

# Evaluating the Enforcement of the Rights of Women under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979: The Nigerian Experience

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## Abstract

The 1948 Universal Declaration of Human Rights (UDHR) is of universal application to both men and women. However, this has not satisfied the specific rights of women. The United Nations has addressed this issue with the emergence of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Nigeria is a signatory to Convention despite the widespread abuses of the gender-sensitive rights of women. This work is aimed at evaluating the enforcement of the rights of Nigerian women under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979. Regrettably, Nigerian women have continued to suffer physical and emotional abuses, economic deprivations, social inequalities and kindred human rights infractions on account of their gender despite the fact that the country has ratified the convention. In view of the commitment of the Nigerian government by ratifying the CEDAW, it is recommended that the government should ratify and domesticate the Optional Protocol to CEDAW, which permit individual woman to bring her complaint before the CEDAW Committee in the event of violation of her rights. It is also recommended that the government of Nigeria should domesticate the Convention on the Elimination of All Forms of Discrimination against Women to enable individual women to access justice at the national court upon any threat or actual violation of their rights under the instrument.

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## Keywords

Rights, Women, Gender-Sensitive, Ratification, Enforcement and Domestication

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## 1. Introduction

Generally, women's human rights are the fundamental human rights that all women are entitled to, regardless of their nationality, ethnicity, race, religion, or any other status. Since the early 1900s, a series of laws and international agreements have been passed to ensure that these rights are respected, protected, and fulfilled. At the global level, the United Nations has been at the forefront of the fight for women's rights. It has adopted many resolutions and treaties that protect the rights of women, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration and Platform for Action. In conclusion, a wide range of laws and international agreements have been passed to guarantee women's human rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the most comprehensive international agreement on women's rights. The CEDAW was adopted in 1979, and entered into force on September 3, 1981, calling on countries to end all forms of discrimination against women in both the public and private spheres. It also obligates states to take appropriate measures to eliminate gender-based violence, such as female genital mutilation, domestic abuse, and sexual harassment. The struggle for the human rights of women started long before the creation of the international human rights systems themselves. In 1933 for instance, the Inter-American Women's Commission of the Organisation of American States which came into existence in 1928 adopted a Convention on the Nationality of Women. This was the first international instrument specifically dealing on women's human rights (Nwankwo, 2001a).

In 1946, the Committee on the Status of Women (CSW) was created in response to the women's struggle for the recognition of sex discrimination in Universal Declaration of Human Rights (Udu, 2022). It was the efforts of this Committee that resulted in the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Convention is international human rights document that establishes the universality of the principle of equality of rights between men and women, and amongst women *inter se* (Nwankwo, 2004). The Convention establishes an independent expert body, the Committee on the Elimination of All Forms of Discrimination against Women made up of twenty-three individuals to monitor the implementation of the Convention.

The General Assembly further adopted an Optional Protocol to the Convention. This Protocol permits the Committee to receive and consider communications from women or group of women who alleges that they are victims of gen-

der discrimination within the jurisdiction of State Parties to the Protocol. The Protocol was adopted on October 6, 1999 and entered into force on December 22, 2000 ([Human Rights Library: University of Minnesota, 2004](#)).

At the regional level, the European Union has adopted a number of laws to ensure the rights of women. These include the European Convention on Human Rights, which enshrines the right to equality of men and women; the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which prohibits all forms of violence against women; and the European Union Gender Equality Directive, which requires member states to take measures to ensure equal pay for equal work. Essentially, the African Union (AU) has adopted a number of legislative measures to promote the rights of women and girls throughout its member states. The most prominent of these is the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (also known as the Maputo Protocol). The Maputo Protocol was adopted by the AU in 2003 and entered into force in 2005. It guarantees that women in Africa have the right to: participate in decision-making processes and political life; be free from gender-based discrimination and violence; have access to education and health care; have equal rights in marriage and family life; and enjoy economic and social rights.

The prohibition on discrimination against women is thus not circumscribed by the traditional categories of human rights. It has snowballed to include the social, economic and development rights of women. It is also not limited to the public field as it extends to private life such as the relative rights of spouses. However, temporary special measures geared towards facilitating *de facto* equality between men and women are not within the purview of “discrimination” as defined in this Convention. As soon as the objective of equality of opportunity and treatment is realized, such measures will be discontinued.

