

## DEVELOPMENT OF THE HUMAN RIGHTS OF WOMEN IN A CULTURAL MILIEU<sup>1\*</sup>

### **Abstract**

*There was a time when women were regarded as the slaves of men but that time has faded away. Women in most parts of the world are apparently measuring up to, or healthily competing with men in all fields of life, and are making progress. Human rights are not for men alone; they are inherent in women and should be enjoyed by them without discrimination. However despite significant achievements in the quest for women's equality and in particular the entry into force of the Convention on the Elimination of All Forms of Discrimination Against Women, ensuring gender equality remains an enormous challenge. It is not just the ratification of treaties that guarantees gender equality but the transformation of entrenched or deep-rooted traditional practices that discriminate against women. This paper is a discourse on the development of human rights of women around the world, particularly in cultural settings in Nigeria. It seeks to reveal the actual state of women in the enjoyment of their human rights where entrenched cultural barriers serve as inducement for discrimination and how women in such milieux can be salvaged from their deplorable condition. A few recommendations are made and this brings the paper to conclusion.*

**Keywords:** Human Rights, Women, Culture, CEDAW

### **1. Introduction**

Despite the fact that there has been ratification of most human rights treaties which protect and promote the human rights of women, there is still the subordination and violation of many women due to age-long cultural practices in Africa and other parts of the world. Women in some parts of the world, for instance in some cultural settings in Africa, are regarded as subservient to men and as such are relegated to the background. There are stereotype roles for women and men especially in family settings. These roles are inculcated in girls and boys either formally or informally from childhood. Several cultural practices are harmful to women with respect to their enjoyment of human rights, the lesser status ascribed to women by tradition and custom subject them to different forms of discrimination. Other than cultural practices, religion or certain religious beliefs have played contributory role in the subservient status assigned to women. Many of the cultural practices around the world are entrenched in religion thus, religion has further contributed towards the subordination of women. Hindu scriptures for instance, provide that women are powerless and have no inheritance.<sup>2</sup> Men must thus, make their women dependent day and night. Her father should guard her in childhood, her husband in her youth, and her sons in her old age because a woman is not fit for independence.<sup>3</sup> It further describes a good wife as a woman whose mind, speech and body are kept in subjection, and who acquires the same abode with her husband in the next world.<sup>4</sup>

This paper is a discourse on the issue of human rights generally meant to be enjoyed by women; otherwise referred to as women's rights, historical development of women's rights, the issue of discrimination against women in the enjoyment of their human rights around the world and in Nigeria,

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<sup>2</sup> Hindu Scriptural Quotes on Women: An Anthology of Sacred Quotes from Hinduism on Women. Krishna Yajur Veda Taittiriya Samhita 6.5.8.2. [www.geocities.ws/nshindu](http://www.geocities.ws/nshindu) accessed on 17 November 2017.

<sup>3</sup> Hindu Scriptural Quotes on Women: An Anthology of Sacred Quotes from Hinduism on Women. Manusmriti 9.2-3. [www.geocities.ws/nshindu](http://www.geocities.ws/nshindu) accessed on 17 November 2017.

<sup>4</sup> J. A. Badawi, 'The Status of Women in Islam', 2 *Al-Ittihad Journal of Islamic Studies*, 8 <http://iaislam.tripod.com/TSOWII.htm> accessed on 10 October 2017.

with particular reference to some cultural practices in some parts of Rivers State. International and regional promotion of the human rights of women shall also be considered, as well as the role of government in the development of human rights in a cultural milieu. Although a few recommendations are provided in the course of some issues raised, however there is provision for recommendation and conclusion at the end of the paper.

