

## **ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN NIGERIA: LEGAL CHALLENGES AND PROSPECTS**

**By**

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### **ABSTRACT**

*This paper examines the legal challenges and prospects in the elimination of discrimination against women in Nigeria. Recognising that the mere ratification of international provisions for women's rights protection without more, does not address the gender based problems in Nigeria; this paper appraises the impact of legislation on good practices engendered by women in the elimination of discrimination against women. It also analyses related challenges and possible solutions for making legislation a strong platform for resolving gender based issues in Nigeria.*

*Keywords: Patriarchy, Gender, Discrimination, Gender Rights, Human Rights.*

### **INTRODUCTION**

Nigerian's President was criticised in 2016 for making utterances about the proper 'place' for a woman.<sup>1</sup> His words made allusions to deep-rooted stereotypes concerning women's roles and responsibilities and critics found them chauvinistic.<sup>2</sup> Also in 2016 and for approximately two weeks in December, local radio 'call-in' programmes in Rivers State Nigeria were deluged with calls from members of the public who wanted to express their outrage over the multiple sexual violation of a teenager in the State by persons identified by the victim. A little over a month later, in January 2017, the girl's parents were reported over the radio waves to have had their complaint against the men who violated their daughter withdrawn in fear, alleging death threats. These accounts typify the usual tread of gender discrimination manifesting in events wherein women or a girl-child's rights to personal dignity are infringed despite the fact that Nigeria has signed and ratified various declarations and conventions concerning women's rights<sup>3</sup> and has a Constitution which guarantees these rights, women in Nigeria continue to experience discrimination.<sup>4</sup> In spite the policy adoption and in line with the general view that policy adaptation without more is useless, patriarchy is still quite dominant in Nigeria; even though there are advancements in women's participation in governance and socio-economic development and other improvements in the elimination of discrimination against women.

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<sup>1</sup> K P Yambao, 'Nigeria: President Buhari's "The Other Room" Comment Sparks International Outrage' (Newslite, Oct. 15, 2016) <https://newslite.com/nigeria-president-buharis-the-other-room-comment-sparks-international-outrage/> accessed on: 23 January 2017

<sup>2</sup> Yambao, *ibid*

<sup>3</sup> They shall be discussed in the next section under the heading: "Legislation that foster good practice on discrimination against women's right in Nigeria".

<sup>4</sup> See M O A Ashiru, 'Gender Discrimination in the Division of Property on Divorce in Nigeria' (2007) 51 (2) *Journal of African Law* 316

This paper discusses gender discrimination eradication by women through strategies like mobilizing the support, publicizing and challenging common law and customary laws which lower the status of women or prevent them from exercising and enjoying their rights. The approach here is double pronged: First and after this introduction, it takes a general survey of the extent and content of present and pending national legislation on the subject. It will then examine good practices on the subject engendered by women and women's rights groups, the challenges they face and possible solutions. These will be done in section 2; section 3 and closely followed by section four which examines how the latter's effort may be improved.

The last and fifth section will conclude by arguing that although there are many and varied forms of discrimination against women in public and private life, the last decade has seen and recorded some improvements in this crucial area; especially in the form of programmes ran by women with the support of gender rights based NGOs. The principle of the utilitarianism in Legal Positivism Philosophy which states that the best action is the one that maximizes utility shall be applied here. With that application, the position here shall be that the Nigerian's effort in keeping its commitments to ratified international standards which prohibit gender discrimination and inequality is inadequate and fosters discriminations based on patriarchy. The conclusion shall also contain reformations necessary for eradicating or at least limiting gender based discrimination.

## **2. GENDER RIGHTS ISSUES AND LEGISLATION IN NIGERIA**

The Nigerian woman, like many other women of the world, is faced with many negative issues which are gender based. She and her other African counterparts occupy a subordinate position in a society which is patriarchal in nature.<sup>5</sup> The patriarchal structure has been a major feature of the multicultural Nigerian society, though there are very few ethnic groups in Nigeria that practice Seniority<sup>6</sup> and Matriarchy.<sup>7</sup> Writers like Sefinatu Dogo maintain that patriarchy as "[a] concept has been defined and recreated by feminists, in their quest to understand and analyze the origins and situation of the domination of women by men and [a]s such has been used by feminists to refer to the "systematic organization of male

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<sup>5</sup> See S A Dogo, 'The Nigerian Patriarchy: When and How' (2014) 2 (5) Cultural and Religious Studies 263

<sup>6</sup>The Oyo-Yoruba of South-Western practice 'seniority' in which system the eldest person in an extended family occupies the highest position in the kinship structure of family hierarchy; while a spouse of a kin who though older by birth, must submit to the seniority of the younger biological members of the extended family who were born before the marriage –see generally O Oyewunmi, *Critical Analysis of Oyeronke Oyewunmi's The Invention of Women: Making an African Sense of Western Gender Discourses* (Minnesota: University of Minnesota Press 1997)

<sup>7</sup> The word 'Matriarchy' was used in the 19th century to refer to governance by women over family and society- See P R Sanday, 'Matriarchy' in B Smith, (ed.) *The Oxford Encyclopedia of Women in World History* (Oxford: Oxford University Press 2008). The Longuda are known matriarchal ethnic group who live in Adamawa and Gombe States in North-Eastern Nigeria to whom clan membership is usually counted on the mother line

supremacy and female subordination””.<sup>8</sup> Others believe that however defined or perceived, that philosophy behind patriarchy legitimises various forms of discrimination; as natural and inescapable consequences of the oppression which arises from supposedly natural, and therefore, unchangeable factors of gender stereotyping.<sup>9</sup> Taken as a suppressive, exploitative and authoritarian male dominating ruling system; a paradigm within which discrimination against women is perpetuated, patriarchy is seen as the direct major cause of gender<sup>10</sup> inequality,<sup>11</sup> and indirectly to violations of gender rights. Violations here come in the form of subjugation, abuse, exploitation, sexism, chauvinism, political injustice, girl-child marriage, domestic violence, women trafficking and even kidnapping as evidenced in Chibok.<sup>12</sup> Others include unequal access to education, healthcare, male-child preference,<sup>13</sup> inadequate housing and employment, child and early marriages, restriction of women’s property rights and female genital mutilation.<sup>14</sup> These forms of rights violations are not new and have a long history which is built on patriarchy.

## **2.1 Patriarchy and Gender Rights Violations in Nigeria.**

There are those who are of the view that Nigeria was much more liberal in the past than it is today; that Christian missionaries and the colonial administrators introduced the assumptions of European patriarchy into the Nigerian society through the instrumentality of the religion and western-styled education they brought with them.<sup>15</sup> The veracity of this assertion for them is partly based on verifiable accounts of revolts by women against men and even against the English

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<sup>8</sup> Ibid 263

<sup>9</sup> Nivedita Menon, *Seeing as a Feminist* (Changsha: Hunan Wenyi Publishing House 2012)

<sup>10</sup> Note that gender is a set of visible characteristics that distinguish male and female and which vary from sex to social role, to gender identity. In recent times, the meaning of gender has in many contexts been extended to include and in many cases used specifically to mean the latter. For this paper, the word ‘gender’ is used in the male and female sex sense. ‘Gender inequality’ here refers to the unequal opportunities in various spheres of development between the sexes, while ‘gender rights’ refers to the fundamental rights of each gender group and how the incidence of gender has affected the exercise of their fundamental freedoms. According to the Council of Europe definition: “Gender mainstreaming is the (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making.” SEE ‘Gender Mainstreaming’ (2014)

