are the objective criteria for determining "good character" of a woman police officer's suitor? Since nobody knows

19 Regulation 127 Ibid
20 S.228 Criminal Code, S. 232 Penal Code
21 All emphasis Supplied

tomorrow, what happens when a suitor of "good character" becomes a husband of 'terrible character? In any event no such conditions are imposed on the would be wives of male police officers!

The problem of discrimination against women is not restricted to employment or labour law alone or the Police as an establishment. The problem manifests in many ways, which include but is not limited to:

(a) injurious widowhood practices in matrimonial causes;

(b) inheritance and succession in family law or personal law;

(c) violence against women;

(d) female trafficking, enforced prostitution and enslavement;

(e) child marriage and reproductive health implications;

(f) discriminatory tax practices;

(g) son's preference;

(h) work-Place discrimination; etc

Inheritance and succession under customary laws have proved particularly problematic. It was canvassed that a woman cannot be called to give evidence in relation to land subject to customary rights of occupancy. [32]

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32. *Uke vs Iro* (supra) p.196

Similarly, it was contended in another case that under the "Oli-Ekpe" customary law of inheritance from Nnewi, in Eastern Nigeria, the custom permits the son of the brother of a deceased person to inherit his property, to the exclusion of the deceased's female child.[33]

1.3 OBJECTIVE OF THE STUDY RESEARCH

This thesis has, among its objectives, the following: to

(a) identify the constitutional provisions, laws and international instruments which relate to human rights on a universal basis;

(b) evaluate how much these provisions, laws and instruments are complied with and enforced, in practical terms;

(c) identify the laws, instruments and provisions that assure to women especially, freedom from discrimination on the basis of gender;

(d) highlight those policies and practices which militate against the full realization of the economic, social, political and cultural rights guaranteed to women in different societies;

(e) focus on the Nigerian society in particular and the manifestation of discriminatory laws, policies and practices directed against women;

(f) since the implementation of a law determines its efficiency, to evaluate the extent to which anti-discrimination measures are implemented; and

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33. *Mojekwu vs Mojekwu* (supra) p. 283

(g) to suggest, in addition to what has been done, what other measures can be put in place to minimize, if not eradicate, discriminatory policies and practices being perpetuated based on gender.

1.4 SCOPE OF THE RESEARCH

The study sets out to examine women's rights as part and parcel of universally proclaimed human rights – those rights that "a person enjoys by virtue of being human" and of which women therefore are not exempted from its enjoyment.

As such, the scope of the thesis extends to an examination of municipal laws and international instruments that have come into force to protect women from discriminatory tendencies, focusing on the situation in Nigeria.

The municipal laws so examined include constitutional as well as customary and Islamic laws. The international instruments acceded to by Nigeria, which have a direct bearing on the research, were also considered. Perhaps the oldest is the Convention for the Suppression of the Traffic in Persons and the Prostitution of others, adopted in 1949[(34).] This Convention has found expression in the (Nigeria) Trafficking in Persons (Prohibition) Enforcement and Administration Act 2003.

Therefore, the study considered some of the policies and practices which are detrimental to the full reliazation of women's right in the country. The study does not aim to only identify the problems that derogate from these rights but also proffer solutions.

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34 Cook, J.R(ed) (1994), Human Rights of Women:
National and International Perspectives, University of Pennsylvania Press,
pp. 573-575

1.5 RESEARCH METHODOLOGY

There are different types of research methods, which include empirical, doctrinal and teleological[35] but the researcher uses essentially doctrinal method. Doctrinal (or a priori) research involves making use of books, statements, law reports and other relevant documents to conceptualize a study and thereafter to make recommendations. This methodology has been particularly used in this study.

The primary source of research materials are legislations and decisions of superior courts of records. Secondary sources include textbooks, journals, articles and law reports. The publications by NGO's tend to be contributions from different researchers and women advocates, compiled and edited into a (book) text.

As may be expected, different aspects of human rights issues in general, women's rights in particular, have been tested in the courts in Nigeria; sometimes up to Supreme Court, and in many other instances , at the Court of Appeal. The Fawehinmi's case[(36)] for instance, which decided on the applicability of the African Charter on Human and People's Rights in Nigeria was considered of significant constitutional importance that it was heard by a full panel of seven Supreme Court justices.

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35. Aboki, Y. (2009). Introduction to Legal Research Methodology. Second Edition. Tamaza, Publishing Company Limited, Zaria, Nigeria. pp. 2-3
36. Abacha vs Fawehinmi (2000) 6 NWLR (pt.660) p.228

Journal articles, for example, from the medical field, which describe the nexus between harmful practices suffered by women and maternal health problems provide some revealing data. Other sources include newspaper articles and materials available on the internet.

1.6 SIGNIFICANCE OF THE STUDY

The study is significant to the continuing and progressive discussion on gender issues, as it affects women. Women in Nigeria, for instance constitute almost half of the total population of the country, and a lot of concern has been raised on their behalf, of how they are short changed despite provisions in the 1999 Constitution which guarantees them freedom from any form of discrimination.

Section 42 (3) of the Constitution has been a strongly contentious provision. It provides that: "nothing … shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person … as a member of the armed forces of the Federation or a member of the Nigeria Police Force…"

Significantly, it has been canvassed that this provision has been used to practically discriminate against women in appointment into the Nigerian Police.

It is not only in Nigeria that concerns have been raised against policies and practices that are unfavourable to women. The thesis seeks to contribute to this age-long debate.

1.7 LITERATURE REVIEW

Human rights in general has fund particular expression in International Human Rights Law. As such, a wide spectrum of texts and materials exist on the subject, in the form of books, monographs and journals by Rebecca Cook[37], Rebecca Wallace[38] and Christian Tomuschat[39]

Professor Tomuschat discusses the idea of human rights in great detail, advancing a consist description of the concept as "rights a person enjoys by virtue of being human without any supplementary condition being required" He also described the evolution of human rights and wrote about the different "generations" of human rights, inspired by the nominative themes of the French Revolution (1789) and attributable to the French jurist, Korel vasat.

Professor Wallace on the other hand, examined the many international instruments and proceeds of conferences that have come to shape international human rights. For example, the voluminous Beijing Declaration (1995) outlining the Platform for Action for the realization of women's right's was considered in her textbook, clause by clause. Of particular relevance to the right of women in different societies, is the work edited by Rebecca Cook, in which factors affecting the human rights of women were considered from many countries – Nigeria, India, the Americas, etc – by different contributors, thus offering a transnational perspective.

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37 Cook, J.R (ed) (1994). Human Rights of Women: National and International Perspectives. University of Penusylvania Press, Philadelphio, U.S.A.

38 Wallace, R. (1997) International Human Right: Text and Materials. Sweet and Maxwell, London, United Kindom.

39 Tomnschat, C. (2003/. Human Rights: Between Idealism and Realision Oxford Dictionary Press, USA.

The contribution based on African women's economic, social and cultural rights, for instance makes the point that the human right challenges confronting women on the African continent are not necessarily the same with that in Europe and America

The contribution from India, however, reflect the opinion that in spite of constitutional guarantees, the most significant barrier to women's rights in that country is a political system that is unwilling or uninterested in giving the womenfolk or uninterested in giving the womenfolk, any rights in areas which affect them the most marriage and divorce, adoption, wills, intestacy and succession, among others.

This present study is interested in the fact that woman suffer human rights abuses in a specific form relative to their being female. Thus Professor Ladan's[40] (2003) review of the development of rights relative to reproductive health is significant. According to Ladan, the right to freedom in reproductive decision – making is related to broader principles of bodily autonomy, often referred to as the "right to physical integrity". This principles, Ladan noted, has its roots in the right to respect for human dignity and the right to privacy.

As such, harmful, practices which contribute to reproductive ill health in Nigeria were identified to include forced/early marriage, female genital circumcision (FGM), etc.

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40. Ladan, M.T. (2003). An Overview of Reproductive Rights and Health (Maternal Health) in Nigeria. WACOL, Lagos Nigeria.

Evidence of the impact of early marriage on a woman's reproductive health and maternal well being has been provided in a journal article by a team of medical researchers from a study carried out in Jos, Plateau State.[41]

The researchers found that women who were predisposed to having obstetric vesicovaginal fistula – a medical complication arising childbirth by a woman who has been married young from (at about 14 years) and had very little or no formal education. The social consequences of the ailment on the women was described as "severe" almost 70% of the women who suffer from fistula were either divorced or separated from their husbands.

At the most fundamental level, the constitution of many countries usually have a part of it exclusively devoted to human rights. In Nigeria, for instance, Chapter IV of the 1999 Constitution provides for human rights, which include the right to life[42], right to dignity of human person[f] right to personal liberty[43] right to private and family life[44], and most relevant to our discourse the right to freedom from discrimination[45], either expressly by, or in the practical application of any law in force in the country, on the basis of the circumstances of birth, place of origin, religion, political opinion or sex.

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41. Wall, L.L., Et al (2004). The obstetrics vesicovaginal fistula: characteristics of 899 patients from Jos, Nigeria. *American Journal of Obstetrics and Gynecology* 190: 1011-1016.

42. S.33 1999 Constitution of the Federal Republic of Nigeria
43. Ibid. S.35
44. Ibid. S.34
45. Ibid. S.42

Non-governmental organization (NGOs) have been prolific in the dissemination of literature as part of an advocacy programme, as it relates to women's rights and perceived shortcomings.

In Nigeria some of the NGOs include Women Aid Collective e (WACOL), Gender and Development Action (GADA), Civil Resources Development and Documentation Centre (CIRRDOC); to mention but a few. They have been in the forefront of organizing seminars, workshops, roundtables, etc and making the proceedings generally available to interested researchers. Thus, GADA published Phases of Women Deprivation in Nigeria (2004) and WACOL produced a report on gender equality (2008)

1.8 ORGANIZATIONAL STRUCTURE

The thesis has been structured into five chapters.