At the national level, countries have enacted legislation to guarantee women's human rights. In Nigeria, there has been a long history of gender inequality and discrimination against women. This has led to a lack of access to basic human rights, such as education and healthcare, as well as a lack of representation in politics and public life. In recent years, however, Nigeria has taken steps to address these issues. In 2015, the Nigerian government passed the Gender and Equal Opportunities Bill, which guarantees the human rights of women and girls in Nigeria. This legislation seeks to ensure that women have equal access to education, employment, and healthcare, and that they are protected from all forms of discrimination and violence. The bill also outlines a number of measures to ensure that women's rights are enforced. These include the establishment of a National Gender Equality Commission, which will monitor the enforcement of the legislation and ensure that gender equality is implemented in all areas of society. The bill also sets out a number of affirmative action measures, such as quotas for women in political office, and the introduction of gender-sensitive policies in the workplace. The Gender and Equal Opportunities Bill is a major step forward in the fight for gender equality in Nigeria. It is a testament to the country's com-

mitment to creating a more just and equitable society for all its citizens, regardless of gender. However, the legislation is only the first step in ensuring that women's rights are respected and upheld. The government must continue to work hard to ensure that the bill is implemented and enforced effectively, and that all Nigerians are able to benefit from its provisions. In conclusion, the Gender and Equal Opportunities Bill is an important step forward in the fight for gender equality in Nigeria. It is a sign of the government's commitment to creating a fairer society for not only the women but for all its citizens, and it is a testament to the power of the Nigerian people to demand change and work for a better future. These laws and agreements are essential for ensuring that women are treated with respect and dignity and are able to live free from discrimination and violence. As we move into the future, it is crucial that we continue to pass legislation that ensures the rights of women everywhere.

This article makes a brief introduction to the legislation to guarantee women's human rights. It also appraises the impact of the Convention on the Elimination of All Forms of Discrimination against Women on the rights of Nigerian women. It discusses the human right norms and their implementation mechanisms under the convention. It further identifies the challenges to the recognition and enforceability of the rights of women in Nigeria, and prospects for enhanced regime of women's rights protection in Nigeria.

## 2. Streamlining the Norms under the CEDAW

The State Parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Consequently, they undertake the following:

- 1) To enshrine the principle of equality of men and women in their national laws and to ensure the practical realization of this principle;
- 2) To adopt appropriate legislative and other measures in prohibiting discrimination against women;
- 3) To establish effective legal protection of the equal rights of women through national tribunals or other public institutions;
- 4) To refrain from engaging in any act or practice of discrimination against women;
- 5) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; and
- 6) To repeal all national penal provisions which constitute discrimination against women (CEDAW, Article 2);
- 7) To modify the social and cultural patterns of conduct of men and women which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (CEDAW, Article 5a);
- 8) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all

cases (CEDAW, Article 5a);

9) To take all appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women (CEDAW, Article 5a);

10) To take all appropriate measures to eliminate discrimination against women in political and public life (CEDAW, Articles 7 and 8);

11) To take appropriate measures to eliminate discrimination against women in the field of education (CEDAW, Article 7);

12) To eliminate discrimination against women in the field of employment (CEDAW, Article 11);

13) To eliminate discrimination against women in the field of health care (CEDAW, Article 12);

14) To eliminate discrimination against women in the areas of economic and social life (CEDAW, Article 13); and

15) To take all appropriate measures to eliminate discrimination against women in rural areas (CEDAW, Article 14(2)).

The foregoing provisions are framed as general legal obligations on states that have ratified the Convention. However, there are some other provisions which specify the definite rights that must be protected on the basis of equality of men and women viz:

1) Women have the right to the same conditions for career and vocational training, and the same opportunities for scholarships and other grants (CEDAW, Article 10);

2) Right to the same employment opportunities, to free choice of profession and employment, to equal remuneration, to social security and to protection of health (CEDAW, Article 11);

3) The right to family benefits, to bank loans, mortgages and other forms of financial credit and to participate in recreational facilities, sports and all aspects of cultural life (CEDAW, Article 13);

4) The right of rural women to participate in the elaboration and implementation of development plans, to have access to adequate health care facilities, to benefit directly from social security programmes, to obtain all kinds of training and education, to organize self-help groups, to participate in all community activities, to have access to agricultural credit and loans, and to enjoy adequate living conditions (CEDAW, Article 14).