[http://www.coe.int/t/dghl/standardsetting/equality/02\\_GenderEqualityProgramme/Council%20of%20Europe%20Gender%20Equality%20Strategy%202014-2017.pdf](http://www.coe.int/t/dghl/standardsetting/equality/02_GenderEqualityProgramme/Council%20of%20Europe%20Gender%20Equality%20Strategy%202014-2017.pdf) accessed on: 12 January 2017

<sup>11</sup> Ana Monterio Ferreira, ‘Patriarchy’ in Molefi Kete Asante and Ama Mazama, (ed.s) *Encyclopaedia of Black Studies* (Sage publications, 2005) 395

<sup>12</sup> In April 2014, over 200 female students from the Government Secondary School in Chibok Town in Borno State, Nigeria were kidnapped by the militant group Boko Haram; an Islamic Jihadist and terrorist organization based in northeast Nigeria –see Patrick McGroarty, ‘Boko Haram and the Lost Girls of Nigeria: After a military rescue, captives tell their story to The Wall Street Journal (2015) <https://www.wsj.com/articles/boko-haram-and-the-lost-girls-of-nigeria-1431113437> accessed on: 3 December 2016. Also see M O Folayan, M Odetoyinbo, A Harrison and B Brown, ‘Rape in Nigeria: a silent epidemic among adolescents with implications for HIV infection’(2014) *Global Health Action* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4142225/>> accessed on: 3 December 2016

<sup>13</sup> N Ezenwa-Ohaeto, ‘Fighting Patriarchy in Nigerian Cultures Through Children’s Literature’ (2015) 10(6) *Studies in Literature & Language* 59 <<http://www.cscanada.net/index.php/sll/article/view/7217/7576>> accessed on: 12 January 2017

<sup>14</sup> Ronke I Ako-Nai (ed.) *Gender and Power Relations in Nigeria* (Rowman & Littlefield 2013)

<sup>15</sup> See M O Okome, ‘Domestic, Regional, and International Protection of Nigerian Women against Discrimination: Constraints and Possibilities’ (2002) 6(3) *African Studies Quarterly* 33; Dogo, (n.5) and Oyewunmi (n.6)

Colonial Masters. To them the introduction set the current ‘appropriate social role for women’. The ‘appropriate role’ covers child bearing and rearing amongst other domestic ‘engagements’ that turned the Nigerian woman’s role into a subordinate one.<sup>16</sup> The situation is also believed to be the direct result of post-colonial religious conflicts, the country’s economic problems, as well as government’s failure to care for its people; particularly in the North, where this triggered a regression towards more conservative values.<sup>17</sup>

Thus, patriarchy is generally accepted and widely practiced in Nigeria. That being the case, it must be noted that there is a popular notion amongst feminists and gender rights advocates that patriarchal social institutions, interactions and practices limit both genders to those characteristics and activities defined as feminine and masculine and as a result, sets the tone and place for the woman and girl child in society. This notion is not novel.<sup>18</sup> That the place of a woman in a patriarchy is a haven of discrimination and is one which lacks dignity is also not novel as there is usually impunity where patriarchy is concerned. This is why—amongst other reasons—on December 10, 1948 the General Assembly of the United Nations, in furtherance to its gender equality objectives, proclaimed that “[a]ll human beings are born free and equal in dignity and rights”.<sup>19</sup>

With those words, the Universal Declaration of Human Rights (UDHR) 1948 gave birth to ‘dignity’ as a fundamental pillar of human rights. But it appears that the very drafters of the UDHR never agreed on a specific definition for the concept.<sup>20</sup> According to Neomi Rao<sup>21</sup> the world community chose dignity in the Universal Declaration of Human Rights precisely because the term was open enough to hedge controversial judgments between different cultural values. With time courts now associate dignity with “the classical liberal idea of freedom from interference” which encompasses first generation rights such as rights to life and property, among others.<sup>22</sup> Property rights are very important. They are those legal rights which cover the acquisition, ownership and transfer property and keep rents derived there from, as well as the right to keep and manage one's wages which the patriarchal system usually denies women. These rights are important because an

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<sup>16</sup> E Ayesu, F Gbormittah and K Adum-Kyeremeh, ‘British Colonialism and Women's Welfare in the Gold Coast Colony’ (2016) 63 (2) *Africa Today* 3-30 and M. Rojas, ‘Women in Pre-Colonial Nigeria’ (1990) *African Postcolonial Literature in English in the Postcolonial Web* <http://www.postcolonialweb.org/nigeria/precolwon.html> accessed on: 30 January 2017

<sup>17</sup> See Julia Hamaus, ‘Dismantling patriarchy in Nigeria’ (2016) <http://itad.com/dismantling-patriarchy-nigeria/> accessed on: 12 January 2017

<sup>18</sup> See P. Chua and D. Fujino, ‘Negotiating New Asian American Masculinities: Attitudes and Gender Expectations’ (1999) *Journal of Men's Studies* 391

<sup>19</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at Art. 1 (Dec. 10, 1948) see [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)) accessed on : 3 December 2016

<sup>20</sup> See Neomi Rao, ‘Three Concepts of Dignity in Constitutional Law’ (2011) 86 *Notre Dame Law Review* 183. According to Rao, the world community chose dignity in the Universal Declaration of Human Rights precisely because the term was open enough to hedge controversial judgments between different cultural values.

<sup>21</sup> See Rao, *ibid*, 272.

<sup>22</sup> *Ibid*

active female economic presence is a common indicator of gender equality in any given economy.

Gender discrimination and violence against women is a global phenomena which, as already discussed above, is reinforced by the fact that historically women constitute an oppressed and marginalised group.<sup>23</sup> Learned authors have already written of the constancy of oppression;<sup>24</sup> that although people in both post-industrial and emerging societies face economic, cultural, and political changes, the constant of oppression remains<sup>25</sup> as economically and culturally marginalized groups, who are usually women, continue to endure untold degrees of suffering.<sup>26</sup>

Resolving oppression and other like issues revolving round gender equality advocacy and practise has a long line in history; it supersedes the 1949 Universal Declaration. Of instance here is the example by Joseph Meacham who had a 'revelation' that the sexes should be equal and who as the head of the Shakers<sup>27</sup> Central Ministry in 1788, led the restructuring of the Shaker community into one that balanced the rights of the sexes. Other gender equality and protection rights campaigns came before and would follow this especially at the 'wake' feminism and women's liberation at the end of the Second World War. Such campaigns led to several international conventions and protocols of which Nigeria is signatory to. These shall be examined hereunder.

## **2.2 Legislation that Foster Good Practice on Discrimination against Women's Rights in Nigeria.**

Legislation is often used as a tool for righting human wrongs as well as bridging 'anomalies' such as gender based discrimination and inequalities, and for promoting equality. Gender equality is a human right which women are entitled to; to live with freedom from want and from fear and with dignity. The United Nations Population Fund (UNFPA) views gender equality as a precondition for advancing development and reducing poverty.<sup>28</sup>

Since her transfer from military to democratic rule in May 1999, Nigeria has not come close to achieving its long avowed goal of eliminating gender

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<sup>23</sup> See Amina Mama, 'Feminism or Femocracy? State Feminism and Democratisation in Nigeria' (1995) 20 (1) *Africa Development / Afrique et Développement*, 37

<sup>24</sup> Generally see Isaac Prilleltensky & Lev Gonick, 'Politics Change, Oppression Remains: on the Psychology and Politics of Oppression' (1996) 17 (1) *Political Psychology* 127

<sup>25</sup> See M. Haswell and D. Hunt, (Eds.) *Rural households in emerging societies: Technology and change in Sub-Sahara Africa* (New York, NY: Berg Publishers, 1991) and F. Block, *Postindustrial possibilities: A critique of economic discourse* (Berkeley, CA: University of California Press, 1990)

<sup>26</sup> See Prilleltensky & Gonick (n.24)

<sup>27</sup> The Shakers (formally known as the United Society of Believers in Christ's Second Appearance) branched off the Quaker Community in the north-west of England fleeing persecution, to America in 1774, where they finally settled in 1783. The Shakers are today a nearly extinct religious society, which though practiced segregation of the sexes and strict celibacy, were some of the early practitioners of gender equality.