### **1.1 Definition of Women's Right and its Contrast with Cultural Practices in Nigeria**

The terminology 'women's rights' refers to freedoms and entitlements of women including girls of all ages. These rights may or may not be institutionalized, ignored or suppressed by law, local custom and behaviour in a particular society. These rights are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men and boys, and because activists for this issue claim an inherent historical and traditional bias against the exercise of rights by women and girls.<sup>5</sup> Issues commonly associated with notions of women's rights include, but not limited to, the right to bodily integrity and autonomy, to hold public office, to work; to fair wages or equal pay, to own property, to education, to serve in the military or be conscripted, to enter into legal contracts. Women and their supporters have campaigned and in some places continue to campaign for the same rights as men.<sup>6</sup> In many cultural settings in Nigeria, there are certain key positions or functions that women do not have the right to hold or perform. In virtually all cultures in Nigeria, a woman is not entitled to be the head of a family and thus cannot make key decisions for the family. Chieftaincy position or title of many communities in Nigeria is for the exclusive preserve of the male folk, many cultures in Nigeria do not permit a woman to be made a chief even if she is the oldest person in the community. Thus, there is barely any female representation when vital decisions; which could also affect women, are made. Generally speaking, although the concept of not permitting a woman to be head of family dates back to creation story of ancient biblical times,<sup>7</sup> there is however the common notion that women are the weaker sex thus tacitly approving of male chauvinism or domination particularly in rural settings. This general notion or mind-set places women in a subjugated position in relation to their male counterparts. Furthermore, in many cultural milieus in Nigeria, women do not have the right of inheritance of family land and thus are not entitled to be beneficiaries of such partitioned land.

### **1.2 Historical Background of Women's Right**

In ancient Athens women were always minors and subject to a male, such as their father, brother or some other male kin. A woman's consent in marriage was not generally thought to be necessary and women were obliged to submit to the wishes of her parents or husband. In ancient Rome a wife was considered a minor, a ward, a person incapable of doing or acting anything according to her own individual taste, a person continually under the tutelage and guardianship of her husband. Under Roman law a woman and her property passed unto the power of her husband upon marriage. The wife was considered the purchased property of her husband, acquired only for his benefit. Furthermore, women in ancient Rome could not exercise any civil or public office, and could not act as witness, surety, tutor, or curator. Women were also not allowed to make a will or contract.<sup>8</sup>

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<sup>5</sup> F. P. Hosken, 'Towards a Definition of Women's Rights' (1981) 3 *Human Rights Quarterly*, No. 2., May, 1.

<sup>6</sup> Lockwood Bert B. (ed.), *Women's Rights: A "Human Rights Quarterly" Reader*, (John Hopkins University Press, 2006).

<sup>7</sup> The Holy Bible, Genesis 3:16.

<sup>8</sup> J. A Badawi, (n. 4).

In the late 18th century the question of women's rights became central to political debates in both France and Britain. At the time some of the greatest thinkers of the Enlightenment, who defended democratic principles of equality and challenged notions that a privileged few should rule over the vast majority of the population, believed that these principles should be applied only to their own gender and their own race. The philosopher Jean Jacques Rousseau for example, thought that it was the order of nature for women to obey men. He wrote 'Women do wrong to complain of the inequality of man-made laws' and claimed that 'when she tries to usurp our rights, she is our inferior'.<sup>9</sup> In his 1869 essay 'The Subjection of Women', the English philosopher and political theorist John Stuart Mill in describing the situation for women in Britain stated that the wife is the actual bondservant of her husband; no less than slaves commonly so called. During the 1800s women in the United States and Britain began to challenge laws that denied them the right to their property once they married. Beginning in the 1840s, state legislatures in the United States and the British Parliament began passing statutes that protected women's property from their husbands and their husbands' creditors. These laws were known as the Married Women's Property Acts.<sup>10</sup> Courts in the 19<sup>th</sup> century United States also continued to require privy examinations of married women who sold their property. A privy examination was a practice in which a married woman who wished to sell her property had to be separately examined by a judge or justice of the peace outside of the presence of her husband and asked if her husband was pressuring her into signing the document.<sup>11</sup>

In the subsequent decades women's rights again became an important issue around the world particularly in the English speaking world. By the 1960s the movement was called 'feminism' or 'women liberation'. Reformers wanted the same pay as men, equal rights in law, and the freedom to plan their families or not have children at all. Over the course of the 20<sup>th</sup> and 21<sup>st</sup> centuries, women in different parts of the world took on greater roles in society such as serving in government. According to Badawin, 'The status which women reached during the present era was not achieved due to the kindness of men or due to natural progress. It was rather achieved through a long struggle and sacrifice on woman's part and only when society needed her contribution and work, more especially; during the two world wars, and due to the escalation of technological change.'<sup>12</sup>

### **1.1 2. International and Regional Laws Promoting Women's Rights and its Impediment**

The Universal Declaration of Human Rights, adopted in 1948, enshrines 'the equal rights of men and women', and addressed both the equality and equity issues. Prior to the adoption of the Universal Declaration of Human Rights, the Commission on the Status of Women (CSW) was established in 1946<sup>13</sup> by the Economic and Social Council (ECOSOC) which is an organ of the United Nations.<sup>14</sup> The essence of establishing the Commission on the Status of Women was to ensure the empowerment of women and gender equality and to provide recommendations to ECOSOC on the obstacles relating women's rights in civil, political, social, economic, and education fields. The Commission on the Status

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<sup>9</sup> P. G. Lauren, *The Evolution of International Human Rights: visions seen* (University of Pennsylvania Press 2003) pp. 29 & 30.