Besides, the Convention imposes on the State Parties the duty of according women equality with men before the law (CEDAW, Article 15(1) and (2)). The rights relating to marriage and the family must be ensured by the States Parties on the basis of equality of men and women (CEDAW, Article 16). These principles and rights are reproduced in the African regional treaty. Accordingly, States Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard the state parties to the protocol shall take the following

actions:

1) Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;

2) Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;

3) Integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

4) Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

5) Support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women [Moputo Protocol, Article 2(1)].

### 3. Implementation Mechanism of the CEDAW

The mechanism contemplated in this Convention and the Protocol of 1999 takes the following forms:

#### 3.1. The Reporting Procedure

States Parties undertake to send a report to the Committee on the Elimination of Discrimination within one year of entry into force of the Convention, and, thereafter, every four years, or as the Committee request. In this report, the State Parties indicate the factors and difficulties they encounter in fulfilling their obligations under the Convention (Ilic, 2021). Unlike other treaties also, the Convention limits the meeting period for the Committee to two weeks annually (CEDAW, Article 20). The Committee has however, proposed that the State Parties amend Article 20 so as to allow it to meet annually for such period as is necessary. This is to ensure that the functions of the Committee under the Convention are carried out effectively (CEDAW, Article 18).

#### 3.2. Individual Communications

The Committee is competent to receive and consider petitions from individual women or groups of women. They must have exhausted all their domestic remedies. Unless it can be established why consent was not received by the Committee, petitions cannot be submitted on behalf of individuals or groups of individuals (CEDAW, Article 2). Under the Optional Protocol, the Committee can conduct confidential enquiries into grave or systematic violations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Article 8).

The implementation of the Convention is greatly predicated on the willingness of governments to domesticate same. Once domesticated, the terms of the

Convention shall be transposed into administrative and social policies and practice in order to realize a profound eradication of discrimination. Courts in many countries refer to the Convention in domestic litigation to remedy discrimination against women in matters such as nationality, inheritance, violence against women or sexual harassment at work.

#### 4. Juridical Enforcement of Women's Rights in Various Jurisdictions

The equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognized under the law and is encapsulated in rights instruments. Non-discrimination and equal protection is a theme that runs across the human rights regime. The international Bill of Rights places emphasis on the equal rights of all gender. The Committee on Economic, Social and Cultural Rights has made it clear that the prohibition of discrimination is an obligation of immediate effect in the ICESCR (*Limburg Principles, Principles 13, 22 and 35-41; Maastricht Guidelines, Guidelines 11, 12 and 14(a)*). However, equality between men and women in the context of economic, social and cultural rights invokes particular sensitivities. Despite some recognition of non-discrimination and equal protection of human rights, human development has not attained a stage whereby gender-based equality is universally acknowledged, let alone applied within the domestic constitutional mechanism—frequently set against deep rooted traditional, cultural and religious patterns. Aiming to eradicate discrimination and provide for equal protection of the law despite the gender, Article 3 of the ICESCR provide for the equal right of men and women to the enjoyment of the rights provided in the Covenant. This provision is founded on Article 1, para.3 of the UN Charter and Article 2 of the Universal Declaration of Human Rights. Except for the reference to ICESCR, it is identical to Article 3 of the International Covenant on Civil and Political Rights (ICCPR), which was drafted at the same time (*CESCR: General Comment No 16, 2005*). Article 3, restates the fundamental position in relation to ensuring equality between men and women in the usage of the rights contained in the covenant. The principle of establishing *de facto* equality through policies of affirmative action is evident in the ICESCR Committee approach towards Article 3.

The International Covenant on Economic, Social and Cultural Rights committee in its General Comment states that the enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both substantive and formal equality. Formal equality and substantive equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned with the effects of laws, policies and practices. It ensures that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience. The committee further

elucidated that the principles of equality and non-discrimination are not always sufficient to guarantee true equality. Sometimes, temporary special measures may be needed to bring disadvantaged persons or group of persons to the same substantive levels as others. This is a temporary measures aimed at realizing not only formal equality, but also substantive equality for men and women. As long as these measures are necessary to redress substantive discrimination and are terminated when *de facto* equality is achieved, such differentiation is legitimate. However, the application of the principle of equality will sometimes require that states parties take measures in favour of women in order to alternate or suppress conditions that perpetuate discrimination (ICESCR: EC/12, 2005, para. 15).