<sup>28</sup> See UNFPA, 'Gender Equality' (2016) <<http://www.unfpa.org/gender-equality#>> accessed on: 12 January 2017

discrimination. Like in other similar sections in its past Constitutions since 1979, Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)<sup>29</sup> makes this avowal in the following sweeping words:

*“(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-*

*(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or*

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

Before the 1999 Constitution, Nigeria had signed and ratified a series of international standards which prohibit gender discrimination and inequality on human rights that touch on women's rights, and the need for equality and freedom from discrimination. Nigeria is a state party to nine major international human rights treaties, but has not yet ratified all optional protocols to these treaties. Though yet to be domesticated, these treaties are legally binding on Nigeria, imposing obligations to respect, protect and fulfil the human rights safeguards set within them.<sup>30</sup> Of the nine, those covering gender rights include:

#### 1. **Convention on the Elimination of All Forms of Discrimination against**

**Women (CEDAW):** Nigeria ratified CEDAW without reservation<sup>31</sup> on 13 June 1985 and its Optional Protocol on 22 November 2004. CEDAW is an important human rights instrument in the international anti-circumcision campaign. It guarantees the right of all women to be free from discrimination. By ratifying CEDAW, Nigeria in essence agreed to amend discriminatory laws and eliminate discrimination against women especially through the adoption of legislation that prohibits all forms of discrimination. Through this, Nigeria must ensure the full

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<sup>29</sup> Here in after referred to as ‘the Constitution’

<sup>30</sup> State Parties are bound by and obliged to observe or implement rights resolutions - passed without a veto - through the UN Security Council or one of the few regional bodies with binding authority over member states. Thus in *Mojekwu v. Ejikeme* (2002) 5NWLR (pt 657) 402, the Nigeria Court of Appeal held that although CEDAW was not domesticated in Nigeria, it applied and the ‘ili ekpe’ custom, which was in issue, was not discriminatory against women when examined under the CEDAW guidelines.

Note however that even if a rights document is ratified, states often use reservations, understandings, and declarations (RUDs) to evade obligations.- see CFR, ‘The Global Human Rights Regime’ Issue Brief (Council on Foreign Relations 2013) <http://www.cfr.org/human-rights/global-human-rights-regime/p27450> accessed on: 21 January 2017

<sup>31</sup> “[R]eservations affect the efficacy of the Convention, whose objective is to end discrimination against women and to achieve de jure and de facto equality for them. Reservations prevent the committee from assessing the progress of implementation of the convention, limit its mandate and potentially affect the entire human rights regime... by entering a reservation, the state indicates its unwillingness to comply with an accepted human rights norm...” – see paragraphs 10, 14 and 15 of ‘Statements on Reservation to CEDAW adopted by the Committee on the Elimination of Discrimination against Women: A/53/38/Rev.1 <http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/Reservations-English.pdf> accessed on: 12 January 2017

enjoyment by women of all human rights on an equal basis with men. Nigeria must take effective action to prevent violations of these rights and freedoms.

2. **International Covenant on Civil and Political Rights (ICCPR):** Nigeria acceded to the ICCPR on 29 October 1993. Nigeria has not yet ratified any of its Optional Protocols. As a signatory to this treaty, Nigeria must guarantee civil and political rights of its citizens. Civil and political rights include the rights to life, liberty and security of person, the right to a fair trial, the rights to freedom of association, expression and of peaceful assembly, freedom from torture, and the rights to freedom of thought, conscience and religion. Guarantees under the ICCPR include concepts like equality before the law and the right without any discrimination to equal protection of the law.

3. **International Covenant on Economic, Social and Cultural Rights (ICESCR):** Nigeria ratified the ICESCR on 29 October 1993 and not its Optional Protocol. The ICESCR requires Nigeria to protect the economic, social and cultural rights of its citizens. It recognizes the rights to work, to social security, to an adequate standard of living, to health, to water and food, and to education.

Other than these treaties, Nigeria is also bound by the **Universal Declaration of Human Rights (UDHR)** and the **Commitment of the Fourth World Conference on Women in Beijing, China**.

According to Odigie-Emmanuel,<sup>32</sup> Nigeria's commitment to international 'standards' which prohibit gender discrimination and inequality should have seriously opened up the arena and set the much needed stage to realise the goals encapsulated in the standards which prohibit gender discrimination and inequality. Sadly, the reverse is case.

On the surface, Nigeria has seemingly complied with the spirit of these international standards and has given it the whole-hearted dedication it deserves; Nigeria's former Minister of Women Affairs and Social Development, Salamatu Suleiman outlined the actions Nigeria has taken in its "continued commit[ment] to the cause and advancement of women"<sup>33</sup> to include the following:

- The establishment of a Minister of Women Affairs and Social Development at the Federal Level and in all 36 States as well as Women development Units in all the 774 Local Government Areas to ensure grassroots mobilisation and programming;

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<sup>32</sup> See O Odigie-Emmanuel, 'Assessing Women's Rights in Nigeria' (2010) Washington, DC: Foreign Policy In Focus Available online at: [http://www.fpi.org/articles/assessing\\_womens\\_rights\\_in\\_nigeria](http://www.fpi.org/articles/assessing_womens_rights_in_nigeria) accessed on: 12 January 2017

<sup>33</sup> See Salamatu H. Suleiman, 'Statement': Address delivered at the 54<sup>TH</sup> Session of the UN Commission on the 'Status of Women/Beijing+15 Review Conference' held in New York on March 3, 2010 (2010) [www.un.org/womenwatch/daw/beijing15/general\\_discussion/NIGERIA.pdf](http://www.un.org/womenwatch/daw/beijing15/general_discussion/NIGERIA.pdf) accessed on: 12 December 2016

- Adoption of a National Gender Policy in 2007, as policy documents to guide the country in the implementation of various national, regional and global commitments on women's development, empowerment, as well as gender equality to facilitate gender mainstreaming at all levels of governance;
- Establishment of Centre for Women Development as a machinery for research, development and training at the different levels of government;
- Upgrading and equipping the Women Development Centres with funds from the established National Economic Recovery Fund (NERFUND) to assist women cooperatives across the country with soft loans to engage in entrepreneurial activities;
- Establishment of the Universal Basic Education (UBE) as a deliberate policy for granting the girl-child equal access to education as boys and the establishment of science schools for girls, especially in states who rejected co-ed education based on grounds of religion;
- Constituting a National Action Committee on Women in Politics to mobilise participation of women in politics, train women politicians in communication and negotiation skills and campaign strategies;
- Establishment of a national agency for the prohibition of trafficking in persons;
- Adoption of a national policy on HIV/AIDS, reproductive health and female genital mutilation.<sup>34</sup>

She however added that the area of health, child and maternal mortality remained key challenges in Nigeria despite Government's effort. She ascribed this deficiency to a low maternal education and awareness, inadequate man resource manpower, weak primary health care system, poverty and amongst others, poor household practices.<sup>35</sup>

Unfortunately, besides the general provisions in its Constitution, Nigeria does not have much in the way of national provisions that offer protection against gender discrimination<sup>36</sup> despite the 'push' contained in CEDAW which compels State Parties to enact local gender friendly laws. Efforts to change the *status quo* have often proved abortive.<sup>37</sup> It is then not surprising that the guarantees offered by these International standards which prohibit gender discrimination and inequality have been described as "protections which amount to a self-policing which leaves

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<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

<sup>36</sup> Some of the few include: The Violence Against Persons (Prohibition) Act (2015) and The Trafficking in Person's (Prohibition) Law Enforcement and Administration Act (2015).