<sup>10</sup> J. J. Lewis, '1848: Married Women win Property Rights' [http://womenshistory.about.com/od/married\\_womens\\_property/a/property\\_1848ny.htm](http://womenshistory.about.com/od/married_womens_property/a/property_1848ny.htm) accessed 30 September, 2017.

<sup>11</sup> S. L. Braukman & M. A. Ross, 'Married Women's Property and Male Coercion: United States Courts and the Privy Examination, 1864-1887', 12 *Journal of Women's History*. Number 2, [http://muse.jhu.edu/journals/journal\\_of\\_womens\\_history/v012/12.2braukman.html](http://muse.jhu.edu/journals/journal_of_womens_history/v012/12.2braukman.html) accessed 13 October 2017.

<sup>12</sup> J. A. Badawi, (n. 4).

<sup>13</sup> (E/RES/2/11, 21 June 1946)

<sup>14</sup> The order main organs of the United Nations established in 1945 when the United Nations was founded are the General Assembly, the Security Council, the Trusteeship Council, the International Court of Justice and the United Nations Secretariat. Retrieved from Main Organs: [www.un.org/en/sections/about-un/main-organs](http://www.un.org/en/sections/about-un/main-organs)

of Women has organised different world conferences geared towards the advancement of women in all spheres of public and private life by asserting and improving the rights of women.<sup>15</sup> Four World Conferences have been held starting with the World Conference of the International Women's Year in Mexico City. This was the first conference and was held in 1975. The second women conference was held in Copenhagen in 1980. The third was held in Nairobi in 1985. The Fourth Women Conference on Women was held in Beijing in September 1995. At this conference, the Platform for Action was signed. This included a commitment to achieve gender equality and empowerment of women. These conferences created an international forum for women's rights. However, they also illustrated divisions between women of different cultures as well as the difficulties of attempting to apply principles universally.<sup>16</sup>

Culture has greatly impeded the development of women's right. Culture is the customs and beliefs, arts, way of life and social organisation of a particular society, group, place, or time. The different ethnic groups around the world have their different cultural practices or customs. This diversity in cultures has fuelled disparity of ideas among women against uniting for a common front of promoting women's rights particularly in cultural settings. One of such issues that women around the world do not have a unifying stance because of cultural differences is the issue of sexual and reproductive rights.<sup>17</sup> In Nigeria, customary law which is a source of Nigerian law, and which consists of customs and practices accepted by members of a community as binding among them, may be classified in terms of nature into two; ethnic or non-Moslem customary law and Moslem law. Ethnic customary law is indigenous and unwritten while Moslem law is a religious law, based on Moslem faith. It is written, and applicable to members of the Moslem faith. Moslem law is also known as Islamic law or Sharia.<sup>18</sup> The Supreme Court in the case of *Esuwoye v. Bosere*<sup>19</sup> held that *'The customary law of a people is a mirror of their accepted usage and it is no less a source of law as other sources of law. It is a set of rules of conduct applicable to persons and things...'*<sup>20</sup> Marriage under customary law in Nigeria is one aspect where women seem handicapped. This is due to the fact that such marriage is inherently polygamous because customary law does not preclude or prevent a man who has married under it from contracting a further marriage with another woman. Women tend not to unite and have a common front in this aspect by refusing to be the object of a subsequent marriage when the first marriage between the man and his wife is still subsisting. But polyandry on the other hand is highly prohibited in virtually all cultures in Nigeria.

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<sup>15</sup> Historic Overview on the World Conferences on Women. [https://www.un-ngls.org/index.php/un-ngls\\_news\\_archives/2009/2524-historic-overview-on-the-world-conferences-on-women](https://www.un-ngls.org/index.php/un-ngls_news_archives/2009/2524-historic-overview-on-the-world-conferences-on-women) accessed 22 November 2017.

<sup>16</sup> Fourth World Conference on Women. Beijing, China. September 1995. "Action for Equality, Development and Peace". <http://www.un.org/womenwatch/daw/beijing/index.html>. accessed 22 November 2017.