The provision of Article 3 has gained traction among persons and institutions engaged in economic, social and cultural rights, and support is derived through an assessment of international instruments that dwells on equality of the law. The Limburg Principles observed that in the application of Article 3, consideration should be given to the Declaration and the Convention on the Elimination of all Forms of Discrimination against Woman (CEDAW) and other relevant instruments as well as the activities of the supervisory committee under the said convention (Limburg Principle, Principle 45). This is not however without limitation. While Article 4 provides for a general limitation clause, which is applicable to the substantive rights contained in part III of the CEDAW, Article 5 contains what can be termed as a saving clause which creates the effect that the provisions of a treaty cannot be used as a justification either for the violation of the rights protected by that treaty (Alston & Quinn, 1987).

Similarly, Article 26 of the International Covenant on Civil and Political Rights, which makes the equal protection principle applicable to any legislation passed by the state, regardless of its substantive content, encompasses legislation meant to regulate economic, social and cultural rights. Accordingly, several clauses enshrined in the Convention on the Elimination of all Forms of Discrimination against Women, make copious reference to its application to norms and practices regarding economic, social and cultural rights, social policies and social services. The same could be said about the protection granted by non-discriminatory and equal protection principles enshrined in constitutions of various jurisdictions, including Nigeria (CFRN, Section 42).

Generally, anti-discriminatory litigation, challenging normative distinctions based on forbidden grounds or showing that legislation or administrative practices have a disproportionate impact on a particular social group, are well suited, and has been extensively employed to the field of economic, social and cultural rights, social policies and social services (Fiss, 1976). This was made manifest under the US Constitutional Law in the case of *Brown v Board of Education of Topeka*, (Kluger, 1975; 347 US 483, 1954), which entertained an application of the equal protection clause in determining the applicant's right to education. In the instant case, the US Supreme Court decided that the existence of schools segregated by race amounted to a breach of the equal protection clause and or-



dered that the school system be redesigned in accordance with the ruling.

The United Nations Committee on the Elimination of all Forms of Racial Discrimination (CERD) also considered situations of violations of economic, social and cultural rights through discrimination on the basis of race. In the case of *Ms L.R. et al v. Slovakia*, CERD dealt with a municipal decision revoking a housing policy directed towards fulfilling the needs of the Roman population, finding that such revocation amounted to a discriminatory impairment of the right to housing based on grounds of ethnic origin (*Ms L.R. et al v. Slovakia Communication No. 31/2003, March 10, 2005*).

The Human Rights Committee (HRC) has also considered cases where the right to equal protection under the law and the prohibition of discrimination were applied to economic, social and cultural rights. The HRC, in the case of *Zwaan de Vries v. the Netherlands* (*Communication 182/1984, April 9, 1987*; *Brocks v. The Netherlands, Communication 172/1984, April 9, 1987*), decided that the Dutch social security legislation providing unemployment benefits discriminated against married women requiring them to satisfy additional eligibility conditions that did not apply in the case of married men. This offends the right to freedom from discrimination (*Constitution of the Federal Republic of Nigeria, 1999*). Differential treatment on the basis of gender was found to be in breach of Article 26 of the ICCPR. Similar cases were decided by the European Court of Human Rights, considering social benefits to be protected by the right to property enshrined in protocol 1 to the European Convention (*ECHR, 2002*).

In South Africa, the South African Constitutional Court in the case of *Khosa & Ors, v Minister of Social Development & Ors*, considered a constitutional challenge to the Social Security Act, which restricted access to social assistance benefits to South African citizens (*2004 (6) SA 505 (CC), 2004*). In that case, the plaintiffs, a group of poor Mozambican nationals with permanent resident status in South Africa, alleged that the Social Security Act discriminated against them on the basis of their national origin. The constitutional court rejected the Government's arguments that including them in the social assistance system would attract a flood of immigrants to South Africa and would place an unsustainable financial burden on the social assistance budget. They found that the exclusion of permanent residents both discriminated against them unjustly in breach of Section 9(3) of the Constitution and breached their Section 27(1) right to have access to social assistance. Based on this discrimination, it declared the offending provisions of the Social Assistance Act unconstitutional and went ahead to extend the application of the provisions so that permanent residents would also be accommodated. Although the basis of the discrimination is on ground of origin but inspiration could be drawn from the principle enunciated to bear on discrimination against women.

The European Court of Human Rights has also examined the application of the principle of non-discrimination on the basis of national origin in relation to social security and social assistance benefits. In the *Gaygusuz case* (*Gaygusuz v. Austria, 1996: Paras. 46-52*), the court, considered that the disparity in treatment

between nationals and non-nationals regarding eligibility for contributory emergency assistance scheme was not based on any objective and reasonable justification, and therefore was discriminatory, and a violation of the right to property. The court considered that the law refusing a non-contributory allowance for adults with disability on the basis of national origin was unjustifiable and amounted to discriminatory treatment.