The first chapter sets out to introduce the subject, the background, its national and international, perspectives. The methodology utilized in the research, the objective, scope and significance are also contained therein.

Chapter two looks at women's rights as a subset of human rights, the origin and philosophy of human rights in different socio-political environments, and the concept of deviation from those rights, which has engendered discrimination.

Chapter three discusses the international conventions, treaties and other instruments on which international women's rights are based beginning with the Universal Declaration of Human Rights in 1948.

Chapter four examines the overview of discriminatory laws, policies and practices, their nature and manifestations. Some specific practices, like reproductive health concerns are highlighted, with an analysis of the issues involved and the problems that have arisen.

Chapter five concludes the study with a view to providing summary, findings and recommendations to the problems identified.

CHAPTER TWO

WOMEN'S RIGHTS AND HUMAN RIGHTS

2.1 THE CONCEPT OF HUMAN RIGHT

In this chapter, we propose to examine human rights as a concept, its origin and philosophy, the different 'generations' of human rights that have been suggested and their universal acceptance. We shall discuss the historical development of the concept, how it grew from the works of medieval thinkers like Thomas Aquinas and Hugo Grotius, on to the thoughts of the 17th and 18th centuries, manifested in the writings of philosophers like John Lock, Montesquieu Voltaire and Rousseau; which came to be incorporated in national constitutions.

The works of the United Nations and its agencies like the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), among others; in organizing large informational conferences will also be discussed. A notable conference in this regard held in Beijing (China) in 1995 which popularized the phrase "women's rights are human right" will also be examined.

Human rights as a concept, is readily used not only by lawyers, but also by politicians and more generally, the public at large. Claims are presented and criticisms are formulated all by invoking human rights. (1)

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1. Tomuschat, C. (2003). *Human Rights: Between idealism and Realism*. Oxford University Press, Inc., New York, USA, p.1

To say that there is widespread acceptance of the concept of human rights is not to say that there is complete agreement about the nature and scope of such rights. Among the basic questions that have cropped up are the following:

- Whether human rights are to be viewed as divine, moral or legal entitlements;
- Whether they are to be validated by intuition, culture, custom, social contract, principles of distributive justice, or as prerequisites for happiness;
- Whether they are to be understood as irrevocable or partially revocable, and
- Whether they are to be broad or limited in number and content

Despite this lack of consensus, a number of widely accepted and interrelated fundamental principles can assist in the task of appreciating the concept; five of which in particular are outstanding[(2).] In the first instance, human rights are understood to be quintessentially universal in character, in some sense equally possessed by all human beings everywhere, including in certain instances,

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2. The discussion on the concept of human rights has been excerpted from ,different sources, centered on The New Encyclopedia Britannica, Macropaedia, Vol. 20, 15th edn., 2005; p.656, et seq.

even the unborn.[3] In stark contrast to the divine right of kings and other such conceptions of privilege, human rights extend to every person on earth without regard to merit or need, simply for being human.

Thus, ESO, JSC [4] gave the principle a judicial perspective wherein he defined human rights to mean: "(human right)… is a right which stands above the ordinary laws of the land which in fact is antecedent to the political society itself".[5].

Secondly, reflecting varying environmental circumstances, differing worldviews, and inescapable interdependencies between goods and benefits, human rights refer to a wide continuation of claims, ranging from the most justiciable to the most inspirational. Thus, human rights partake of both the legal and moral orders, sometimes indistinguishably.

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3. One of the most basic of human rights – the right to life – is attributable to the unborn.
   See s.236, Penal code and s.328, of Criminal Code
   See also: Ibidapo-Obe, A. (2005) *Essays on Human Rights Law in Nigeria* (Lagos: Concept Publications Ltd, 2005), PP. 177-180
4. *Ransome Kuti vs Attorney General of the* Federation (1985) 2 NWLR (Pt.6) p.211
5. Ibid, at 229 – 230
   See also: Saude vs. Abdullahi (1989) 4 NWLR (Pt.116) p.387

Following from the second principle above, is the third, that human rights are commonly assumed to refer, in some vague sense, to "fundamental" as distinct from "non-essential" goods or benefits. In fact, some human rights and political theorists go so far as to limit human rights to a single core right or two, for example, the right to life or the right to equal freedom of opportunity. Therefore, the tendency is to emphasize "basic needs" and to rule out "mere wants."

Fourthly, regardless of their ultimate origin or justification, human rights are understood to represent both individual and group demands for political power, wealth, education, and other social goods and benefits, the most fundamental of which is respect and its constituent elements of reciprocal tolerance and mutual forbearance in the pursuit of all other goods. Consequently, human rights imply claims against persons and institutions impeding the achievement of these goods as well as standards for judging the legitimacy of laws and traditions.

Lastly, most assertions of human rights though arguably not all, are qualified by the limitation that the rights of any particular individual or group in any particular instance are restricted as much as is necessary to secure the comparable rights of others and the aggregate common interest. Given this limitation, human rights are sometimes designated prima-facie rights, so that ordinarily it makes little or no sense to think of them in absolute terms.

Nevertheless, no matter how accurate the foregoing principles are, they are not without controversy. For instance, granted that human rights qualify state power do they also qualify private power? If so, when and how? What does it really mean, for example to say that a right is fundamental?

These questions notwithstanding, and given the basic correctness of the principles; perhaps no other description of the concept is more apt than that of Professor Tomuschat wherein he stated that: "human rights are rights a person enjoys by virtue of being human without any supplementary condition being required"[6] .

2.2 ORIGIN AND PHILOSOPHY OF HUMAN RIGHTS

According to the Britannica, [7] the expression "human rights is relatively new having come into everyday parlance from around the end of the Second World War (in 1945). It replaced the phrase "natural rights" which had fallen into disfavour in part because the theory of natural law to which it was closely connected had become a matter of serious controversy. It replaced as well the latter phrase "the rights of Man", which was not universally understood to include the right of women.

Most studies of human rights trace the origins of human rights to ancient Greece and Rome, where it was closely tied to the natural law doctrines of stoicism.[8]

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6. Tomuschat, C. op. cit. p3
7. Ibid.
   See also: Ezejiofor, G. (1964)*Protection of Human Rights Under the Law* (Butterworths, London, England p.5
8. Ezejiofor, G. ibid
   Stoicism was a school of philosophy in Greco-Roman times whose core of ethical doctrine helped to promote the idea of a common humanity bonded together through acts of mutual benefit. Leading Roman Stoics were Seneca, Epictetus and Marcus Aurelius.

According to the stoics, human conduct should be judged according to and brought into harmony with the laws of nature. In part, because stoicism played a key role in its formation and spread, Roman law similarly allowed for the existence of a natural law, and with it certain universal rights that extended beyond the rights of citizenship. According to the Roman jurist Ulpian[9], for example, natural law was that which nature – not the state-assures to all human beings, Roman citizens or not.

It was not until after the Middle Ages, however, that natural law became associated with natural rights. In ancient and medieval times, doctrines of natural law concerned mainly the duties, rather than the rights, of "Man." Moreover, these doctrines recognised the legitimacy of slavery and serfdom and, in so doing excluded perhaps the most important ideas of human rights as they are understood today- freedom (or liberty) and equality (or non discrimination). In order for human rights to gain general acceptance as natural rights therefore, certain basic changes in society were necessary, changes of the sort that took place from the decline of European feudalism through the Renaissance.[10] During this period, resistance to intolerance and political and economic bondage, the evident failure of rules to meet their obligations under natural law, and the unprecedented commitment to individual expression and worldly experience all combined to shift the conception of natural law from duties to rights.

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9. Full name (in Latin) Danitius Ulpianus. He was a Roman jurist and imperial official whose writings supplied one- third of the total content of the Byzantine emperor Justinian I's monumental Digest or Pandects.
10. The period in European civilization immediately following the Middle Ages, conventionally held to have been characterized by a surge of interest in classical learning and values. Beginning in the 12th century, the Renaissance as a unified historical period ended with the fall of Rome in 1527.

The teachings of St. Thomas Aquinas and Hugo Groitus on the European continent, as well as the Magna Carta[11] (1215), the Petition of Right (of 1628) and the Bill of Rights (1689), [12] all in England were proof of this change. The teachings, writings and historical documents all testified to the increasingly popular view that human beings are endowed with certain eternally and inalienable rights that were not renounced when human kind "contracted" to enter the social state from the primitive state (Francis Hobbes) and were not diminished by the claim of "the divine right of Kings" (John Austen).

The modern conception of natural law as meaning natural right was elaborated primarily by thinkers of the 17th and 18th centuries. Particularly important were the writings of John Locke [13] and the works of the 18th century French Philosophers including Montesquieu Voltaire and Jean-Jacques Rousseau. Locke argued in detail, that certain rights self-evidently pertain to individuals as human beings; that chief among them are the right to life, liberty (freedom from arbitrary rule) and to property; that upon entering civil society, humankind surrendered to the state pursuant to a "social contract" only the right to enforce these natural rights and not the

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11. Magna Carta, English GREAT CHARTER, the Charter of English Liberties granted by King John in 1215 under threat of civil war and reissued with alterations in 1216, 1217 and 1225.
12. The main purpose of the English Bill of Rights was to declare illegal the royal prerogative of dispensing with the law in certain cases, and the complete suspension of laws without the consent of Parliament.
13. John Locke (1632-1704); arguably the most important natural law theorist of modern times" His work "Two Treaties of Government" (1690) is thought to have had a profound influence on the framers of the United States Constitution.

rights themselves, and that the States failure to secure these rights gave rise to a right to responsible, popular revolution.