<sup>37</sup> For example, in 2016, the 'Bill for the Abolition of All Forms Of Discrimination Against Women In Nigeria And Other Related Matter' failed at the Nigeria National Assembly because among other reasons, 'articles 12 and 16 of CEDAW clearly endorse abortion and infanticide'-see Henry Umoru & Joseph Erunke, 'Northern Senators reject bill on gender equality' Vanguard (Nigeria) 16 March 2016 <http://www.vanguardngr.com/2016/03/senate-throws-out-bill-on-gender-equality/> accessed on: 3 January 2017. This not the first time the National Assembly has rejected it -See UN, 'Nigeria poised to vote on bill to enforce women's anti-discrimination convention' (2008) <<http://www.un.org/press/en/2008/wom1691.doc.htm>> accessed on: 12 January 2017

room for abuses”<sup>38</sup> particularly since Nigeria, as a signatory, does not further the requisite and expected constitutional and legislative changes necessary to domesticate and as demanded by section 12 of the Constitution. Section 12 of the Constitution of Federal Republic of Nigeria, 1999 provides:

*"(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.*

*(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.*

*(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation."*

This being the case, it is not in doubt that progress has been sluggish;<sup>39</sup> sluggishness which is also built on resistance to change of discriminatory cultural practices.<sup>40</sup> Rights groups stand firmly by the view that provisions that entrench women’s rights only have meaning for a woman where she:

- (a) has knowledge of the existence of the provisions of said rights; and
- (b) has the necessary funds to have recourse to the courts where necessary.

This is where the civil rights society organisations and other Non-Governmental Organisations (NGOs) other come in to promote the interests of women.

### **3. SOCIETY ORGANISATIONS: THE LIGHT BRINGERS FOR THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN<sup>41</sup>**

It has already been observed elsewhere that within the international human rights literature, the problem of discrimination has been conceptualized as involving the denial of self-determination to women.<sup>42</sup> That, by being more responsive to the

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<sup>38</sup>See *Development, Human Rights and the Rule of Law: Report of a Conference held in The Hague on 27 April - 1 May, 1981*. Convened by the International Commission of Jurists (Oxford: Pergamon Press, 1981) 44

<sup>39</sup> The UN Committee Report (2010) on the Millennium Development Goals, described progress in gender equality and women’s empowerment as ‘sluggish.’ –see UN, ‘The Millennium Development Goals Report’ (2010) [mdgs.un.org/unsd/mdg/Resources/Static/.../Progress2010/MDG\\_Report\\_2010\\_En.pdf](http://mdgs.un.org/unsd/mdg/Resources/Static/.../Progress2010/MDG_Report_2010_En.pdf) accessed on: 6 January 2017

<sup>40</sup> See A. L. Ilika and U.R. Ilika, ‘Eliminating gender-based violence: learning from the widowhood practices elimination initiative of a women organisation in Ozubulu, Anambra State of Nigeria’ (2005) 9 (2) *Africa Journal Reproductive Health* 65, 70. Juxtapose with Elwert and Christakis’ position they opine that blacks married to blacks do not suffer a detectable widowhood effects- see F. Elwert and N. Christakis, ‘Widowhood and Race’ (2006) 71 *American Sociological Review* 16 <[www.ssc.wisc.edu/soc/faculty/pages/docs/elwert/ASR-Elwert%202006.pdf](http://www.ssc.wisc.edu/soc/faculty/pages/docs/elwert/ASR-Elwert%202006.pdf)> accessed on 6 January 2017

<sup>41</sup> The term ‘civic organisations’ is used here as umbrella name for NGOs, social enterprises, professional associations, etc, who work towards eradication of gender discrimination. Research for this paper is based on information received from Women for Women in Nigeria. Women for Women International is an NGO that works to eliminate discrimination against women in Africa and other continents through its varied sponsored programmes. At <http://www.youtube.com/watch?v=EBp87cIqqUE> online, one can have a visual record of their field work. My sincere appreciation goes out to the Organisation and especially its Regional/Country Director for Nigeria, Ngozi Eze for her kind assistance and the great work they are doing for the women of Africa.

<sup>42</sup> See Okome, (n. 15)

international regime of human rights, the Nigerian government and human rights activists in Nigeria do not pay sufficient attention to indigenous philosophies and traditions about respecting human rights; thus perpetuating the notion that the only way to guarantee human rights in Nigeria is to blame all contemporary human rights abuses on the persistence of traditional mores.<sup>43</sup>

Dorothy Hodgson writes that a new transnational strategy for women's empowerment emerged in the late 1980s which linked women's rights agendas to the increasingly vocal and visible international human rights campaigns, leading to a restructuring of human rights agendas to incorporate women's rights.<sup>44</sup> In Africa, as elsewhere, this strategy enabled activist women to adopt new languages and strategies to circumvent and reframe enduring debates over women's empowerment mired in the potent, contradictory terms of "culture," "tradition," and "modernity."<sup>45</sup>

As Okome rightly points out, the development of alternative rules, norms and procedures that provide the avenue through which structural transformation may be engineered; which process combines the manipulation of rules, norms and procedures as well as organization for political action by women to protect what rights they have.<sup>46</sup>

This position is somewhat favoured by international organizations such as UNFPA and gender rights advocacy groups like Women for Women (WfW) and Women in Law and Development in Africa (WiLDAF), who for many years now, have played a very strong role in promoting gender friendly legal and policy reforms, have collected gender-sensitive data and supported local initiatives that improve women's welfare and educate African women about their legal rights. They also lobby for national legislative reforms and mobilize international support to extend the scope of state accountability. Writers and activists for gender rights protection in the global south generally seem to agree that the problems faced by women in this part of the world tend towards socio-economic and cultural than civil and political.<sup>47</sup> Due to this, most civic organisations tend towards programmes that cater to those needs. For example, as one of its driving motives, Women for Women International (WfWI), believes that lasting change can only be achieved when women have access to both knowledge and resources.<sup>48</sup> To

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<sup>43</sup> Ibid 34

<sup>44</sup> D L Hodgson, 'Women's Rights as Human Rights: Women in Law and Development in Africa (WiLDAF)' (2002) 49 (2) *Africa Today*, Women, Language and Law in Africa 2

<sup>45</sup> *ibid*

<sup>46</sup> Okome (n. 15) 33

<sup>47</sup> See S. Forti, 'Challenges in the Implementation of Women's Human Rights: Field Perspectives' (2005) COWI A/S Conference Paper: *The Winners and Losers from Rights Based Approaches to Development*. 12 <[http://www.sarpn.org/documents/d0002116/Womens\\_rights\\_Forti\\_Feb2005.pdf](http://www.sarpn.org/documents/d0002116/Womens_rights_Forti_Feb2005.pdf)> accessed on 30 January 2017; M. J. Osirim, 'Making Good on commitments to grassroots women: NGOs and Empowerment for Women in Contemporary Zimbabwe' (2001) 24 (2) *Women's Studies International Forum* 167, 179

<sup>48</sup> WfW 'What We Do: Helping Women Survivors of War Change Their World' <[www.qa.womenforwomen.org.uk/node/393](http://www.qa.womenforwomen.org.uk/node/393)> accessed on 30 January 2017

advance this principle, it initiates a one year programme for their participants which focus on the following:

### **3.1 Sponsorship and Economic Stability**

The WfWI program is a one year program in which women are taught income and asset management. Women who are enrolled in this program are matched with a global network of sponsors that provide monthly financial assistance and emotional support which comes in the form of letters from sponsors. This serves as an emotional lifeline and motivation for rebuilding confidence to the enrollee who may have lost everything due to war or conflict.