The United Kingdom House of Lords provides an example of upholding the prohibition on non-discrimination on the basis of sexual orientation, in the area of housing protection. It held that differential treatment of same-sex partners as compared to different sex partners with respect to protection of security of tenure amounted to illegitimate discrimination and a violation of Article 14 of the European Convention on Human Rights and Fundamental Freedoms, bothering on the prohibition of discrimination, in relation to Article 8 of the European Convention, bothering on the right to respect of family and private life, which is also applicable under the Human Rights Acts (*Ghaidan v. Godin-Mendoza*, 2004).

## 5. Challenges of the Recognition and Enforcement of the Rights of Women in Nigeria

It is imperative to reiterate that human rights pertains to those rights that every human being possesses and is entitled to enjoy simply by virtue of being human. These rights are predicated on the fundamental principle that all persons possess an inherent human dignity and that they are entitled to enjoy these rights regardless of sex, colour, language, national origin, age, class, or religious or political beliefs. Therefore, human rights apply to both men and women equally.

Basically, women's human rights are those rights that apply to both women and men, and are contained in general human rights instruments to wit: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, (ICESCR) among others, which entrench rights exercisable by all without discrimination of any form (Schuler & Flowers, 2003). There are also some that are specific to women or that need to be enlarged to suit women's situations. Such rights are found in specialised instruments like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Yet, there are some others that are still evolving. This category of rights is yet to be defined and included comprehensively in the general human rights instruments, for instance, some reproductive rights of women (Schuler & Flowers, 2003).

The contemporary women's human rights movement was shaped by various factors particularly the emergence of the UN human rights system. The UN human rights system emerged at the very foundation of the UN itself in 1945. The UN Charter articulated the human rights principles in general form. These principles were further enunciated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International

Covenant on Economic, Social and Cultural Rights (ICESCR).

At the evolution of the human rights system, the focus of human rights was on civil and political rights rather than economic, social and cultural rights that have prevailing influence on women. Human rights were also set to curtail the powers of state positive actions to ensure women's human rights. Women were systematically excluded from public activities such as commerce, government, law and politics. Majority of women had their lives centred on the home and family where economic, social and cultural rights became crucial. This informs the struggle for the inclusion of women's human rights both in the mainstream of the UN human rights system and in other separate and gender-sensitive instruments.

The factor that impeded the recognition of women's right at the evolution of human rights system was the economic underdevelopment, and the social inequalities. Women were not adequately involved in the UN development agenda. They were excluded from access to technology and training, and the land reforms deprived women of ownership of interest in land.

Besides, there remains remarkable growth in trafficking in women and children to Europe and neighbouring African States for illicit purposes. The police officers and immigration officers throughout Europe, particularly in Netherlands, Italy and Czech Republic report continuous flow of Nigerian women entrapped and sold into prostitution. Trafficking in persons is forbidden in Nigeria by domestic laws including *The Prohibition of Traffic in Persons Act, 2003*; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention on Transnational Organized Crime (Ratification and Enforcement) Act, 2001; and the UN Convention against Transnational Organized Crime (Ratification and Enforcement) Act, 2001 (Kuti-Olaniyi, 2004). These are legislative measures in eradicating inhuman and degrading treatment against women in Nigeria.

## **6. Prospecting an Enhanced Recognition and Enforceability of the Rights of Women in Nigeria**

Generally, gender specific theories in favour of women have been developed. These theories assert equality in gender roles to be essential to equality in development. The development of gender theory institutionalized at higher levels of education analyses the differing constructs of social concepts and institutions created by the social position of women and the increasing consciousness of women's right. This significantly enhanced women's human rights movement. As women increasingly became politically active and enlightened of the concept of human rights, they began to realize their great marginalization from the human rights system and mobilized to change the system accordingly. Notably, the full range of defined human rights applies to women apart from the ones found in women-specific instruments. There is appreciable understanding of the link between the national and the international human rights systems.

Thus, political struggles and human rights activism considerably engaged women in a new way and developed their skills. This new form of activism which included struggles to oust dictatorship government, and to gain independence from colonial rule, served as the basis for bringing about social change. Against this background, international human rights organisations such as Amnesty International, Human Rights Watch and the Helsinki Committees, including regional and national groups, emerged to monitor human rights violations. This consequently enhanced the awareness and observance of human rights of women.