The French '*philosophes'* building on Locke and others, vigorously attacked religious and scientific dogmatism, intolerance, censorship and social and economic restraints. They sought to discover and act upon universally valid principles governing nature, humanity and society, including the inalienable "rights of man" which they treated as a fundamental ethical and social gospel.

Not surprisingly, this liberal intellectual ferment exerted a profound influence in the Western world of the late 18th and early 19th centuries. Together with the Revolution of 1688 in England and the resulting Bill of Rights, it provided the rationale for the wave of revolutionary agitation that swept the West, most notably in North America and France.

Thus, the first document of constitutional policy that came about in the North American continent was made on 12th June 1776, in the Virginia Declaration of Rights, which a couple of weeks later, on 4th July, 1776, found a reflection in the American Declaration of Independence, with the following words: "we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness". [(14)]

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14. Tomuschat, C. op. cit., pp 12-13

In sum, the idea of human rights, though known earlier as natural rights played a key role in the late 18th and early 19th century struggles against political absolutism. It was indeed, the failure of rulers to respect the principles of freedom and equality that was responsible for this development. Although the heydays of natural rights proved short, the idea of rights nonetheless endured. The abolition of slavery, the implementation of factory legislation, the rise of popular education and trade unionism, the universal suffrage movement – these and other examples of 19th century reformist impulses afforded ample evidence that the idea was not to be extinguished.

Today, the vast majority of legal scholars and philosophers – particularly in the West – agree that every human being has some basic rights. Indeed, except for some essentially isolated late 19th century and early 20th century demonstrations of international humanitarian concern, the last half of the 20th century may fairly be said to mark the birth of the international as well as the universal recognition of human rights. In the treaty charter establishing the United Nations, for example, all member states pledged themselves to take joint and separate action for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, language, religion or sex. Similarly, in the Universal Declaration of Human Rights (UDHR) in 1948, representatives from many cultures endorsed the rights therein set forth "as a common standard of achievement for all peoples and all nations". Tomuschat describes the UDHR as "the great leap forward" (15)

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15. Ibid, p.13

in the evaluation of human rights in that "for the first time in the history of mankind, a document had come into being which defined the rights of every human being, independently of his/her race, colour, sex, language or other condition"[16].

Human rights have come of age, and it has now become routine to speak of different "generations" of human rights [17], attributable to the French jurist, Karel Vasak.

Inspired by the three normative themes of the French Revolution [18], Vasak advanced:

(a) Human rights of the first generation

Belonging to this first generation are rights such as the right to life, liberty and the security of the person, freedom from slavery or involuntary servitude, freedom from torture and from cruel, in human or degrading treatment or punishment. The focus of this thesis – protection from gender discrimination – also belong in the first generation. First generation rights are deemed to constitute a necessary component of modern constitutional texts [19] and as such, are "rightly considered the core of the defence strategy against arbitrary use of power by governments" [20] .

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16. Ibid, p. 23
17. Ibid p. 24
18. The normative themes of the French Revolution (1789) are *Liberte, Egalite and Fraternite,* meaning liberty, equality and solidarity.
19. See for instance, Rights enshrined in ss. 33-43 of the 1999 Constitution, especially s. 42 (Right to freedom from discrimination).
20. Tomuschat, C. op. cit. p.27

These rights have also been described as 'negative' human rights in that they enjoin states to abstain from interfering with personal freedom [21] and as a shield that safeguards the individual, alone and in association with others, against the abuse of political authority.

(b) Human rights of the second generation

Historically, they are a counterpoint to the first generation of civil and political rights[22]. In this category, human rights are conceived more in 'positive' than in 'negative' terms in that they require more the intervention rather than the abstention of the state for the purpose of assuring equitable distribution of the goods and benefits involved [23] .

They appeared fairly late on the stage as constitutional developments and introduced rights which have been classified as political, economic and social rights. It is not in dispute that they are far more context – dependent than the traditional rights of the first generation. For that reason, some states refrain from guaranteeing them at a constitutional level [24].

In Nigeria, for instance, they are subsumed in Chapter II of the 1999 Constitution as "Fundamental Objectives and Directive Principles of State Policy"[25], whereof they can be described as inspirational in nature.

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21. Ibid, p. 24
22. The New Encyclopedia Britannica, Macropaedia, Vol.20, op. cit. p. 658.
23. Ibid
24. Tomuschat, C. op. cit. pp 27-28
25. SS. 15 – 24 of the 1999 Constitution

(c) **Human rights of the third generation**

Sometimes also called 'solidarity rights,' a total of six rights, are thought to belong in the third generation. These are:

i. the right to peace;

ii. the right to a healthy and sustainable environment;

iii. the right to humanitarian disaster relief;

iv. the right to political, economic, social and cultural self-determination;

v. the right to economic and social development, and

vi. the right to participate in and benefit from "the common heritage of mankind"

It has been said that the last three of these rights reflect the emergence of "Third World" nationalism and its "revolution of rising expectation," that is, its demand for a global redistribution of power, wealth and other important goods and benefits [(26).]

Summarily, it is apposite to remark that the fact that human rights have been classified so broadly should not be taken to imply that the three generations of rights are equally acceptable to everyone. Thus, the classification scheme we have described, the parameters of which are "generations" has more than once come under criticism, for instance, for terminological inadequacy.[(27)] The perceived inadequacy has therefore given rise to proposals to introduce different classifications, for example, different 'dimensions' of human rights. [(28)] Neither should

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26. The new Encyclopaedia Britannica op. cit., pp 658-659.
27. Tomuschat, C. op. cit, pp 24-25
28. Ibid

it suggest that the three generations or their separate elements have been greeted with equal urgency.[29] Vasak's model could be taken to be no more than a simplified expression of an extremely complex historical record. The model is also not intended to suggest a linear process in which each generation gives birth to the next and then dies away. The three generations of rights are cumulative, overlapping and interdependent. [30]

2.3 WOMEN'S RIGHT AS HUMAN RIGHTS.

The Fourth World Conference on Women held in Beijing China (in 1995) resulted in the Beijing Declaration and Platform for Action, which popularized the phrase "women's rights are human rights" [31]. As we have noted earlier, the historical development of the expression "human rights" involved its replacement of two phrases, "natural rights" and "the rights of Man". The latter phrase especially was not universally understood to include the right of women.

It is now globally accepted that: "… the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields" [32]. As such, it is equally universal wisdom that the human rights of women (and of the girl child) are an inalienable integral and indivisible part of universal human rights.

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29. The New Encyclopaedia Britannica op cit, p 659
30. Ibid, p. 658
31. UNIFEM AND UNIC. (2003) *The Beijing Conference: What does it mean to Women in Nigeria?* Lagos, Nigeria. p.7
32. Wallace, R. (1997) *International Human Rights: Text and Materials*: Sweet and Maxwell, London, England. p.15

The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and eradication of all forms of discrimination on ground of sex, are therefore priority objectives of the international community. [33].

As an instance, the Canadian Charter of Rights and Freedoms include the provision that: "Every individual is equal before and under the law without discrimination and has the right to the equal protection and equal benefit of the law in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex …" [34].

Section 28 of the Canadian Charter reinforces S.15(1) quoted above, to the effect that: "notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons" [35].

In some other jurisdictions, legislation has been passed to supplement such Charter provisions as obtains in Canada. According to Beloff [36], while major changes in the legal status of women had been wrought by the British Parliament over time, men tended to treat women differently for no other reason than that they were women in sphere of life where this difference had no practical significance whatsoever.

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33. Ibid, culled from Part I, para. 18, Vienna Declaration and Programme of Action; adopted following the United Nations World Conference on Human Rights, held in Vienna, Austria, June 1993.
34. Bailey S.H, Harris D.J and Jones, B.L (1995) *Civil Liberties: cases and materials* Butterworth's, London, p. 27;
35. Ibid
36. Beloff, J. M. (1976) *Sex Discrimination: The New Law* Butterworths, London. p.iii

Thus, the Sex Discrimination Act 1975 was passed, to take away a male privilege and confer a female right [37].

The Charter of the United Nations (1945) begins by reaffirming a "faith in fundamental human rights in the dignity and worth of the human person (and) in the equal rights of men and women…" It goes further to state that the purposes of the UN are, among other things, to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex…". Whatever the current attitudes and policies of governments, there is a widening and deepening concern for the protection and promotion of human rights on all fronts. Substantially responsible for this progressive development has been the work of the UN itself and its allied agencies, especially the Commission on Human Rights.

According to the Britannica, [38] for the first 20 years of its existence (1947-1966), the UN Commission on Human Rights concentrated its efforts on setting human rights standards. Together with other UN bodies such as the ILO, UNESCO, the Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice; it has drafted standards and prepared a number of international human rights instruments: We shall have more to say about these international instruments .

Also contributing to this development, particularly since the 1970's and 80's have been five other "salient factors" [39], viz:

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37. Ibid
38. The New Encyclopaedia Britannica op. cit. p.661
39. Ibid, p. 664

(a) a mounting intellectual and political challenge from feminists regarding not only the rights of women worldwide but also what they regard as the myths defining humane governance generally;

(b) the emergence and spread of civil society on a transnational basis, primarily in the form of activist, non-governmental, human rights organizations;

(c) the public advocacy of human rights as a key aspect of national foreign policies;

(d) a worldwide profusion of teaching and research devoted to the study of human rights; and

(e) the work of large UN conferences in areas such as children's rights, population, social development and women's rights.

Professor Wallace [40] has put the last factor in perspective, beginning with the Conference in Mexico City (Mexico) in 1975, whose works led to the declaration by the United Nation General Assembly of the UN Decade for Women (1975-1985). That decade saw to the adoption by the General Assembly, of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in 1979. The second conference held in Copenhagen (Denmark) in 1980; the third in Nairobi (Kenya) in 1985 and the fourth in Beijing (China) in 1995; which resulted in the Beijing Declaration and Platform for Action. [41].