The monthly financial contributions are small stipends allowing a woman to cover basic necessities for herself and her family.<sup>49</sup>

### **3.2 Rights Awareness**

Rights advocacy organisations often find that women generally do not have any idea of what rights if any are available to them. Negative widowhood rites practices in most of the over two hundred ethnic groups in Nigeria are some of the strongest causes of discrimination faced by Nigerian women. Against this and other negative practises, women's rights and social development professionals like Fatimah Kelleher, agree that patriarchy as a self-perpetuating system cripples both genders. Kelleher finds that re-education around gender roles is necessary in dismantling patriarchy and that the re-education has to translate down to educational systems.<sup>50</sup> Such educational systems include awareness programmes that coves educating women and others to re-orientate the men.<sup>51</sup> Awareness programmes also take the form of radio drama that provide 'empowering messages and images for young women and encourages reflection and debate among young men and women about gender roles and how they inhibit people's potential'.<sup>52</sup>

### **3.3 Support and Safety Networks**

Support and safety networks are most helpful for women who the ravages of public and personal conflict, arising from discriminatory customs and traditions that border on violence and actual physical assault of the victim. These often reduce afflicted women to a helpless state of low self-esteem and emotional distress. Through support and safety network programmes, counsellors and educators are able to render the much needed counselling. Under an atmosphere

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<sup>49</sup> See the following: L Njoku, 'No Responsible Society will Leave Women in Poverty and Hardship' (2010) *The Guardian* (Nigeria) May 2, 2010; S Ugwuoke, 'Mrs Chime Dwells on Women Empowerment' (2010) *Daily Star* (Nigeria), April 28, 2010; L Njoku, 'Empowered by Grace: Inspiring Story of Ekoli-Okpanku Women' (2008) *The Guardian* (Nigeria) December 7, 2008; J Daring, 'Commissioner Commends NGO for Support' (2010) *Sunday Standard* (Nigeria) June 20, 2010 and L Njoku 'Succour Comes to Jos Crisis Victims' (2010) *The Guardian* (Nigeria) July 25, 2010.

<sup>50</sup> Julia Hamaus, 'Dismantling Patriarchy' (2016) <http://itad.com/dismantling-patriarchy-nigeria/> accessed on: 3 January 2017

<sup>51</sup> See C Oji, 'Better Days for Gender Relations' *The Nation* (Nigeria), July 15, 2009 p. B2. See also G C Eze, 'Men Leadership Training on Gender Issues Held in Enugu'. *The Truth* (Nigeria) July 29, 2009 p.8

<sup>52</sup> See *Purple* at <http://iampurple.ng/home/purple/> accessed on: 30 January 2017

conducive for managing the emotional distress, they acquire instrumental self-sustaining skills.<sup>53</sup>

The programmes thus provide important lessons on how dominant norms that perpetuate gender inequality can be challenged.

The UNFPA agenda for overcoming gender inequality is quite similar to those discussed above. For UNFPA, “[w]omen's empowerment and gender equality requires strategic interventions at all levels of programming and policy-making. These levels include reproductive health, economic empowerment, educational empowerment and political empowerment.”<sup>54</sup> These also tie into the ‘gender rights education, lobbying for national legislative reforms, extending the scope of state accountability, and mobilize international support’ style that WiLDAF applies in the quest to eliminate all forms of gender discrimination. These heads are discussed in more detail below:

### **3.4 Legal Rights Education**

Legal rights education takes many forms. The forms are structured in the best possible way to convey information to a target audience. For instance, in late 1998 WiLDAF partnered with other women's rights groups in Togo to organise a two-week multimedia educational campaign against domestic violence. The focus was to change public perceptions of the issue by getting victims break the silence, speaking out about domestic violence and seeking legal redress against same. The campaign used public lectures, advertisements posters and a mock trial in reaching its audience.<sup>55</sup>

### **3.5 Lobbying For National Legislative Reforms and Extend the Scope of State Accountability**

In 1997 WiLDAF partnered with the Center for Reproductive Law and Policy (CRLP) to prepare a CEDAW shadow report on women's reproductive rights in Zimbabwe. The topics covered in the report included: family relations, sexual violence, employment rights, and access to health care (including family planning) and education for adolescents.<sup>56</sup>

### **3.6 Mobilize International Support**

WiLDAF's gender discrimination eradicating strategy includes mobilizing the support of international Rights Protection advocacy bodies in publicizing and

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<sup>53</sup> C Balkwell, *Transition to Widowhood: A Review of the Literature* (1981) 30 (1) *Family Relations* pp. 117, 125

<sup>54</sup> UNFPA, "[Engaging Men and Boys: A Brief Summary of UNFPA Experience and Lessons Learned](https://www.unfpa.org/.../UNFPA%20Engaging%20men%20and%20boys_web-2.pdf)" <[https://www.unfpa.org/.../UNFPA%20Engaging%20men%20and%20boys\\_web-2.pdf](https://www.unfpa.org/.../UNFPA%20Engaging%20men%20and%20boys_web-2.pdf)> accessed on: 27 January 2017

<sup>55</sup> Hodgson (n.44), 10

<sup>56</sup> See CRLP, 'Shadow Report' (1997) [www.reproductiverights.org/sites/default/files/documents/SRZimbabwe97en.pdf](http://www.reproductiverights.org/sites/default/files/documents/SRZimbabwe97en.pdf) accessed on: 27 January 2017

challenging common law and customary laws which lower the status of women or prevent them from exercising and enjoying their rights.<sup>57</sup>

The strategies described above are some of the most common and popular means of eliminating discrimination against women. In applying these strategies, gender rights advocates in Nigeria frequently encounter certain obstacles. These obstacles shall be considered in next section 4.

#### **4. SUBSTANTIVE CHALLENGES TO THE ENFORCEMENT OF GENDER RIGHTS IN NIGERIA**

In consonance with the provisions of ratified gender ‘safeguarding’ standards which prohibit gender discrimination and inequality,<sup>58</sup> Nigeria adopted a National Policy on Gender in 2006 and 2007<sup>59</sup> to address challenges faced by women and children in Nigeria. The Policy is geared towards facilitating women’s development, poverty reduction and general sustainable development through the acknowledgement of women’s key role in national development and the requirement that gender based issues form the pinnacle of government policies, planning and programmes. The policy has also been adopted by some states.<sup>60</sup>

In spite the policy adoption and in line with the general view that policy adaptation without more is useless, patriarchy is still quite dominant in Nigeria; even though there are advancements in women’s participation in governance and socio-economic development and other improvements in the elimination of discrimination against women. Legislation such as those discussed above<sup>61</sup> and affirmative action policies should have been a more solid platform for changing negative societal attitudes that foster patriarchal norms<sup>62</sup> and discrimination. But available evidence indicates the opposite.