The gender specific instruments or treaties protecting the rights of women, though not directly enforceable in Nigerian courts, gain justiciability upon domestication, in keeping with the doctrine of *pacta sunt servanda*. Thus, the Constitution of the Federal Republic of Nigeria provides that a treaty shall have the force of law only to the extent to which it has been enacted into law by the National Assembly (*Constitution of the Federal Republic of Nigeria (CFRN), 1999*). In other words, it is enforceable in Nigeria only when it has been incorporated into the national laws. Given this provision above, CEDAW is not enforceable in Nigeria because it has not been incorporated into national laws. Nigeria has however, signed and ratified CEDAW. Traditionally, parties sign a treaty only to verify that it represents their true intentions before ratifying same, and thereafter, it becomes binding on them. Signature is followed by ratification which allows for second thoughts and for further consultations. This explains why some states often sign but hesitate to ratify a treaty, and this shields the state concerned from the application of the principle of *pacta sunt servanda*. It is trite law however, that once a state party has signed and ratified the treaty, it becomes legally binding on the party. The State is obliged to bring its laws including its Constitution in conformity with the international obligations resulting from execution and ratification of a treaty (*Nwankwo, 2001a*).

The trending development of gender specific rights is towards strengthening of traditional values, which are less favourable to Nigeria's teeming population of women. In most communities in Nigeria, there is the cultural belief that women are chattels and property of their husbands, and as a result they lack the power of negotiation of safer sex. Consequently, some become victims of marital rape, polygamy, forced shaving of hair, widow inheritance, female genital mutilation, ear piercing, *nrachi nwanyi* custom where a girl is kept in the family to have male children for her parents, male child preference, cultural conditions and low socio-economic status of women that prevent them from negotiating safe sex, violence against women especially rape and sexual harassment by employer, lack of information and misinformation, cultural practices that encourage sexual freedom for males, cultural conditions that make women not to be assertive enough to talk, and denial of varying economic, social and cultural rights (*Onah, 2004*).

The Constitution of the Federal Republic of Nigeria provides that the state

shall protect, preserve and promote the Nigerian culture which enhance human dignity and are consistent with the fundamental objectives as herein provided in Section 21(a). Custom is defined under the law as a rule which in a particular district, has from long usage, obtained the force of law (*Evidence Act of Nigeria, 2011, Section 2(1)*). A custom can be applied as part of the law governing a particular set of circumstances if it has been noticed judicially or it can be established by evidence to exist. Even where a particular custom is proved by evidence, it would nevertheless not be enforced if it is held to be contrary to public policy or repugnant to natural justice, equity and good conscience (*Evidence Act of Nigeria, 2011*).

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) to which Nigeria is a party calls on State Parties to take measures to abolish all existing laws, customs and regulations that are discriminatory against women (*CEDAW, Article 2*). The Nigerian Constitution, by virtue of Section 42, prohibits discrimination against any person on grounds of sex, religion, tribe, etc. In Nigeria, for instance, the court in the case of *Mojekwu v. Ejikeme* (2000: 5 N.W.L.R. (Pt. 657) 403) referred to Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women. The Court presided over by Hon. Justice Niki Tobi held that the *Nrachi Nwanyi* Customary practice of Nnewi which enables a man to keep one of his daughters unmarried perpetually under his roof to raise issues, especially males, to succeed him constitutes discrimination, promiscuity and prostitution (*Nwankwo, 2001b*). It is important to note that women's rights, at the moment, are still far from full recognition and implementation. Women all over the world have always cried out for the attention of the relevant authorities on the violations of their human rights.

The provision of Section 42 of the Nigerian Constitution specifically states that 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 be discriminated against in any form. In *Adewale & Ors v. Jakande & Ors* (1981: N. C. L. R. 262), the Lagos State Government made a proposal which tended to subject the citizens of Nigeria in Lagos State to a disability not obtainable in other states. Basing the schedule of fees on the state of origin of students was held to be unconstitutional. In *Adamu v. A-G Borno State* (1996: 8 N.W.L.R. (Pt. 465) p. 203), Islamic religious instruction was taught to the students irrespective of their religious inclination. Although the Christian students were at liberty to be instructed on Christian religion, the authorities only made available Islamic instructors or tutors. Christian Religion teachers could only be hired by Christians, not the Borno State government. So, the Christians in Borno State were made to pay for their children's Christian Religious Instructions from their own pockets. Relying on Section 39(1) of the 1979 Constitution of the Federal Republic of Nigeria (now S. 42 of the 1999 Constitution), the appellate court held that the act of the Borno State Government offended the appellant's fundamental right to freedom from discrimination. Nigeria has ratified CEDAW hence, has

agreed to abide by the Convention's provisions. It acknowledged CEDAW as an instrument and framework for women's equality. However, harmful customs and discriminatory traditional practices still pervade in the localities. Violence against women is one of such prominent human rights abuses against women.