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40. Wallace, R. op. cit. pp 46-47
41. Ibid p. 47

The Beijing Declaration was cited with approval by His Lordship, Niki Tobi JCA [42](as he then was) wherein he said, while delivering the unanimous judgment of the court, that: "we need not travel all the way to Beijing to know that some of our customs is not consistent with the civilized world" [43]. . In holding that a custom which discriminates against women or the girl child should not be so; as all human beings, male and female are born into a free world and are expected to participate freely in society, without any inhibition on grounds of sex. The Beijing Platform for Action reaffirmed that all human rights-civil, economic political and social, including the right to development – are universal, indivisible, interdependent and interrelated.[44].

2.4 DEROGATIONS FROM WOMEN'S' RIGHTS

Professor Tomuschat has asserted that if human rights accrue to every human being without any additional requirements, discrimination and exclusion cannot be tolerated. And yet human history is characterized by a continuous fight against negative differentiations.[45] Such differentiations, when directed specifically at a woman based on her gender, derogates from the woman's human rights. Thus, a person discriminates against a woman if in specified situations, he treats her on the ground of her sex less favourably than he treats or would treat a man [46]. Sex discrimination can be either direct or indirect. It is direct where a person intends to discriminate.

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42. Mojekwu vs Mojekwu (1997) 7 NWLR (Pt 512) 283
43. Ibid at 304-305
44. Wallace, R. op. cit., p.106
45. Tomuschat, C. op. cit., pp 42-43
46. Beloff, J. M. op. cit. p.9

It is indirect where, irrespective of his intention, a person applies to a woman who is seeking a benefit from him, an unjustifiable condition whose effect is to discriminate against her. (47) However, it is not discrimination simply to treat a woman less favourably than a man, the discrimination must be on the ground of her sex. (48).

Culture and tradition have been fingered in restricting and derogating from the exercise and enjoyment of basic rights by women. For instance, paragraph 71 of the Beijing Declaration observed that discrimination in girls' access to education persists in many areas, owing to customary attitude, early marriages and pregnancies; (that) girls undertake heavy domestic work at a very early age; (that) girls and young women are expected to manage both educational and domestic responsibilities, often resulting in poor scholastic performance and early drop-out from the educational system. (49)

Equally, violence against women has been identified as an obstacle to the achievement of the objectives of equality, development and peace. Violence against women, it is contended, violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. (50).

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47. Ibid,
48. Ibid p.10
49. Wallace, R. op. cit. p.49
50. Ibid, p. 77

The term "violence against women" has therefore been described to mean any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty [51].

The forms of violence are numerous. Those that have been identified in Nigeria include, but are not limited to[52]:

- Sexual assault (such as rape, defilement, indecent assault and incest);
- Sexual harassment;
- Early marriage;
- Trafficking in women; etc,

A pernicious employment practice has also been widely reported from the banking sector in the country: that women of marriageable age employed in banks are forced to sign undertakings, either not to marry within three years of being employed, or, if married, not to start a family within three years, on the pain of losing their employment [53].

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51. Ibid, p. 78 See also:
    Article I, United Nations Declaration on the Elimination of Violence Against Women (1993)
52. WACOL: CEDAW and Accountability to Gender Equality in Nigeria (A Shadow Report, 2008), p.35
53. Ibid

We have seen, in this chapter that what is now universally known and accepted as “human rights” did not originally develop as such. In the beginning, it was regarded as “natural rights” Taking its roots from natural law, that is, what can be naturally deduced from the law of nature. Later the concept came to be known as the “right of Man” the main shortcoming of which was that it was not universally understood to include the rights of women.

Thus, it was not until after the second World War in 1945 and the formation of the United Nations three years after (in 1948), that the term “human rights” came to be universally expoused and accepted, which crystallized in the Universal Declaration of Human Rights (UDHR)

Since 1948, there has been an emergence and spread of civil society organization on a transnational basis, most of them deriving inspiration from the works of the United Nations (UN) itself and its agencies. We have thus discussed the many conferences held under the auspices of the UN, culminating in the Beijing Declaration and Platform for Action which actively seeks to combat derogations from women’s rights.

CHAPTER THREE

INTERNATIONAL INSTRUMENTS AND WOMENS' RIGHTS

3.1 INTERNATIONAL INSTRUMENTS

Since human rights are guaranteed to all humans without regard to race and without any "supplementary condition being required", it follows that the optional way to have universal benchmarks is through written agreements among international entities.

As was pointed out in the immediately preceding chapter, the UN Commission on Human Rights along with other bodies like the International Labour Organization (ILO) have been prominent in setting standards and preparing a number of international human rights instruments.

These instruments have come into existence in the form of Conventions, Covenants, Charters, etc, which terms the legal meaning of or differences between international law, need not delay us. Collectively, they are known as treaties. Uwaifo, JSC[(1)] gave, judicial insight on these instruments: according to the (Vienna) Convention (on the law of treaties of 1969), "treaty" means an intentional agreement or by whatever name called, e.g. Act, Charter, Concordant, Convention, Covenant, Declaration, Protocol or Statute, concluded between states in written form and governed by international law whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.[(2)]

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1. *Abacha vs. Fawehinmi* (2000) 6 NWLR (pt. 660) 228
2. (Supra), at p. 340

Throwing more light on the point, Nweze[3] is of the opinion that broadly speaking, international agreements, particularly those relating to human rights employ two approaches, namely, the "treaty" method and "non-treaty" method. Nweze posits that whereas the treaty method creates legally binding obligations on state parties, the non-treaty method establishes non-legal commitment to guide signatory countries [4]. As far as Nigeria is governed, an international treaty entered into by the government does not become binding until enacted into law by the National Assembly [5].

For our purpose, however, the essence of these instruments is that they are agreements among countries partaking of international norms. As Achike JSC[6] said even though unincorporated treaties have no effect upon the rights and duties of citizens either at common law or statute law; they may however indirectly affect **the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties.** [7]

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3. Nweze, CC (2003). Recent Trends in the Judicialization of Treaty Human Rights:: Comparative Pespective. In: Nweze, C.C. and Nwantwo, O. (Eds) Current Themes in the Domestication of Human Rights Norms. Fourth Dimension Publishers, Enugu, Nigeria. p.143.

4. Ibid

5. S.12 (i),Constitution of the Federal Republic of Nigeria,1999

6. *Abacha vs Fawehinmi* (Supra) p.314

7. Emphasis supplied

As an example, in September 2000, the UN held the millennium summit in New York with 190 member countries in attendance. The Summit resulted in the Millennium Declaration, which set up eight goals to reshape the development focus of the world. These goals were labelled the "Millennium Development Goals" (MDGs), one of which is to promote gender equality and empower women. Even though not incorporated into law, the goals are being actively pursued as policy by the Nigerian authorities, both at Federal and State levels [8]. However, as Ilumoka[9] has noted, "the articulation of international human rights today is an attempt to set universal standards and procedures for enforcing them" [10]. In the same vein, Kofi Annan [11] wrote of the great strides made in defining the universal norms of gender equality in the course of the 20th century [12].

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8. In addition to the eight goals, there are eighteen targets and forty eight indicators in the MDGs, which are set out to be achieved by 2015. Promoting gender equality and empowering women is goal number three. The others are:
   Goal 1: Eradicate extreme poverty and hunger;
   2: Achieve Universal Primary Education;
   3: (as stated above);
   4: Reduce child mortality;
   5: Improve maternal health;
   6: Combat HIV/AIDS, Malaria and other diseases;
   7: Ensure environmental sustainability for Development;
   8. Develop a Global Partnership for Development

9. Ilumoka, O. A. (1994) "African Women Economic, Social and cultural Rights – Toward a Relevant Theory and Practice". *In: J.R. (Ed) Human Right of Women: National and International Perspectives* University of Pensylvania Press, Philadephia, U.S.A, pp 307-326.
10. Ibid, P. 310
11. Kofi Annan was Secretary – General of the United Nations from 1997 – 2005
12. United Nations (2000). *CEDAW: The Optional Protocol – Text and Materials*, United Nations Publication, New Tork, U.S.A. Preface.

Among the giant strides made in defining the international norms of gender equality and human rights are the following instruments [13]

A. Universal Declaration of Human Rights (14);
B. International Covenant on Economic, Social and Cultural Rights (14);
C. International Covenant on Civil and Political Rights (14);
D. Optional Protocol to the International Covenant on Civil and Political Rights
E. Convention on the Right of the Child (14);
F. Covention on the Elimination of All Forms of Discrimination Against Women (14);
G. Convention on the Political Rights of Women (14);
H. Convention on the Nationality of Married Women;
I. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages;
J. Convention against Torture and other Cruel, in human or Degrading Treatment or Punishment;
K. Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others;
L. European Convention for the Protection of Human Rights and Fundamental Freedoms;
M. American Convention on Human Rights; and the
N. African Charter on Human and Peoples Rights [14].

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13. Sourced from Cook, R. (ed) (1994). Human Rights of Women: *National and International Perspectives* op. cit p. 573. and
Peterson V.S. and Runyan, (1993) A.S. *Global Gender Issues.* West view Press, Colorado, U.S.A p. 155
14. Ratified at different dates, by Nigeria

Some of the instruments go a little back in time, the watershed being the Universal Declaration of Human Rights, which came into force in 1948. The Convention on the Political Rights of Women was adopted in 1952 at a time when women did not have the right to vote in many countries. However, the international instrument of overriding relevance to our discourse is that more widely known by its acronym as CEDAW.