Reports supplied by civil society groups indicate the following problems of enforcement:

##### **4.1 Nigeria’s decentralized legal system**

Nigeria’s historical development, the religions practised by its citizens who are mostly Christians and Muslims and its multi-ethnic nature would easily explain why Nigeria has a decentralized legal system. In other words, Nigeria does not

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<sup>57</sup> Ibid 10

<sup>58</sup> See Article 2 of CEDAW which requires that signatories take policy measures in eliminating gender discrimination.

<sup>59</sup> See Salamatu H Suleiman, ‘Statement’ (2010) [www.un.org/womenwatch/daw/beijing15/general\\_discussion/NIGERIA.pdf](http://www.un.org/womenwatch/daw/beijing15/general_discussion/NIGERIA.pdf) accessed on: 12 December 2016

<sup>60</sup> For example see the ‘Jigawa State Gender Policy (JSGP): A Holistic Approach towards Women Development’ (2013) [http://www.sparc-nigeria.com/RC/files/1.1.23\\_Jigawa\\_Gender\\_Policy.pdf](http://www.sparc-nigeria.com/RC/files/1.1.23_Jigawa_Gender_Policy.pdf) accessed on: 30 January 2017

<sup>61</sup> In section 2.2 above

<sup>62</sup> There is a double edged sword here; cultural survival and continuity is largely dependent on women’s reproductive freedom and other rights. These rights are violated each time a woman is circumcised –see Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female* (1992) 26 *New ENG. L. REV.* 1509 and (Author unknown), ‘What’s Culture Got to Do with It? Excising the Harmful Tradition of Female Circumcision’ (1993) 106 (8) 1944

have a uniform system of laws. Prior to the colonisation and the consequent amalgamation of the Southern and Northern Protectorates of Nigeria, the indigenous people who occupied her territory were bound only by their own customs and traditions. With colonisation and in addition to the latter, the people also became bound by certain English legislation as well as the English Rules of Common Law and Doctrines of Equity and later international provisions.<sup>63</sup> Adding to this almost confusing plethora of laws is the ever present customary laws<sup>64</sup> of the different ethnic groups and the Sharia Law which applies only to Muslims and which was later passed as law by the different Houses of Assembly of the Northern states of Nigeria. The result: different provisions for a common subject matter and such provisions sometimes contradicting each other especially on issues of gender. For example, sections Sections 353 and 360 of the Criminal Code both cover the Unlawful and Indecent assault. The only material differences between the two sections lie in the sex of the victim and the length of punishment; is two years imprisonment under section 360 for assaulting a female and three years imprisonment under section 353 where the assault victim is male. In other words, Indecent Assault on a male is a felony, while the same criminal wrong is a mere misdemeanor for assaults on females. This position of the Criminal Code which governs southern Nigeria would likely appear strict to a casual observer who views the provisions of sections 55 and 282 of the Penal Code which operates in the North. The sections allow acts which may amount to assault or rape of any girl who has attained puberty so long as the offender is married to her.<sup>65</sup> On the face of it, these provisions condone domestic violence and may be used as justification for abuse against married women. They remain in operation and are accepted unchallenged despite the broad sweeping tone of the section 42 of the Constitution ineffective.

The irregularity occasioned by examples such as the one given above is the reason why some states have of their own initiative undertaken the establishment of more gender friendly laws which would apply across religious and ethnic ties on all citizens who reside within the state.<sup>66</sup> It is noteworthy however, that within the over two hundred ethnic groups that make up Nigeria there are 'healthy' customs and traditions which cover the deficiency in formal legislation.<sup>67</sup> This does not

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<sup>63</sup> See section 2 above.

<sup>64</sup> Once customary law has been verified as required by law, the courts tend not to question the law itself or at least consider any gender aspect which ought to be incorporated for a modern society –see Ronke I Ako-Nai (ed.), *Gender and Power Relations in Nigeria* (Rowman & Littlefield 2013)

<sup>65</sup> Section 55(1) (d) of the Penal Code provides that “Nothing is an offence, which does not amount to the infliction of grievous harm 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 natural law or custom in which such correction is recognized as lawful.” Section 282 (2) Penal Code provides that “Sexual intercourse by a man with his own wife, is not rape if she has attained puberty.” On the other hand, the Criminal Code frowns at all sexual engagements with girls under 13. Here consent does not remove culpability- see sections 218-357 of the Criminal Code.

<sup>66</sup> See Gender Based Violation Law of Ekiti State (2011) and the Domestic Violence Law of Lagos State (2007)

<sup>67</sup> For example, among the Yoruba tribe in south-west and Hausa of northern Nigeria, both male and female have equal rights to inheritance were their father dies intestate- see Oyewunmi (n.6)

however and in any way obviate the very important need to enact binding general laws that would better suit Nigeria's plural society especially in the light of the demand encapsulated in Article 5 of CEDAW. Article 5(a) states: "States Parties shall take all appropriate measures:

- (a) *To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the inferiority or superiority of either of the sexes or on stereotyped roles for men and women".*

In furtherance to this, Article 2 of CEDAW proposes and recognises the use of domestic legislation as a proper measure in eliminating gender discrimination. At its 6th Session in 1987 the CEDAW Committee adopted General Recommendation 3<sup>68</sup> which highlighted the fact that even though reports have come from states with different levels of development, they present features in varying degrees showing the existence of stereotyped conception of women owing to socio-cultural factors that perpetuate discrimination based on sex and hinder the implementation of article 5. Thus, the obvious in adherence to CEDAW's express demands is bad and strikes a death-knell on what little progress it has made.

#### **4.2 Religious dogma and customs and traditions that propagate patriarchy and discrimination**

Age-old indigenous customs and traditions, and religious dogma often render the broad sweeping tone of the Constitution regarding gender rights ineffective. That is why some states have on their own moved towards establishing laws that engender equality which are to be binding on all who reside within their states. In other words, despite constitutional provisions that guarantee equal rights to all regardless of gender, traditional and religious beliefs contribute largely to the Nigerian woman's gender discrimination and low status. As has been rightly observed, some of these beliefs have been practiced for so long that they are embedded in the societal perception almost as legal norms.<sup>69</sup>

#### **4.3 Economic empowerment of women**

Female economic activity has become a common measure of gender equality in an economy and investments in women's economic empowerment is seen as a direct path towards gender equality, poverty eradication and inclusive economic growth.<sup>70</sup> This view is most firmly hinged on the fact that gender discrimination is often associated with low-wage paying work available to more women than men and which disproportionately opens them up to afflictions of poverty,

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<sup>68</sup> See CEDAW General recommendation No. 3 -- sixth session, 1987 education and public information programmes <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> accessed on: 11 January 2017

<sup>69</sup> See Olateru-Olagbegi & B. Akiyode Afolab, 'Actual Women Situation in Nigeria' (Date Unknown) WiLDAF [http://www.wildaf-ao.org/index.php?option=com\\_content&view=article&id=84&Itemid=66&lang=en](http://www.wildaf-ao.org/index.php?option=com_content&view=article&id=84&Itemid=66&lang=en) accessed on: 6 January 2017