<sup>17</sup> Sexual and reproductive rights mean that a person should be able to make personal decisions about the person's body, choose whether to marry or not, make personal decisions on who to marry and when to marry, make personal decisions whether to have children and the number of children as well as have access to contraception. It also means that women should be free from sexual violence including rape, female genital mutilation, forced marriage, forced pregnancy, forced abortion. This implies that a person should be free from family and societal pressures as to the issue of marriage including personal decisions not to marry, and the issue of having or not having children as well as the sex of the children. It further implies that women should not be discriminated against because they do not have a male child.

<sup>18</sup> A. O. Obilade, *The Nigerian Legal System*, (London, Sweet and Maxwell, 1979) p. 83. In Nigeria, customary law may be classified in terms of nature into two classes; ethnic or non-Moslem customary law and Moslem law. Ethnic customary law is indigenous and unwritten while the Moslem law is a religious law, based on Moslem faith. It is written, and applicable to members of the Moslem faith. Moslem law is also known as Islamic law or Sharia.

<sup>19</sup> [2017]1 NWLR (pt. 1546) 256.

<sup>20</sup> *supra* @p. 325 paras G-H.

Thus, a woman who is married under customary law cannot contract a subsequent valid marriage while the customary marriage still subsists. Many enlightened women seek solace in statutory marriage after they have contracted a customary law marriage. The question then is, how many of such women in cultural milieus are this enlightened? To put it differently, how many women in rural settings are married under the Act? One customary law marriage which is very pivotal in this respect because of its uniqueness is the *Iyaa* customary marriage of the Okrika (*Wakirike*) people of Rivers State. The unique aspect is that once the completion or finalisation of *Iyaa* marriage (known as *Okurukaka*) has been done, the woman is forever bound to her *ya* husband both in her lifetime and at death. The *Okurukaka* marriage is highly respected among the Okrika people because of the paraphernalia of the marriage and the rights attached to the woman. The *Okurukaka* marriage is indissoluble in substance.<sup>21</sup> Despite all the benefits attached to the *Okurukaka* marriage, it still doesn't prevent a man from contracting another *Iyaa* marriage with another woman.

In 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This is described as an international bill of rights for women. It came into force on September 3, 1981. The Convention defines discrimination against women in the following terms:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>22</sup>

It also establishes an agenda of action for putting an end to sex-based discrimination for which states ratifying the Convention are required to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women. They must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against women by individuals, organizations, and enterprises. CEDAW enjoins the enjoyment or exercise by women of human rights and fundamental freedoms in even cultural field, irrespective of their marital status and on the basis of equality with men. Although Nigeria has ratified CEDAW, the treaty cannot have the force of law or be binding in Nigeria unless the provisions of section 12 of the Constitution of the Federal Republic of Nigeria 1999 are complied with.

## **2 3. Advancing Women's Rights in Africa**

Although African states have ratified several human rights instruments protecting women's human rights, generally the severe political, economic and social difficulties facing African states have had a negative impact on the efforts to respect, protect and fulfil the human rights of women. The prevalence of prejudicial traditional practices and customs that legitimized women's inequality in rural areas of most African states hamper the effective implementation of human rights generally, and women in particular, as a vulnerable group. Although obstacles to the realization of both the civil and political rights and the economic, social and cultural rights of women, traditional practices and customs

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<sup>21</sup> The *Okurukaka* marriage; which is the climax of *Iyaa* marriage, is usually done between a man and a woman from *Wakirike* (Okrika) extraction. There is paucity or dearth of cases on dissolution of *Iyaa* marriage. In actual practice, to dissolve the marriage is easier said than done. A man may divorce his *ya* wife but it is only in form and not in substance. In substance, she is still his wife because even the bones of the woman belong to the *ya* husband.