3.2 CONVENTION ON THE ELIMINATOIN OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW, the full meaning of which is the "Convention on the Elimination of All Forms of Discrimination Against Women" has come to be acclaimed as the "Womens Bill of Rights" since its adoption by the UN General Assembly on 18th December, 1979; and has since then taken "its place as a key pillar of international human rights"[15]. It entered into force on 3 September, 1981. Nigeria acceded to the Convention on 23 April, 1984 and ratified it on 13 June, 1985 [16].

According to Napikoski [17], CEDAW is "the key" international agreement on women's human rights. Professor Wallace [18] no doubt agrees, when she wrote that the Convention is the major

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15. Kofi Anan op. cit. p. 1
16. WACOL (2008). CEDAW *and Accountability to Gender Equality in Nigeria: A Shadow Report* Enugu, Nigeria, p. ix
17. Napikoski, L. (2004). *A brief history about CEDAW.* Retrieved August 12, 2010 from http://about.com
18. Wallace, R. (1997) *International Human Rights: Text and Materials*. Sweet and Maxwell, London, England, p.32

international instrument dealing exclusively with the human rights of women. She posits that CEDAW goes further than previous conventions and declarations in recognizing the importance of tradition and culture in shaping the thinking and behavior of men and women, and the significant part the two factors play in restricting the exercise of basic rights by women. [19]

Its underlying philosophy is that discrimination against women is incompatible with human dignity. The convention acknowledges that persistent discrimination against women exists and urge member states of the UN to take action against any form of it. Napikoski asserts that the only industrialized Western nation that has not ratified CEDAW is the United States although it signed the Convention on 17 July, 1980.

The purpose of the Convention is very clear: to eliminate discriminatory behaviour which is adverse to women, [20] and its definition of what constitutes "discrimination against women" has been faithfully reproduced in numerous other publications thereafter. In Article I, it states that "discrimination against women" shall mean:

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

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19. Ibid
20. Ibid, p. 18

Divided into 6 Parts and 30 Articles, the Convention embodies provisions for:

- civil and political rights; [21]
- education and health care; [22]
- employment and economic and social benefits; and [23]
- rural women. [24]

On rural women, for instance, the Convention articulates the particular problems faced by women in rural areas and the significant roles that this group of women play in the economic survival of their families. Also, in the field of education, it urges a reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely. [25]

The provisions of CEDAW has provided the template for the actualization of women's rights on a worldwide scale. The Convention has been reaffirmed at major international conferences, the most recently prominent of which was the Beijing Conference, shortly before the turn of the millennium. The theme of the Conference, held in September 1995, in China, was "Action for equality, development and peace". The Conference resulted in the Beijing Declaration and Platform for Action . An Optional Protocol [26] to the Convention has been adopted, which in its preamble, recalled and reaffirmed the Beijing Declaration and Platform for Action.

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21. Articles 7,8,9, 15 and 16
22. Articles 10 and 12
23. Articles 11 and 13
24. Article 14
25. Article 10 (f)
26. The Optional Protocol was adopted and opened for signature, ratification and accession by General Assembly resolution 54/4 of 6 October 2000, p. 17

Both CEDAW and the Beijing Declaration have been given an extensive and scholarly treatment by Professor Wallace. [27]

3.3 OTHER INTERNATIONAL INSTRUMENTS

In any discourse relating to international and regional treaties on women's economic, social and cultural rights, according to Ibrahim [28], four documents are often referred to. These are:[29]

a. The International Covenant on Economic, Social and Cultural Rights (ICESCR);
b. the Convenant on the Elimination of All Forms of Discrimination Against Women (CEDAW);
c. the Beijing Women Declaration (BWD); and
d. the African Charter on Human and Peoples' Rights (ACHPR).

Ibrahim is also of the opinion that these four human rights documents provide the platform on which women in African (and Nigeria in particular) can lay claim to the right to equality before the law, to freedom from discrimination and to certain economic, social and cultural benefits and freedoms [30].

We should hasten to add to these four documents, the Universal Declaration of Human Rights, which may be considered the grandmother, from which the four documents descended.

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27. Wallace, R. op. cit, pp. 15-130
28. Ibrahim, U. (2004). *Women: Phases of Deprivation in Nigeria*. Gender and Development Action, Abuja, Nigeria, p.12
29. ibid
30. ibid, p.4

While CEDAW has been described as the "Women's Bill of Rights", the ICESCR, along with the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights; have been referred to as constituting "the International Bill of Human Rights" [31] When CEDAW is added to them, Professor Tomuschat wrote that they (along with some others which are not particularly important to our discourse) "form the core elements of the legal tool kit for the protection of human rights at world level" [32].

We have highlighted most of these major international human rights instruments in the introduction to this chapter (Three). We have already examined CEDAW in some detail. We now propose to look at three of them a little more closely, beginning with the grandmother.

3.3.1 Universal Declaration of Human Rights (UDHR)

The UDHR constitute in fact, wrote Tomuschat, [33] a unique mixture of rights of the most diverse nature. It starts out in Article I with a programmatic proclamation revealing the ideological bases of the instrument:

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31. Tomuschat, C. (2003). *Human Rights: Between Idealism and Realism*. Oxford University Press, Inc., New York, U.S.A, p.32

32 Ibid.

Some of the other international instruments cited by Professor Tomuschat include:

(a) International Convention on the Elimination of All Forms of Racial Discrimination;
(b) Convention against Torture and other Cruel, in human or Degrading Treatment or Punishment;
(c) Convention on the Rights of the Child

33. Ibid, p.29

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

In Article 2, it sets out the general principles of equality and non-discrimination wherein it provided that: "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ….sex".

Article 2 of the UDHR has been compared with Article I of CEDAW in advancing the argument that the definition of discrimination contained in the later is more limited in scope than the former [(34)]. The argument, it is submitted only goes to elucidate the progressive relationship between the two instruments, since the Universal Declaration was proclaimed in 1948, and the CEDAW was adopted in 1979.

The catalogue of rights set out in the Universal Declaration of Human Rights, according to the Britannica [(35)], is scarcely less than the sum of most of the important traditional political and civil rights of national constitutions and legal systems, including equality before the law, etc. Pointing out that the Universal Declaration is [not a treaty], the Britannica asserts that it was meant to proclaim "a common standard of achievement for all peoples and all nations" rather than enforceable legal obligations. Nonetheless, the Declaration has acquired a status juridically more

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34. Wallace, R. op. cit. p.19
35. The New Encyclopedia, Britannica, Macropaedia, Vol. 20, 15th edn. , 2005; p. 661.

important than originally intended, and it has been widely used even by national courts, as a means of judging compliance with human rights obligations under the UN Charter.

The UDHR was followed, as "a significant milestone"[36] in 1966, first by the International Covenant on Civil and Political Rights and later by the International Covenant on Economic, Social and Cultural Rights.

3.3.2 International Covenant on Civil and Political Rights.

The civil and political rights guaranteed by this instrument and its subsequent Optional Protocol incorporate almost all those proclaimed in the Universal Declaration of Human Right, including the rights to nondiscrimination. To the extent that the UDHR and the Covenant overlap, however, the latter is understood to explicate and help interprete the former.

3.3.3 International Covenant on Economic Social and Cultural Rights (ICESCR)

Just as the International Covenant on Civil and Political Rights elaborate upon most of the civil and political rights enumerated in the Universal Declaration of Human Rights so do the ICESCR elaborate upon most of the economic, social and cultural rights set forth in the Universal Declaration.

However unlike its companion Covenant on Civil and Political Rights, the ICESCR was not geared towards immediate implementation. One obligation though, was subject to immediate

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36. Tomuschat, C. op. cit., p. 32

application: the prohibition of discrimination in the enjoyment of the rights enumerated on grounds of race, colour, sex… or other status. (37)

3.4 Regional Instruments: African Charter of Human and Peoples' Rights.

Action for the international promotion and protection of human rights has proceeded at the regional level in Europe, the Americas, Africa, the Middle-East, and to a lesser extent, in Asia[38]. These actions have resulted, from the first three regions, in the European convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights respectively.

We shall only be interested in the African regional instrument.

In 1981, the 18th Assembly of Heads of State and Governments of the Organization of African Unity (O.A.U, now known as the African Union, A.U) adopted what has come to be called the "Banjul Charter (39), as the African Charter on Human and Peoples' Rights is sometimes called. Like its American and early European counterparts, the African Charter provides for a human rights commission, which has both promotional and protective functions. There is no restriction on who may file a complaint with it. In contrast to the Europeans and American procedures, however, concerned states are encouraged to reach a friendly settlement without formally involving the investigative or conciliatory mechanism of the Commission. Also, the African Charter does not call for a human rights court. African customs and traditions,

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37. The New Encyclopedia Britannica op. cit., p 662.
38. Ibid
39. The African Charter on Human and Peoples' Rights was ratified in Banjul, Gambia.

it has been said, emphasize mediation, conciliation, and consensus rather than the adversarial and adjudicative procedures that are common to Western legal systems.

Four other distinctive features of the Banjul Charter are noteworthy[40]. First, it provides for economic, social and cultural rights[41] as well as civil and political rights[42]. In this respect, it resemble the American Convention and differs from the European Convention.

Secondly, in contrast to both the European and American Conventions, it recognizes the rights of groups in addition to the family, women and children.[43] The aged and the infirm are accorded special protection also,[44] and the right of peoples to self-determination is elaborated in the right to existence, equality and non domination[45].

Thirdly, it uniquely embraces the third generation or "solidarity" rights to economic, social and

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40. The New Encyclopedia Britannica op. cit., p.663
41. The economic, social and cultural rights are contained in Articles 15,16,17 and 22 of the Banjul Charter.
42. The civil and political rights are provided for in Articles 6-14.
43. Art. 18 (3)
44. Art 18(4)
45. Art 19.

cultural development[46] and to national and international peace and security [47].