<sup>70</sup> UNwomen, 'Economic Empowerment' <http://www.unwomen.org/ru/what-we-do/economic-empowerment> accessed on: 3 January 2017

discrimination and exploitation.<sup>71</sup> Substantiating this position, the UN Population Fund says that, "Six out of 10 of the world's poorest people are women and economic disparities persist partly because much of the unpaid work within families and communities falls on the shoulders of women."<sup>72</sup>

#### **4.4 Sexual violations and violence against women**

Violence as a result of patriarchal gender constructs or gender-based violence is defined as "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, whether occurring in public or in private life".<sup>73</sup> For the United Nations General Assembly, gender based violence is "...a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."<sup>74</sup>

It is to be noted that in 1994, the U.S. Department of Justice (Office of Justice Programs Bureau of Justice Statistics) published a report of its survey into Violence against women.<sup>75</sup> Its findings indicated that violence against women is often caused by the acceptance of violence by various cultural groups as a means of conflict resolution within intimate relationships.<sup>76</sup> The Survey found that the police and the justice system have also not responded in appropriate manner in the cases where they are required to do so, such as referring a case back to the family for settlement because violence against women was considered a family matter, thus compounding women's vulnerability to violence and other abuses.<sup>77</sup> This position also holds true in Nigeria. Sources indicate that there is a large number of acts of sexual violations and rape cases perpetuated against women in Nigeria.<sup>78</sup> It is quite alarming that activists who interact with many of the victims of such violations report that only about one in every 50 rape cases are reported.<sup>79</sup>

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<sup>71</sup> *ibid*

<sup>72</sup> See UNFPA (n.28)

<sup>73</sup> *United Nations General Assembly. "A/RES/48/104 - Declaration on the Elimination of Violence against Women - UN Documents: Gathering a body of global agreements" (1993) <http://www.un-documents.net>* accessed on: 3 January 2017

<sup>74</sup> *ibid*

<sup>75</sup> See Ronet Bachman, 'Violence against Women: A national Crime Victimization Survey Report' (1994) <https://www.ncjrs.gov/pdffiles1/digitization/145325ncjrs.pdf> accessed on: 25 January 2017

<sup>76</sup> *Ibid*, 8

<sup>77</sup> Dorcas Coker-Appiah, 'The Cedaw Convention and Harmful Practices Against Women: The Work Of The Cedaw Committee' (2009) [http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Expert%20Paper%20EGMGPLHP%20\\_Dorcas%20Coker-Appiah\\_.pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Dorcas%20Coker-Appiah_.pdf) accessed on: 20 January 2017

<sup>78</sup> See also M.O. Folayan, M. Odetoyinbo, A. Harrison and B. Brown (n.9); O. I. Fawole, A. J. Ajuwon, K. O. Osungbade and O. C. Faweya, 'Prevalence of violence against young female hawkers in three cities in south-western Nigeria' (2002) 102 (230) *Health Education* 8 and Adelani Adepegba, 'Nigeria recorded 2,2 241 robbery, rape cases in 2015-Police' *Punch Nigeria* (August 28, 2016) <<http://punchng.com/nigeria-recorded-2241-robbery-rape-cases-2015-police/>> accessed on : 3 December 2016

<sup>79</sup> B Olateru-Olagbegi & B. Akiyode Afolab, (n.69)

This makes the CEDAW Committee's concern over the persistent patriarchal roles and values that discriminated against women and which feed the so-called the 'culture of silence' over the domestic violence women suffered germane. As they suggested to the Bhutan Government-which suggestion is co-opted here-the Nigerian Government must prepare law enforcement agents and the judiciary to tackle gender-based violence and appropriately assist victims.<sup>80</sup>

#### **4.5 Gender mainstreaming and political participation of women**

Records show that the Nigerian woman has always been passively active in politics; in times of dire need such as in independence, women are allowed to participate in public matters. However, as soon as the objectives have been achieved, women were discarded like a bad penny.<sup>81</sup> Since independence and the return to democracy in 1999 and despite the rise in advocacy aimed towards greater inclusion of women in politics her presence there has at best been marginal.

Her present position,-little as it is- in Nigerian politics has its genesis in the 1980s. It really began with what has been described as Mrs Mariam Babangida's femocracy.<sup>82</sup> Though roundly criticised for "creating more media space for the wives of the ruling elite, and mobilising ruling class women's support for the most populist of the various totalitarian regimes that have ruled Nigeria", it cannot be denied that her tenure begun active participation in politics.

With the return of democracy in 1999 and although Nigerian women have tried to gain access to political decision-making positions by contesting for elective positions at various levels of governance, elections into the have been won predominately by males.<sup>83</sup> This has been criticised as inadequate for being a clear manifestation of female political disempowerment; the result of the patriarchal structured Nigerian politics and for not meeting the international bench mark

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<sup>80</sup> UN, 'Bhutan Harmonizes Spectrum of Domestic Laws with Women's Anti-Discrimination Convention, Creates First Ever Scheme for Gender Equality, Expert Body Hears' (23 July 2009) <<https://www.un.org/press/en/2009/wom1741.doc.htm>> accessed on: 6/2/2017

<sup>81</sup> Pat Williams, 'State, Woman and Democratisation in Africa: The Nigerian Experience (1987-1993)' (1997) 22 (1) Africa Development 141

<sup>82</sup> Mrs Mariam Babangida (now late) was the wife of Nigeria's military Head of State, Gen. Ibrahim Babangida. She was the first 'First Lady' of Nigeria to ever play an active role through-a not constitutionally recognized- office of the First Lady of Nigeria. She was also the first to establish a 'pet project' which had the hall marks of a government agency and which appeared to be fully funded by the Central Bank of Nigeria despite allegations to the contrary- see Amina Mama, 'Feminism or Femocracy? State Feminism and Democratisation in Nigeria' (1995) 20 (1) Africa Development 37

<sup>83</sup> For example, for the legislative arm of government women took 3 out of the available 109 seats of the upper House in 1999. This rose to 8 in 2007 then went lower to 7 in 2011. In the lower House women took 12 of 360 seats, increased to 21 in 2003, 26 in 2011 and decreased yet again to 19 in 2015. See Oluyemi Oloyede, 'Monitoring Participation Of Women In Politics In Nigeria' (2016) <[https://unstats.un.org/unsd/gender/Finland\\_Oct2016/Documents/Nigeria\\_paper.pdf](https://unstats.un.org/unsd/gender/Finland_Oct2016/Documents/Nigeria_paper.pdf)> accessed on: 7 January 2017

target.<sup>84</sup> The international bench mark was set at the fourth World Conference on Women in Beijing, which advocated 30% affirmative action. However, in Nigeria, the extant National Gender Policy (NGP) recommended at least 35% of both elective political and appointive public service positions respectively. Thus a lack of political power continue to constitute a hindrance to women's development despite concerted efforts have been made by NGOs to increase the level of participation of women in politics, in line with the declaration made by the Beijing Platform of Action.<sup>85</sup> This development shows the failure of the Nigerian state once again to put a legal framework in place to support a gender friendly electoral system.<sup>86</sup> The absence or under-representation of women in governance structures undermines the fundamental concept of a democracy which assumes equal participation and representation by women and men in all areas and levels of public life.

A summation of the challenges listed in this section indicates the need for the following:

1. A unification of domestic laws to eradication current conflicts within them that propagate discrimination and abolishing laws that contravene the principles of the Constitution;
2. Providing training programmes for local law enforcement agents and the judiciary on best practises in assisting victims and the proper management of cases of gender-based violence;
3. An abolition of all harmful cultural practices and customs that impede women's rights in Nigeria;
4. Domestication of ratified international treaties on gender rights protection; and
5. Increased incentives to encourage gender mainstreaming and political participation of women appointment of women to hold political offices.