<sup>22</sup> Section 1 of the Convention on the Elimination of All Forms of Discrimination Against Women.

disproportionately affect the latter since traditionally, this category of rights has been often marginalized rather than prioritized.<sup>23</sup> In view of the fact that all human beings are born free and equal in dignity and rights, the principles of non-discrimination and equality represent the twin pillars upon which the whole edifice of human rights law is established.<sup>24</sup> These two principles are included in various international and regional human rights instruments.<sup>25</sup>

The main women's human rights instruments in Africa; the African Charter on Human and Peoples' Rights (ACHPR) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, prohibit discrimination and protect the equal enjoyment of the rights of men and women. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, popularly known as the Maputo Protocol, was adopted by the African Union on July 11, 2003 at its second summit in Maputo, the capital of Mozambique. The protocol entered into force on November 25, 2005 having been ratified by the required 15 member nations of the African Union.<sup>26</sup> The protocol guarantees comprehensive rights to women which includes the right to take part in the political process, right to social and political equality with men, right to control of their reproductive health, and right to an end to female genital mutilation. However, the Protocol cannot have the force of law in Nigeria except it has been enacted into law by the National Assembly in compliance with section 12 of the Constitution of the Federal Republic of Nigeria 1999.

### **3.1 ACHPR and the Rights of Women in Africa**

The African Charter on Human and Peoples' Rights (ACHPR) contains four main provisions protecting women against discrimination. First is the general non-discrimination clause contained in Article 2 of the Charter which states that 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as ... sex.' Secondly, this is reinforced by Article 3 which deals with equal protection in the following terms: 'Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law.' Thirdly Article 18(3) which generally deals with protection of the family provides that 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.' Finally, article 60 provides that the African Commission on Human and Peoples' Rights will draw inspiration from international human rights instruments such as CEDAW. However, the above provisions do not adequately address the human rights of women in Africa. For example, while article 18 prohibits discrimination against women, it does so only in the context of the family. More so, explicit provisions guaranteeing the right of consent during and after marriage are absent. These omissions are compounded by the fact that the charter places emphasis on traditional African values and traditions without addressing the fact that many customary practices, such as female genital mutilation, forced

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<sup>23</sup> J. Oloka-Onyango, 'Reinforcing Marginalized Rights in the Age of Globalization: International Mechanisms, Non-state Actors and the Struggle for People's Rights in Africa' (2003) 18/4 American University International Law Review 851.

<sup>24</sup> Universal Declaration of Human Rights GA res. 217A (III), UN Doc A/810 (1948), Art. 1

<sup>25</sup> International Covenant on Civil and Political Rights GA res. 2200A (XXI), 21 UN GAOR Supp (No 16) at 52, UN DOC A/6316 (1966), 999 UNTS 171 entered into force 23 March 1976, Arts 2(1) and 26; International Covenant on Economic, Social and Cultural Rights GA res. 2200A (XXI), 21 UN GAOR Supp (No 16) at 49 UN DOC A/6316 (1966), 993 UNTS 3 entered into force 3 January, 1976, Arts 2(3) and 3.

<sup>26</sup> I. V. Nambi, 'Africa: Women Activists Call for Fast-Tracking of Rights Protocol' <http://allafrica.com/stories/200907200813.html> accessed on 2 November 2017. The Protocol has currently been ratified by 36 African States. 'Ratification Table: Protocol to the African Charter on Human and people's Rights on the Rights of Women in Africa' <http://www.achpr.org/instruments/women-protocol/ratification/> accessed 24 November 2017.

marriage and wife inheritance can be harmful or life threatening to women.<sup>27</sup> According to Wandia, by ignoring the critical issues such as custom and marriage, the Charter inadequately protects women's human rights.<sup>28</sup> Despite these criticisms, the Charter has the force of law in Nigeria because it has been domesticated.<sup>29</sup> Consequently, women can enforce their rights protected under this Act in the same way Chapter IV of the 1999 Constitution can be enforced. The Supreme Court in the case of *Abacha v. Fawehinmi*<sup>30</sup> held that the Charter, having been enacted into municipal law, the courts have jurisdiction to apply and grant redress to anyone whose rights under the Charter had been violated, thus, individual rights protected by the Charter were justiciable in Nigerian courts

### **3.2 Protocol to the ACHPR on the Rights of Women in Africa**

This is the second regional human rights instrument. It is also known as the Maputo Protocol as stated above. The reluctance to ratify the protocol is itself indicative of the human rights of women in Africa. It is worthy of note that the protocol does not provide expressly that the reservations or declarations are not permitted and as such, states would make reservations similar to those made by some African states to CEDAW; for example, the reservations to CEDAW made by the Islamic states of Egypt, Libya, Mauritania and Morocco which specifically referred to the traditional male centred interpretations of Islamic law.