Lastly, it is to date the only treaty instrument to detail individual duties as well as individual rights to the family, society, the state and the international African community[48].

According to Tomuschat,[49] the originality of the African Charter of Human and Peoples' Rights reside in the fact that it deals at the same time with individual human rights and collective rights of peoples. Concerning human rights proper, it sets forth not only classical liberty rights (of the "first generation") but also a number of economic and social rights (of the "second generation") such as the right to work, the right to health and the right to education.

In addition, it may be pointed out that long before environmental issues became a world wide concern through the phenomenon of global warming, the Charter provided for the right of all peoples, to a general satisfactory environment favourable to their development. [50]

It is this holistic view that has perhaps been embodied and personified in the winner of the 2004 Nobel Prize for peace, the Kenyan environmentalist and human rights advocate, Wangari, Maathai. In nominating her for the prize and thus becoming the first African woman to receive it; the Norwegian Nobel Committee observed that Professor Maathai "has taken a holistic approach to sustainable development that embraces democracy, human rights and women's rights in

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46. Art. 22
47. Art. 23
48. Arts. 27, 28 and 29.
49. Tomuschat, C. op. cit., p. 33
50. Art. 24

particular." [51]The African Charter on Human and Peoples Rights is now a part of the body of Nigerian laws [52].

The import and purport, status and applicability of the African Charter in Nigeria was extensively considered by the Supreme Court in ***Abacha V. Fawehinmi (supra)*** by a full court of seven Justices. Although there was a split (of 4-3) in their Lordships' judgment, all the Justices, however, agreed that the Charter is applicable in the country.

In the considered opinion of Uwaifo, JSC [53], the African Charter as far as Nigeria is concerned, is not purely a matter of public international law regulating the relationship between member states which are signatories to it. It is an understanding between some African states concerned to protect and improve the human rights and dignity of their citizens and other citizens within the territorial jurisdiction of their countries, to the commitment of which, that understanding has been translated into legal obligation by adopting the Charter as a domestic law. In our own case, the Hon. Justice concluded, the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act is a domestic law.

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51. The Encyclopedia Britannica 2005 Op. cit. p. 62
52. Cap. A9 LFN 2004
53. *Abacha vs Fawehinmi (*supra) pp 228, 340

It will be appreciated, that there is no way women's rights can be separated from international instruments that have been made to set universal standards of gender equality, human rights and non-discrimination.

The most encompassing of these instruments is the Universal Declaration of Human Rights, which was meant to proclaim "a common standard of achievement for all peoples and all nations". As regards women's rights, the most prominent of these instruments, as we have seen is CEDAW . Between the Universal Declaration proclaimed in 1948 and CEDAW adopted in 1979, notable ones have been the International Convention on Economic, Social and Civil and Political Rights.

At the regional levels, the European, American and African instruments have come into force, the last of the three is called the African Charter on Human and People's Rights.

As we have pointed out, no international instrument can have the force of law in Nigeria, save to the extent to which it has been domesticated, in accordance with constitutional provisions. Thus, the African Charter has been domesticated, in a way in which the CEDAW has not been done; and it is on that basis that the applicability of the African Charter has been judicially tested.

CHAPTER FOUR

DISCRIMINATORY LAWS, POLICIES AND PRACTICES AGAINST WOMEN IN NIGERIA.

4.1 OVERVIEW OF DISCRIMINATORY LAWS, POLICIES, AND PRACTICIES

In the immediate preceding chapter, we have considered the many national, regional and international instruments which are directly related to human and women's rights. These instruments have engendered laws, policies and practices which are intended to promote and protect human rights. It is a fact, however, that laws and policies impact on people's lives to the extent to which they are implemented and enforced.

In this chapter, we shall look at those laws, policies and practices which tend to affect women negatively, and the consequences of such negative tendencies.

We have noted at the outset of this discourse, that women human rights have been described both as rights that women have by virtue of being human, and that, in some circumstances, suffer human rights abuses in a specific form, relative to their being female[(1)]. We have also noted that rights, generally described, have never been absolute and universally applicable, such that where

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1. Ilumoka, O. A. (1994). African Women's Economic, Social and Cultural Rights – Towards a Relevant Theory and Practice" In Cook, J. R. (Ed*). Human Rights of Women: National and International Perspectives.* University of Pennsylvania Press, Pennsylvania, USA, p.31

discriminations exist, of which women are at the receiving end; the impact varies within different cultures and value systems. Discriminatory laws, policies and practices against women, is suggested, for our immediate purpose, to be addressed as negative tendencies militating against the full realization of women's natural potentials.

4.2 DISCRIMINATORY LAWS

According to Atsenuwa[2] on whether there are in existence, laws that are expressly incompatible with Article 2 of both the CEDAW and the African Charter on Human and People's Rights which obligate State Parties to pursue a policy of eliminating discrimination against women the answer ought to be 'No' because the 1999 Constitution voids all laws that are discriminatory.[3] However, she submits that in spite of the constitutional position, discriminatory laws remain on the statute books. As an example, she cites s.42(3) of the Constitution which validates discriminatory provisions such as those contained in Regulations made under the Police Act.[4] Other illustrations of gender-insensitive laws according to Atsenuwa are to be found in the requirement which permits a woman foreigner who is or has been married to a Nigerian man to acquire Nigerian citizenship by registration but requires a male foreigner married to a Nigerian woman to acquire citizenship through the more ardous route of naturalization[5].

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2. Atsenuwa, A. (2010). National Legislations, Policies and Practices Congruent and Incompatible with the Provisions of CEDAW and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa". In Imam, M. A. (Ed.) *Adopting Women's Human Rights Legislation in Nigeria: A Synthesis Analysis and Report* Limited, Lagos, Nigeria, pp. 79-129
3. Ibid. The Constitutional provisions are as contained in ss. 15(2), 17(2) and 42
4. Ibid
5. S.27 Constitution of Federal Republic of Nigeria, 1999

Policies and practices which overtly and subtly discriminate against women are experienced in both the public and private sectors of national life. For instance, public and private sectors of Public Service Regulations deny women who have not worked for an unbroken period of six months maternity leave with pay. Also, Regulations made under the National Youth Service Corp (NYSC) Scheme state that a female Youth Corper who gets pregnant before completing six months out of the twelve months of the service year and requires maternity leave shall be deemed not to have served and will be required to re-commence the compulsory service programme[6].

4.3 DISCRIMINATORY POLICIES AND PRACTICES

The practice of tax administrators to presume that men bear responsibility for the maintenance of their children, and as such, to grant them children's allowance without proof, is one policy that flies in the face of the reality on ground. When women seek to claim children's allowance, they are required to provide documentary evidence that they are in fact responsible for the children[7]. Even when the evidence is furnished, the allowances are either not granted at all or not granted in full.

The widespread practice of child betrothal and marriages persist in many communities. When placed side by side with other harmful practices such as puberty initiation rites, wife inheritance and genital cutting; the impact on the women folk has been more than devastating. Dr Ladan (as he then was) has sought to put the issues in perspective. In a paper[9] he presented at a WACOL

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6. Ibid, at p. 113
7. Ibid, at p. 119
8. Dr. M.T. Ladan was appointed a Professor of Law at the Ahmad Bello University, Zaria. In October,2004
9. Ladan, M.T., (2003) *An Overview of Reproductive Rights and Health (Maternal Health) in Nigeria,* WACOL, Kano, Nigeria. p.12.

roundtable in 2002, he gave a scholarly review of the historical development of the concept of reproductive health and rights, beginning from the 1968 International Conference on Human Rights held in Tehran (IRAN)[10] which recognized the basic right of parents "…to determine freely and responsibly the number and spacing of their children and a right to adequate education and information to do so".[11]

Ladan also acknowledged the nexus between this right and its adoption by CEDAW which he posited: "… provides the strongest legal support for the right to reproductive health and choice. In addition to guaranteeing equality in the freedom to determine family size, the CEDAW guarantees non-discrimination in access to health care, including information and advice on family planning" [12].

According to the scholar, the right to freedom from interference in reproductive decision-making relates to broader principles of bodily autonomy, often referred to as the "right to physical integrity" [13]. This principle has taken its roots in the right to respect for human dignity, the rights to liberty and security of the person, and the right to privacy; which rights are explicitly protected in Article 4 of the African Charter of Human and Peoples' Rights (ACHPR) and Article 5(1) of the American Convention on Human Rights[14].

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10. Ibid, p.12
11. Ibid
12. Ibid, p. 13
13. Ibid, p . 5
14. Ibid

Reproductive self-determination also implies the right to be free from all forms of violence and coercion that affect women's sexual or reproductive life, in consequence of which the international community has, since 1995, expanded its recognition of reproductive rights under international law and re-affirmed its commitment to the declarations made at international conferences.[15] Thus, the Treaty of Rome, adopted in July 1998 which created the International Criminal Court (ICC) recognized that rape and other forms of sexual violence are among the most serious crimes under international humanitarian law.[16]

4.4 CONSEQUENCES OF DISCRIMINATORY TENDENCIES

In the considered opinion of Ladan, various harmful practices which may be encountered throughout the life span of a woman contribute, for instance, to reproductive ill health in Nigeria and constitute a violation of reproductive right[17]. Example of harmful practices commonly encountered, according to him, include forced/early marriage (hereinafter referred to as FGM), wife inheritance and group circumcision, among others[18]. FGM, or genital cutting is practiced in every state in Nigeria, in various forms from infancy to adulthood; and cuts across religions and cultural boundaries. [19]

These practices, it may be noted, are not restricted to Nigeria, and the medical evidence is, to put it mildly, most damning. A common consequence of early marriage is the development of obstetric vesicovaginal fistula.