“Finding the right policy mix and the political will” to address these challenges as McCracken<sup>87</sup> et al suggest would be better served in accordance with the principle of the utilitarianism in Legal Positivism Philosophy. Utilitarianism is an ethical theory of Legal Positivism that states that the best action is the one that maximizes utility. Utilitarianism was espoused by philosophers such as John Stuart Mill<sup>88</sup> and mainly by Jeremy Bentham (1748-1832) who was not only a philosopher, a social reformer, a

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<sup>84</sup> M. O. Quadri, 'Women and Political Participation in the 2015 General Elections: fault lines and mainstreaming exclusion' (2015) <<http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Maryam-Omolara-Quadri.pdf>> accessed on: 25 January 2017

<sup>85</sup> Ibid 15

<sup>86</sup> [Abiola Akiyode-Afolabi](http://www.womenaffairs.gov.ng/cedawdocs/6th%20Nigeria%20cedaw%20report%20final%20version.pdf), 'Nigeria's Electoral Reform And The Prospect For Women's Participation In The 2011 Elections' (2013) <https://ng.boell.org/2013/10/14/nigerias-electoral-reform-and-prospect-womens-participation-2011-elections> 6<sup>th</sup> country periodic cedaw report 2006 <http://www.womenaffairs.gov.ng/cedawdocs/6th%20Nigeria%20cedaw%20report%20final%20version.pdf> accessed on: 27 January 2017

<sup>87</sup> Katie McCracken, Elaine Unterhalter, Sergio Márquez & Agata Chelstowska, 'Empowering women and girls through education' (2015) <http://www.europarl.europa.eu/studies> accessed on: 20 January 2017

<sup>88</sup> Don A. Habibi, *John Stuart Mill and the Ethic of Human Growth* (Dordrecht: Springer Netherlands 2001) 89, 90

feminist,<sup>89</sup> jurist and the founder of modern utilitarianism, but was also regarded one of the early English advocates of gender rights.<sup>90</sup>

Applying principles of Utilitarianism to gender rights protection in Nigeria, one must swiftly come to the conclusion that, ratification without more will not solve the problems as this does not offer much aid for the purpose which it is meant. On the other hand, as the Bhutan example<sup>91</sup> indicates, a full utilisation of the opportunity offered in the Treaties discussed above would involve translating them into local enactment as demanded in section 12 of the Constitution. In other words, the only true way of achieving the most use of these international safeguards is through domestication. As exemplified by Bhutan, domesticating gender based anti-discriminatory international laws have a far reaching effect than a mere ratification ever could; it sends a strong signal that the punishments for criminal acts of discrimination are non-negotiable.

Until the call for the proposed reform is answered, serious and other gruesome forms of violence and other forms of discrimination will continue to take place within homes and in society with complete impunity. As rightly said by Kalpana Kannabiran<sup>92</sup>: “[I]f we make the end of impunity non-negotiable, the change in thinking will come about—it has to. People will begin to understand that you cannot get away with this behaviour.”<sup>93</sup> Policy makers are the ones who must face the challenge here; the challenge of finding the right policy mix and the political will to address the complex factors that affect women’s and girls’ empowerment...<sup>94</sup> through every available means and especially through legislative means, which could form a viable tool for both victims and gender rights advocacy groups.

## **5. CONCLUSION AND RECOMMENDATION**

The last decade has heralded a lot of changes in Nigeria’s institutions of governance as it has tried to cement its still fledgling democracy. It has recorded and continues to record national disasters (terrorist attacks, religious uprisings, etc.), which have all ultimately led to further possibilities for discrimination against women.

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<sup>89</sup> See Elie Halevy, *The Growth of Philosophic Radicalism* (Boston, 1966) 20

<sup>90</sup> See Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (New York, 1965) and Miriam Williford, ‘Bentham on the Rights of Women’ (1975) 36 (1) *Journal of the History of Ideas* 167

<sup>91</sup> “Following Bhutan’s historic transition last year to a democratic constitutional monarchy, the South Asian nation had harmonized a myriad of domestic laws in accordance with the women’s Convention and created its first national action plan to ensure gender equality in all aspects of economic, political and social life”-see (n. 80)

<sup>92</sup> [Kalpana Kannabiran](#) is the editor of *Women and Law: Critical Feminist Perspectives*, and director of Hyderabad-based Council for Social Development. She is a recipient of the Rockefeller Humanist-in-Residence Fellowship at Hunter College, City University of New York, and won the 2012 Amartya Sen Award for Distinguished Social Scientists

<sup>93</sup> See Monalisa and Pretika Khanna, ‘Crimes are Crimes against the state: Kalpana Kannabiran. Kalpana Kannabiran on women’s issues and the efficacy of the legal framework in addressing them’ (2014) <<http://www.livemint.com/Politics/xZXx42ZOtcf2sSnRGkNmXO/All-crimes-are-crimes-against-the-state-Kalpana-Kannabiran.html>>

<sup>94</sup> Katie McCracken, Elaine Unterhalter, Sergio Márquez & Agata Chelstowska (n.87)

Nigeria has ratified a series of international standards which prohibit gender discrimination and inequality that proffer gender rights protection and seemingly adopting its provisions through the establishment of commissions and agencies whose primary focus is eliminating discrimination against women. This should have seriously opened up the arena and set the much needed stage to realise the goals encapsulated in the standards which prohibit gender discrimination and inequality. But that is far from the case. There is no doubt that progress is sluggish and further stifled by patriarchy-induced resistance to change which underline known discriminatory cultural practices and domestic law. That these even contravene the spirit and specific constitutional provisions cannot be gainsaid, nor can the fact that it hurts the very citizens who the Constitution should protect.

Protection for the ordinary Nigerian woman is now more available through the agency of civil rights groups who advocate against gender inequality. Their programmes encourage and enable women gain access to socio-economic freedoms and other benefits denied them under the harsh patriarchy led social environment she occupies. Also, the activities and sustained advocacy education programmes of NGOs and other gender advocacy rights groups have no doubt led to the re-education and enlightenment of women as to their rights. This is the apparent reason for the Nigerian woman's more vocal and active strides in producing initiatives geared towards the protection of their rights.

As already stated above, a strengthening of Nigeria's gender rights protection regime necessitates a domestication of ratified international treaties on gender rights protection and a unification of domestic laws to eradication current conflicts within them that propagate discrimination and abolishing laws that contravene the principles of the Constitution. Making the end of impunity non-negotiable through legislation is really the first serious step towards eradicating or at least streaming discriminatory acts against the woman. Legal stringent consequences for criminal acts of gender rights violations would likely induce people to understand this. Braving existing odds and holding 'the complex factors that affect women's and girls' empowerment' figurative bull by the horns through legislative reform would bridge the inadequacies in Nigeria's commitments to ratified international instruments on gender rights protection. It will also form a much needed tool-a veritable clutch to lean on-for both victims and gender rights advocacy groups in the fight against harmful cultural practices and customs that impede women's rights in Nigeria.

Legislative reforms must also be supported with training programmes for local law enforcement agents and the judiciary on best practises in assisting victims and the proper management of cases of gender-based violence. That, as well as increased incentives that encourage gender mainstreaming and political participation of women appointment of women to hold political offices, would make Nigeria not appear to be merely paying lip service to eliminating gender based discrimination, but will enable begin the process of liberation for all its people who will enjoy the inherent benefits accruable to a nation of the truly free.