## **4. The State of Women's Rights in Practice**

One of the key obstacles to the realization of the human rights of women in Africa is culture. Women still continue to be victims of discrimination and harmful practices even though most African states have ratified human rights instruments. Culture includes inherited ideas, beliefs, values and knowledge which form the bases of social action. Anthropologists commonly use the term to refer to a society or group in which many people live and think in the same ways.<sup>31</sup> The persistence of deep-rooted adverse patriarchal attitudes and firmly entrenched stereotype-behaviour with respect to the role of women in the family and society limit the full implementation of the human rights of women. The widespread and continuing existence of harmful practices in African states affect the equal right of men and women to the enjoyment of all human rights. These persistent customs and traditions which are harmful to women are factors also impeding the implementation of the International Covenant on Economic, Social and Cultural Rights in Africa.<sup>32</sup> The traditional harmful practices include female genital mutilation, ritual killing, corporal punishment, domestic violence, early marriage, polygamy, denial of inheritance rights to women etc.

### **4.1 Polygamy**

Polygamous marriage is widely recognized in Africa but generally considered from international human rights perspective as contrary to women's equality with men. Although the Maputo Protocol prohibits discrimination against women and guarantees women's right to dignity,<sup>33</sup> it recognizes polygamy in

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<sup>27</sup> M. Ssenyonjo *Culture and the Human Rights of Women in Africa: between light and shadow* (Cambridge University Press. 2007, volume 5, number 1) p. 44.

<sup>28</sup> M. Wandia, 'Rights of Women in Africa: launch of petition to the African union [http://www.choike.org/nuero\\_en\\_g/informes/1944.html](http://www.choike.org/nuero_en_g/informes/1944.html) accessed 14 October 2017.

<sup>29</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, Cap. A 9 Laws of the Federation of Nigeria 2004.

<sup>30</sup> (2000) 6 NWLR (pt. 660) 228.

<sup>31</sup> F. Raday, 'Culture, Religion and Gender' (2004) *International Journal of Constitutional Law*. (Volume 1, Number 4) p. 665.

<sup>32</sup> CESCR Concluding Observations: Zambia E/C12/1/Add 106 (23 June 2005) at para 10.

<sup>33</sup> Article 3 Maputo Protocol states that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

article 6(c) by providing inter alia that states parties shall enact appropriate national legislative measures to guarantee that monogamy is encouraged and that the rights of women in marriage and family, including polygamous marital relationships are promoted and protected. Even the African Charter on Human and People's Rights recognizes traditional practices in Africa as provided in article 17(2) that, it is a duty for state parties and the individual to promote and protect the morals and traditional/cultural values recognized by the community. Polygamous marriage contravenes a woman's right to equality with men and can have such serious emotional and financial consequences for her and her dependants; as a result, such marriages ought to be prohibited.<sup>34</sup>

#### **4.2 Divorce and Poverty**

Divorce brings about changes in family structure. Such changes place additional burden on women. It is pertinent to note that in the event of a breakdown or dissolution of customary marriage in Nigeria, women usually bear the brunt of raising the children particularly when they are still minors. Many women in cultural settings lack the economic power to give their children quality education, healthcare and daily nourishment due to lack of economic empowerment or poverty. According to the diagnosis on women and poverty at the Fourth World Conference on Women, poverty has variegated manifestations which includes lack of income and productive resources sufficient to ensure a sustainable livelihood, hunger and malnutrition, ill health, limited or a lack of access to education and other basic services, increasing morbidity and mortality from illness, homelessness and inadequate housing, unsafe environment and social discrimination and exclusion. It is also characterised by lack of participation in decision-making. Women's poverty is directly connected to the lack of economic opportunities and autonomy, lack of access to economic resources, issue of land ownership and inheritance, lack of access to education and the minimal participation of women in decision making process. Poverty is capable of forcing women into situations in which they are vulnerable to sexual exploitation.<sup>35</sup> Ensuring that women in rural settings are economically empowered is germane in the eradication of poverty especially for women who have been divorced and are laden with the responsibility of providing for their dependants.

Traditional divorce law in many states in Africa also discriminates against women. For instance, in Egypt, sharia is the primary source of legislation, and practices that conflict with the government's interpretation of sharia are prohibited. Women seeking divorce through unilateral repudiation by virtue of *khul*<sup>36</sup> must in all cases forego their rights to financial support and in particular, to the refund of their dowry.<sup>37</sup> This leads to financial discrimination against women and may bar them from seeking divorce through unilateral repudiation. But the Islamic husband has the right to unilaterally divorce his wife for no just cause and without any constraint whatsoever. This is the type of divorce known as *talaq*.