It is pertinent to stress that a customary practice that allows a distant male relation of an intestate to inherit his estate to the exclusion of his widow and female children offends, not only the foregoing provisions of domestic laws and international conventions, but also our collective intelligence and sensibilities (Nwankwo, 2001b). This customary practice encourages prostitution. In *Mojekwu v. Ejikeme* (2000: 5 N.W.L.R. (Pt. 657) p. 432) the *nrachi nwanyi* custom which enables a man to keep one of his daughters unmarried perpetually under his roof to raise issues especially males, to succeed him was before the court for determination. The Court of Appeal, overruling the decision of the lower court, held that the *nrachi custom* of Nnewi is inconsistent with public policy, repugnant to natural justice, equity and good conscience. Tobi JCA (as he then was) stated that the *Nrachi* ceremony encourages promiscuity and prostitution, which is condemned in Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and also interferes with the girl's right to marry and found a family. It is in all ramifications discriminatory against the women folk.

The Court further held that where there are children or even grand-children and great grand-children, directly traced or traceable to the ancestor, it will be wrong to hold that the lineage is extinct, unless the generation gap is so wide that history and tradition cannot relate sociological contiguity. Note that under the *Oli-ekpe* custom, a widow who has no sons has no right to direct inheritance of her husband's property. If however, the marriage is blessed with only daughters, the husband's estate would go to a brother or to a distant relative of the husband rather than the widow or the daughters.

Fundamentally, Section 42 of the Constitution of the Federal Republic of Nigeria 1999 guarantees freedom from discrimination. The facts that the appellants were born out of wedlock is immaterial. It cannot be used against them in inheriting the estate of the deceased. Thus, as blood relations the property of the deceased should devolve on the appellants. In the light of the above Constitutional provision, the *Oli-ekpe* custom which discriminates against Virginia, daughter of the deceased, is unconstitutional. A child must belong to a family and should not be rendered homeless for a situation he did not create. Therefore the custody of any child born out of wedlock follows that of the mother in the absence of any person claiming custody of the child on the basis of being the natural father (Briggs, 2003).

The right to own immovable property is a constitutional right that avails every citizen. However, some customary laws such as is applicable amongst the Igbos in the eastern Nigeria disallow women from owning immovable property. In *Eruwa v. Eruwa* (2002: 4 RCHR 536), the High Court held that an unmarried woman is entitled as of right to the portion given to her by her father, or prop-

erty that is partitioned that devolves on her by inheritance. Such a woman is however not entitled to farmlands or lands not given to her. In *Chinweze v. Masi* (1989: 1 N.W.L.R. (Pt. 97) 254), the Supreme Court held that under customary law, a wife has only a life interest in the property of her husband.

The position under Yoruba Customary law is obviously different from the position in Eastern Nigeria. In *Sanusi v. Makinde* (1994: 5 N.W.L.R. (Pt. 346) 214), the issue was as to whether the children (both male and female) have a right to inherit family land under customary law. The court held that the position of the law under Yoruba Customary Law is that all children, male and female, are entitled to inherit their parent's land. In the case of *Lewis v. Bankole* (1909: 1 NLR p. 81), it was held that under Yoruba Customary Law, the eldest surviving son of the founder of the family, called the "Dawodu" is generally recognised as the Head of the Family. Upon the death of Dawodu, the eldest surviving child of the founder, whether male or female, succeeds to the headship of the family. Impliedly, where there are only female children, the eldest female becomes the head.