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15. Ibid, p. 14
16. Ibid, pp. 14 – 15
17. Ibid, p. 19
18. Ibid
19. Ibid, pp. 19-20

A fistula is a serious childbirth injury that leaves girls and women incontinent of urine and/or feces after prolonged and obstructed labour. [20] It is estimated that approximately two million girls and women worldwide live with a fistula and almost all these girls and women live in resource-poor countries of Africa and South Asia. [21] According to the study carried out by the Women's Dignity Project in Tanzania, [22]Fistula is more than a woman's health problem. Its roots are embedded in economic, political and social determinants that underlie poverty and vulnerability. These include limited financial expenditure on basic and maternal health care services for the poor; the absence of governance structures that bring the voices of marginalized people into public policy setting; the lack of transparency in the allocation of public funds, including for priority social sectors such as health and the exclusion of women and girls from decision-making processes[23].

A historical perspective to fistulas is provided by Tafesse, et al[24] . According to the authors, obstetric fistula is one of the earliest documented human tragedies. The link between difficult childbirth and the development of fistula was established for the first time by Avicenna, an Arab – Persian physician who died in 1037 AD. Avicenna suggested prevention of the condition "by postponing pregnancy among girls who married young" [25] .

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20. Bangser, M (2007). Strengthening Public health priority-setting through research on Fistula, maternal health, and health inequities. International *Journal of Gynecology and Obstetrics* 99:S16-S20.
21. Ibid
22. Ibid
23. Bangser, M. op cit S16-S17
24. Tafesse, B. et al. (2006). Obstetric fistula and its physical, social and psychological Dimension: The etiopian scenario. *Acta Urologica* 23; 4:25-31
25. Ibid, p. 26

In a paper presented at the Twenty-Second Annual Meeting of the American Gynecological and Obstetrical Society [26], Wall, et al discussed the characteristics of 899 patients with vesicovaginal fistula from Jos (Plateau State)[27].

The patients reviewed came from Plateau State, the neighbouring states of Kaduna and Bauchi, while a few came from as far away as Niger Republic [28]. The report found that women with fistula had been married young. The mean age at menarche [29] was 14.5 years and the mean age at marriage was 15.5 years; while a whopping 352 of the women (representing 39.1% of the study) had not yet menstruated at all as at the time of their marriage [30] 33.6% or 302 of the women had been married by the age of 14 years.

Wall, et al found that most of the patients tended to be poorly educated, from impoverished rural backgrounds, and were largely illiterate: 700 patients (77.9%) had no formal education, only 126 (14%) had primary school education, 13 (1.4%) had some secondary school education NONE OF THE PATIENTS HAD ANY EDUCATION BEYOND SECONDARY SCHOOL[31].

The paper found that:

26.. Wall L., Et al. (2004). The Obstetric vesicovaginal fistula: Characteristics 899 patients from Jos, Nigeria. *American Journal of Obstetrics and Gynecology*190, 1011-9,

27 Ibid 190, 1011-9.

28. Ibid, p.1012

29. "Menarche" is the medical terminology for the first occurrence of menstruation in a woman's life.

30. Wall, L. L., et al op. cit, p.1012.

31. Ibid, Emphasis supplied

" the overall reproductive outcome for these women was dismal. These 899 women had given birth to a total of 2,729 babies in the course of their reproductive lives of whom only 819 children (30.0%) were still alive' [(32)].

And for the woman who has a fistula the social consequences are "devastating." [(33)]Physically unclean from the constant loss of urine and stool, uneducated, poor, unable to fulfil their socially mandated roles as wives and mothers, often unjustly stigmatized as being somehow responsible for their condition because of an unacknowledged "sin", these women represent a neglected and increasing social problem in developing countries[(34)].

In the situation reported from Jos, when it becomes obvious that the fistula will not heal spontaneously and that the condition is going to continue for a long time; the women gradually become outcasts – 74% of these women were divorced or separated from their husbands, which is a devastating loss of social support in an African context.[(35)] The foregoing finding has been corroborated in another study by Ahmed and Holtz[(36)]. According to them, among all the morbid conditions that can affect women following labour, having an obstetric fistula is considered the most "debilitating and devastating". [(37)] Describing the devastating effect of the condition from another work, Ahmed and Holtz wrote that:

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32. Ibid, p. 1013
33. Ibid, P. 1015
34. Ibid, P. 1016
35. Ibid, P. 1015
36. Ahmed, S. and Holtz, S.A. (2007) Social and Economic consequences of obstetric Fistula: Life Changed Forever? *International Journal of Gynecology and Obstetrics* 99, S10-S15
37. Ibid, P. 510

> In the case of the girls with an obstetric fistula, the baby is usually stillborn and together with the fact that her odor is offensive (soon) her incontinence becomes confused with veneral disease, and the affected family feels a deep sense of shame… the girl is initially kept hidden, subsequently she finds it difficult to maintain decent standards of personal hygiene because, water for washing is generally scarce; divorce becomes inevitable and destitution follows…[38]

Quoting from the World Health Organization's Global Burden of Disease, Ahmed and Holtz reiterated that not only does problem of fistula affect the productivity of a country, community and household, it also changes the life of the affected woman forever; as women with fistulas are no longer able to successfully fulfill their societal role of wife and mother, and are often desserted by husbands and family and stigmatized by society[39].

An extensive study on the psychosocial consequences of having a fistula in Bangladesh revealed that a majority of women (61.4%) reported embarrassment in their social lives, 52% of the husbands expressed a loss in sexual pleasure with their wives, with 67.4% [of the husbands] reporting an inability to perform their prayers[40].

Ahmad and Holtz concluded that:"Women affected with obstetric fistulas are the most dispossessed, outcast, powerless group of women in the world…..and having a fistula changes a woman's quality of life forever." [41]

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38. Ibid, Emphasis supplied
39. Ibid, p.511
40. Ibid, p.513
41. Ibid, p.514

4.5 ISSUES AND PROBLEMS IN DISCRIMINATORY TENDENCIES

As Ladan[42] rightly noted, laws and policies create the framework through which governments affect the behaviour of people. According to the scholar, when law is uniformly respected and enforced, it can directly influence people's actions and enhance government accountability. He further submitted that laws can also have, a moral force and shape people's understanding of equity and justice. [43]

Ladan however, concluded that the degree to which law and policies influence people's lives depend upon whether these measures are implemented and enforced [44].

Thus, in a 2008 Report by Women Aid Collective (herein after referred to as WACOL)[45] it was found that despite the provisions of S.42 (1)of the 1999 Constitution of the Federal Republic of Nigeria which prohibits discrimination on grounds of sex, women are still discriminated against in many spheres of life in the country, due to patriarchy and cultural practices[46]. It was reported that there is a huge gap between formal guarantees of equality of the sexes, as enshrined in the Constitution and the realization of rights in practice.

The WACOL study found that national policies and efforts relating to the protection of the rights of women exist but are not being implemented. [47] These policies include, but are not limited to:

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42. Ladan, M.T. op cit, p. 21
43. Ibid
44. Ibid
45. WACOL (2008). *CEDAW and Accountability to Gender Equality in Nigeria: A shadow Report.* Enugu, Nigeria, p.20
46. Ibid p.20
47. Ibid, p. 23

- National Gender Policy and Strategy for the Acceleration of Girls Education in Nigeria (2003);
- National Guidelines and Strategies for Malaria Prevention Control During Pregnancy (2005);
- National Gender Policy (2006) ; which replaced the National Policy on Women (2000);
- National Strategic Framework and Plan for Vesico-vaginal Fistula (VVF) Eradication in Nigeria;
- National Policy on Women trafficking.

From their study in Jos, Wall, et al. were able to conclude that "a complex interaction that involves multiple biologic and socioeconomic factors appear to predispose young women to vesicovaginal fistula[48]. Three factors[49] were advanced as being responsible:

a) In this part of Africa, there is a strong belief that women's movements must be under strict male control, usually by her husband. Permission from the husband or a suitable male surrogate must be obtained before money can be spent on health care or before a woman can leave home to seek hospital treatment, even in emergency situations.

b) Secondly is that in this part of the world, much suffering is thought to represent the inevitable "Will of God". This viewpoint often breeds an inertia that is difficult to overcome, particularly if the problem involves women's health.

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48. Wall, L. L. et al op. cit, p. 1011
49. Ibid, p. 1015

c) Thirdly is the fact that as the Nigerian national economy has deteriorated, health care facilities have also been seriously adversely affected. User fees have been widely instituted in many hospitals and health centres in an attempt to help defray the cost of health services. In virtually all the cases, the study concluded, the institution of user fees has driven away needy patients and has delayed access to emergency obstetric care until the situation becomes desperate.

Similar challenges have been reported from elsewhere: for most third world rural women, sex and child bearing are not regarded as a pleasure but as a means of survival. In the absence of these functions – which may be occasioned by the development and non-treatment of a fistula – their womanhood is at stake. [(50)]

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50. Tafesse, B. et al op cit. p.30

It can be concluded that irrespective of constitutional provisions, women tend to suffer discrimination simply because of their gender. As we have seen for instance, the requirement for acquiring citizenship differs between a woman foreigner married to a Nigerian man and a male foreigner married to a Nigerian woman. In the same vein, the presumption of tax administrators is that women cannot be the ones responsible for maintenance of their children.

We have also shown that harmful practices like early betrothal and marriage contribute to reproductive ill health in women, and as such, is a violation of their right to freedom from interference in reproductive decision making, the right to physical integrity, human dignity and to privacy. Evidence has been provided from medical works on the consequence of early marriage and the development of vesicovaginal fistula (VVF), and its disastrous impact on the women so affected, being treated as social outcasts and stigmatized by society.