In Uganda, before October 15, 2004, women had to meet stricter evidentiary standards than men to prove grounds for divorce. Males were able to divorce their wives solely on the grounds of adultery while the wife, other than proving adultery, had to prove additional grounds such as incest, rape,

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<sup>34</sup> CEDAW General Recommendation 21. Equality in Marriage and Family Relations (13th session. 1992) UN DOC A/49/38 at 1.

<sup>35</sup> The United Nations Fourth World Conference on Women; Platform for Action-Women and Poverty Diagnosis. <http://www.un.org/womenwatch/daw/beijing/platform/poverty.htm> accessed 22 November 2017.

<sup>36</sup> *Khul* is a type of divorce under sharia where the Islamic wife offers ransom to obtain her release. It is also known as divorce by ransom. In *khul* divorce, the husband and wife agree on a divorce and the wife agrees to pay the husband an agreed sum for her freedom. Where there is dispute over the "ransom", the case will be decided by the court, which would fix a "ransom".

<sup>37</sup> HRC Concluding Observations: Egypt (CPR/ CO/76/EGY/28/11/2002) at para 8.

sodomy, bestiality, desertion, before her petition for divorce can be granted. But on March 10, 2004, the Ugandan constitutional court in the case of *Uganda Association of Women Lawyers v The Attorney General*<sup>38</sup> held that the provisions of section 4(2)(b) Divorce Act (Cap 249) Laws of Uganda 1964 were inconsistent with Articles 21, 31, 33 of the 1995 Ugandan Constitution.<sup>39</sup> The court ordered that all grounds for divorce mentioned in the Divorce Act will be available to both men and women from that date.

### **4.3 Land Rights**

Land rights confer direct economic benefits as a source of income, status, nutrition, and collateral for credit. Access to agricultural land can mean higher income for the household. Improving women's land rights makes a powerful contribution to household food security. Women's property rights increase women's status and bargaining power within the household and community. When women have access and secure rights to land, they are better able to improve their lives, those of their families, adopt sustainable farming practices and invest in their land. Many women in African countries who are rural dwellers work on farms but do not have secure rights to the land they farm. This makes women more vulnerable to poverty. The Zimbabwean case of *Magaya v Magaya*,<sup>40</sup> is illustrative. However, the decision of the High court in the Tanzanian case of *Ephrahim v Pastory*<sup>41</sup> is encouraging. It has been submitted that although everyone has a right to cultural participation including cultural rights of specific groups, African cultures and traditions as they presently exist are mainly made for and by men.<sup>42</sup> In Eritrea for instance, while participation in the National Service creates eligibility for access to land and other economic resources, women are exempted from the service on grounds of marriage, thus losing eligibility for access to land and other resources.<sup>43</sup> Customary practices in Nigeria do not permit women to inherit family land. According to Madu,

The whole of the law of inheritance is completely gender discriminatory in Nigeria... Since customary laws are generally heavily weighted against women, their rights of inheritance suffer unduly in the face of systematic gender discriminatory and oppressive rules... A wife under the system cannot inherit the husband's estate which passes to the children. Thus a widow is left in the unhappy position of returning destitute to her own family or alternatively remaining in her husband's family...<sup>44</sup>

Other than inheritance, there are different other modes of acquiring title to land. In the case of *Opoto v. Anuan*,<sup>45</sup> the court held that title to land may be acquired either by first settlement on virgin land and deforestation of the land, or by conquest during tribal wars, or by gift, or by grant (customary grant), or by sale, or by inheritance. Thus, cultural practices that discriminate against women's inheritance of land can be circumvented by a customary grant of such land. Women can demand for their right to own family land through customary grant. Culture ought to be developing. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983<sup>46</sup> provides for the right to cultural

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<sup>38</sup> Constitutional Petition No. 2 of 2003 (March 10, 2004).

<sup>39</sup> Articles 21, 31 and 33 Constitution of Uganda 1995 deal with the right to equal protection, equal right in marriage and right to dignity respectively.

<sup>40</sup> Supreme Court of Zimbabwe. 1999. Judgment No. S.C. 210/98.

<sup>41</sup> Tanzanian High Court. 1990 87 Int. L. Rep 106 (1992)

<sup>42</sup> Oloka-Onyango J. 2005. Who's Watching Big Brother? Globalization and the Protection of Cultural Rights in Present day Africa. Volume 4. Human Rights Quarterly 1268.