Under the Islamic Law, both men and women are entitled to a share in what their parents and kinsfolk leave behind. In *Mallam Ya' Soda v. Alhaji T. Kuringa* (1992: 2 N.W.L.R. (Pt. 261) 632), one of the issues was for the determination of who the necessary plaintiffs were in a claim for repossession of land under Islamic Law. The Court of Appeal held that "it is a party's right under Islamic Law to request for his share of inheritance and he can go to court and demand it even if the remaining heirs do not give their consent to this suit. Chapter 4, verse 7 of the Holy Quran states that men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind, whether it be little or much, a share ordained by *Allah*." There is also prevalence of spousal abuse. Women are often times beaten up by their spouses on no just cause, and treated as sex objects. Widowhood rites greatly infringe on women's right to equality as well as right to dignity of human person because such rites adversely affect women. In the case of *Theresa Nwafor Onwo v. Oko* [(1996) 6 N.W.L.R. (Pt. 456) 584], where the applicant was forcefully shaved of her hair, assaulted and locked up as incidents of mourning for her deceased spouse, yields a good illustration. The local Sharia practices are known to violate basic human rights although Sharia law, in itself, is meant to protect the rights of women. In the case of *Rungumawa v. Rungumawa* (2002), the Court of Appeal held that under Islamic Law of Marriage, it is incumbent upon the husband to provide for his wife by feeding her, clothing and providing accommodation for her within his means, even if the wife is rich.

Female Genital Mutilation (FGM) is a practice that transcends ethnic and religious confines in Nigeria. However, some states have taken legislative measure to tackle this scourge and other widowhood practices. Women experience considerable discrimination as well as physical abuse. Although there are no laws forbidding women from particular fields of employment, women are often discriminated against because of Government inaction and tolerance towards cus-

tomary and religious practices that perpetuate such discrimination. The international human rights movement recognizes the right of women to be free from violence, and the obligation of governments to take steps to eliminate violence against women (UNGA Declaration, 1994). The *Special Rapporteur on Violence against Women (1994)* has the responsibility to investigate and make reports on cases of violence against women globally. Also the Optional Protocol to CEDAW adopted by the UN General Assembly in 1998 permits individual complaints to be made to the CEDAW Committee by people in those states that have ratified the protocol.

It is pertinent at this point to situate the right of women to inherit property in Nigeria. Property inheritance is governed by customary and statutory law in Nigeria. In other words, women's right of inheritance to property is governed by customary law, although there is a civil code that applies in some instances. Under customary law, women have limited rights to inherit property and often have to rely on their male relatives to inherit and manage property on their behalf. In some cases, women may be able to inherit property as long as they are married, but in many cases, they may not be able to inherit property at all. Under statutory law, which is based on written legislation, women also have the right to inherit property, provided the terms of the will or other legal document granting the right to inherit are followed. In some areas of Nigeria, the Civil Code has been applied in order to give women more rights to inherit property. Under the Civil Code, women can generally inherit property regardless of their marital status, although they may still be subject to certain restrictions. In addition, some states have adopted legislation that recognizes the rights of women to inherit property.

Generally, globalization has had a largely positive influence on women's rights in Nigeria. It has created more economic opportunities for women, increasing their access to education and financial independence. It has also provided access to new technology, which has enabled more women to access information and resources that can help them fight for their rights. Thus, increased international attention to women's rights issues has raised awareness of the need for gender equality and has put pressure on the Nigerian government to address the issue. In addition, increased international trade has brought in more resources and funding that can be used to promote women's rights. However, the situation for women's inheritance to property in Nigeria is complex and varies from one region to the next. While there has been progress to give women more rights to inherit property, there is still a long way to go before women have equal rights to inherit property in Nigeria.

## 7. Conclusion

There is no doubt that the rights embodied in this specialized instrument, CEDAW, may not enjoy equal seriousness with the general rights. It is therefore a veritable challenge to all advocates of gender-sensitive rights to ensure that these rights



receive equal importance. The Non-Governmental Organisations play a leading role in this respect. They can use the mechanism of CEDAW to mobilise towards enforcement of women's human rights. Through education, public awareness, training, lobbying, advocacy and other means, women's human rights protection could be enhanced. Advocates could further the observance of women's human rights by publicising CEDAW and its provisions. They could also keep the government conscious of the commitments made by the ratification of the instrument. In this way, the government would bring its policies and domestic laws in conformity with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. Violence and other human rights deprivations against women are no less serious social problem. These have affected women and produced a population of women with low self-esteem, and inability to contribute meaningfully to economic growth and national development (Obinwa, 2004). The exclusive recourse to separate, women-specific instruments in protecting women's right is not enough. There is obvious need to integrate women into the mainstream of the human rights system for fuller protection of women's rights by domesticating the CEDAW pursuant to Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

### Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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