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY

The goal of the early advocates of women's rights in male-dominated, patriarchal societies and cultures, was equality with the men folk, in all areas of human endeavours, what was essentially different in feminist jurisprudence was the strategy. Thus, liberal feminists advocated equal opportunities, radical feminists supported affirmative action to challenge perceived inequalities while post modernists were not just critical of gender dichotomies but even the concept of gender itself.

There arose a heady controversy as to whether women should seek equality rather than equity or seek both equity and equality. The proponents of women seeking only equity are of the view that the three major world's religions (Christianity, Islam and heathen) preach, practice and protect the inequality of man and woman as a critical and fundamental doctrine. The proponents of inequality opine that, it would not be incorrect to assert that God Himself supports, and in fact, started inequality. God said "Let us make a man, some like ourselves to be the master of all life upon the earth, and in the skies and in the seas"[1].

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1. Holy Bible NIV version Genesis 1 verse 26,

From the above passage of the Bible, it is clear that God created man not woman in His own image, him, (man) not woman, ruler over all the things on earth. Further, we learn vividly that: Then Lord God said, "it is not good for man to be alone; I will make a companion for him, a helper suited for his needs…"[2] Then the Lord God caused the man to fall into a deep sleep and took one of his ribs and closed up the place from which he had removed it". In other worlds, God created only the man but nicely formed the woman from the ribs of the man and assigned the woman as a helper to the man or as assistant to the man and not as a co-equal. Put differently, a woman, from creation, was formed as an assistant to the man in his needs. The will of God about women is also expressed when He said "You wives submit yourselves to your husbands for that is what the Lord has planned of you"[3].

The plan of God is that a woman should be submissive to the husband and not assert equality with him. The preeminence of man could be surmised from the fact that when the woman (Eve) polluted the Garden of Eden, God, in His anger, ignored that the woman (Eve), even existed and called out to the man (Adam). Adam quickly told God that it was the woman He gave him (Adam) that caused the pollution. God knew that Eve polluted the garden but ignored her and sought explanation from the man whom He had given charge of the earth. What could be more supportive of the inequality of man and woman even in the eyes of God Almighty?

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2. Ibid Genesis 2:18,19
3. Ibid Colossians 3:18

Furthermore, when God told Moses to order a convocation of seventy people of Israel who would conference with Him (God) and take charge of the welfare of the people, no single woman was found in the number. When God Almighty took flesh, no single woman was one of his Twelve-Apostles. From the foregoing, to them, can a surmise be drawn to the effect that God is spiteful of women? A negative answer must be turned. Far be it. But it merely follows from the orderly and divine scheme of things on earth, God in His infinite wisdom has merely assigned roles and functions to all living things on earth. A man, his roles, and a woman, hers. Plants, wild and domestic animals, their roles as well.

The proponents of inequality went further to argue that, the inequality is more strictly observed under Islamic and heathen religions. The Islamic system even creates a puda – system when wives can only be seen by, and interact with their husband, and their children who are under the age of maturity. The heathen religion excludes women in most of its socio-cultural and political activities. Pre-colonial and Pre-Jihad Nigeria was essentially a heathen one. And women were excluded from most socio-political and cultural activities.

Traditionally, the woman is socialized into a culture of female subordination. Women are groomed to a life of subservience. They are mostly indoctrinated within most families and communities to defer to men (not on the best basis of intellect but of gender) to have lower aspirations and expectations and to prepare themselves for the institution of marriage.

Various institutions of society such as family, religion, political, educational, economic, media, socio cultural practices, state policies and agencies have assisted in the perpetuation of widespread violations of women's human rights.

Nearly all cultures, in Nigeria when a woman marries, the most immediate change in her legal status is her name. She takes the name of her husband. According to common law tradition as well as our own indigenous culture, a woman ceases legally to be a person upon her marriage. She was then without legal capacity. A husband and wife were regarded as one person and that person was the husband. The personality of the wife was thus submerged into that of her husband. The trend of modern legislation notably the Married Women Property Act 1882 and the Law Reform (Married Women and Tort Teasers) Act 1935 is to restore to a married woman that lost personality to make her "a feme sole" capable of acquiring, holding and disposing of her property as if she were a feme sole, i.e. an unmarried woman. The battle for a separate personality might have thus been won, but the battle for equality of opportunity; equal privileges; equal access to the seat of power – political and religious – is still raging with unabated fury.

In an analysis of factors that contribute to maternal mortality in developing countries, it has been suggested that delay in obtaining adequate emergency obstetric care was the result of a cascade of 3 (three) contributing factors[(4)]:

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4. WACOL(2008). *CEDAW and Accountability to Gender Equality in Nigeria (a shadow Report,* p.72

a. a delay in deciding to seek care;

b. a delay in arriving at a suitable health care facility; and

c. a delay in receiving appropriate care once the patient arrives at that facility

These 3 factors, it was concluded, also appear to influence the formation of vesicovaginal fistulas by prolonging the time that a woman remains in obstructed labour.

In the case of Nigeria (as in other African countries), the study found that the use of health care services declines exponentially as the distance which one must travel to reach the facility increases. [5]

A similar situation has been reported from Tanzania where Bangser[6] found that women feel they have no choice but to be delivered at home because of distance, cost and other factors limiting access to formal health care; that women have a limited sense of entitlement to the free pregnancy and delivery services the government offers; that (health) facilities lack supplies and equipment for delivery; and that health workers face poor working conditions, including low members and pay as well as a lack of training[7].

Another manifestation of gender disparity is violence against women. According to the Women in Law and Development in Africa (WILDAF), which ever angle one looks as it, violence against women is a violation of women's fundamental rights and freedom guaranteed by the UDHR, CEDAW and the Nigerian Constitution.

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5. Ibid
6. Bangsar, M. (2007) Strengthening Public Health Priority setting-through research on fistula, maternal health and health inequities. *International Journal of Gynecology and Obstetrics* 99, S16 – S20
7. Ibid

In Nigeria, the long military rule has institutionalized the violation of women's rights. This has resulted in very severe political, social and economic crises. Nigeria's socio – cultural prejudices and inadequate laws are also a factor militating against the protection of women's rights.

The unequal status and the vicious circle of economic dependence, fear of children's welfare and lives as well as high level of illiteracy amongst women and ignorance of the law have effectively subordinated the "woman" making her an object of violence.

5.2 FINDINGS

The following are the findings of the writer :

1. The writer submits, that there exists a 'Gender divide' which has given rise to discriminatory laws, policies and practice against women.

2. It is clear from the above outline that the three major religions maintain and practice inequality of man and woman as a fundamental doctrine.

3. Also another fact is that fundamental freedoms guaranteed to women in the Constitution and International instruments notwithstanding, there exist numerous gaps between the stated aims and the reality on ground.

4. Our legal system is a very complex system of statutory law, common law, customary & sharia laws This has affected the rights of women, for example in cases of domestic violence; the seriousness of the offence.

Section 55 (1) (d) of the Penal code states as follows: “Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a husband for the purpose of correcting his wife such husband and wife being subject to any native law or custom in which such correction is recognized as lawful”. This to a large extent condones wife beating.

6. Sex discrimination is evident from the moment a child is identified as a male or female especially in patriarchy society where male child is preferred. The preference stops not only at birth but reflected in nutrition at early childhood, healthcare harmful traditional practices, and access to education. This discrimination on the basic necessities of life impede the growth and development of the “dispreferred” female child.

5.3 RECOMMENDATIONS

From the fore going findings, the writer humbly makes the following recommendations:

1. The challenges of women and the girl child are not necessarily the same with men. Thus, while increased budgetary allocations to the health sector are deemed socially desirable and important in human development, fairness demands that specific attention must be given to maternal and reproductive health, in considering financial outlays and programmes for the health sector. The same reasoning supports the educational, employment, succession dichotomies and even equality before the law.
2. In the field of education and training for instance, there is need to increase enrolment and retention rates of girls by allocating appropriate budgetary resources. There is also the need

to close the gender gap in primary and secondary school education, as recommended by the Beijing Platform for Action[8].

3. In health matters as it relates to women, there is the need to provide more accessible, available and affordable primary health care services of high quality, including sexual and reproductive health care, which include family planning information and services, and giving particular attention to maternal and emergency obstetric care.

4. All tiers of government should play a coordinating role to ensure the pooling of all available resources for the effective administration of healthcare service delivery. The government should enhance the implementation of the Primary Health care delivery system to meet the health needs of women and other vulnerable groups. Also health education programmes, and family-life education should be intensified at all tiers of government and by Non-Governmental Organizations (NGO) as a means of promoting good health for girls, children and women.

5. Again, there should be effective government financing of the implementation of the National Policy on Women.

6. It is also recommended that CEDAW and other international instruments relating to

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8. Wallace R. (1997).*International Human Right: Text and Material* (London: Sweet and Maxwell,London,England,p.77

women's rights be domesticated in order to make them justiciable. Also, the next review of the 1999 Constitution should include amendment of its discriminatory provision like S.42 (3). This would serve to guarantee women and men their rights as full citizens in a democratic state. In addition, there should be a general review of Nigerian Laws. All laws that are discriminatory should be amended.

7. Statistics and other data on the discriminatory policies and practices and their negative impacts on women should be generated and disseminated in order to support advocacy and positive mind shifts. Finally, a sensitization campaign should be carried out, to address misconceptions about CEDAW.

In conclusion therefore, our law has to insist on social justice by clearing all the cobwebs of inbuilt prejudices against women, which had all along formed the main props of structural injustice. Our law has to insist that women have equal opportunities for self development and self-fulfillment and are accorded equal treatment. This is really the essence of the rule of law. It is the practical meaning of our equality before the law.

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