<sup>43</sup> CEDAW Concluding Observations: Eritrea CEDAW/C/ERI/CO/3 (3 February 2006) at para 14.

<sup>44</sup> A. C. Madu, *Women Empowerment: Its Relation to National Development and Human Rights*, (Enugu, Snaap Press Ltd., 2010) p. 118.

<sup>45</sup> [2016] 16 NWLR (pt. 1539) 437.

<sup>46</sup> Cap. A 9 Laws of the Federation of Nigeria 2004.

development. Unless women stand up to their rights, the primordial cultural practices of discrimination against women in respect of customary land will not change. Changing cultural practices by granting women access to land rights can aid the advancement of women's right in Africa.

#### **4.4 Education**

The overwhelming majority of children deprived of basic education, two-thirds of children not in school and a similar proportion of illiterate adults are female. In Togo for example, there is an extremely high rate of illiteracy among women, which in 1998 stood at 60.5 per cent in the rural areas and 27 per cent in the urban areas.<sup>47</sup> Togo's Ministry of Education prohibits pregnant school-girls or students from attending school. This partly accounts for the high drop-out rate of girls and their low enrolment rates in higher education owing to pregnancy and early and forced marriage. The denial of women's economic, social and cultural rights in turn undermines women's capacity to influence decision and policy making in public life.<sup>48</sup>

#### **4.5 Women's Deplorable Status**

Most African women for instance, are denied the equal enjoyment of their human rights in particular by virtue of the lesser status ascribed to them by tradition and custom. Many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, language, religion, political and other opinion, national or social origin, property, birth or other factors such as age, disability, marital, refugee or migrant status, resulting in compounded disadvantage. Therefore much remains to be done to realize the human rights of women in Africa.<sup>49</sup> Every state in Africa is a party to at least one international treaty prohibiting discrimination on the basis of sex in the enjoyment of human rights or is a party to an international treaty providing for the equal rights of men and women to the enjoyment of all human rights. Despite this, African states violate human rights of women in practice, especially persons with mental disability who are often subjected to human right abuses such as rape, forced sterilization, inadequate sanitation etc. In Libya, women have been the worst victims of human rights abuses since their rights are often subordinated to rigid social norms condoned and reinforced by the government. There are circumstances in which discrimination primarily affects women in a different degree or way than men. For instance, women often have less access to education and health care than men which as a result, compromises their opportunities for employment. The insignificant status ascribed to women can be reversed if the traditional practices of subjecting them are changed.

#### **4.6 Women's Precarious Employment State**

Over 60 per cent of those working in family enterprises without pay are women. In the home, women perform most of the chores. This work is also unpaid; often little valued and not reflected in national production statistics. In every state where data is available, notwithstanding favourable legislation, women's average wages are less than those of men regardless of education.<sup>50</sup> Women are often subjected to discriminatory employment practices all over the world, such as the requirement to present a non-pregnancy certificate to gain employment or to avoid dismissal from employment. A good example of this is the Maquiladora (Textile) industry in Mexico which as at 2006 required women to present non-pregnancy certificates in order to be hired or to avoid being dismissed.<sup>51</sup>

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<sup>47</sup> CEDAW Concluding Observations: Togo CEDAW/C/TGO/CO/3 (3 February, 2006) at paras 24-25

<sup>48</sup> Montreal Principles in Women's Economic, Social and Cultural Rights (2004) 26 Human Rights Quarterly 763

<sup>49</sup> CESCR General Comment No. 16E/C12/2005/4 (2005) at para 5

<sup>50</sup> United Nations Development Fund for Women (UNIFEM) Progress of World's Women (2000, United Nations) 92.

<sup>51</sup> CESCR Concluding Observations Mexico Future E/C12/CO/MEX/4 (17 May 2006) at para 15.

## **5. Role of Government in enhancing Women's Right**

Considering the deplorable conditions of many women in cultural milieus which affect the enjoyment of women's right generally as well as the right against discrimination due to entrenched cultural practices, there is the need for political will of government. In order to address the issue of mass poverty and promote human welfare among women in a cultural milieu, social policies<sup>52</sup> of government has to be considered because these play a role in the development process. Women in cultural milieus in Nigeria also have the right to development as provided in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983,<sup>53</sup> and thus require development. According to Justice Oputa,

The right to development has aptly been described by jurists as the most important human right of the Third World. It is a right comprising and even transcending all other rights - be they civil, political, social or economic. Development does not end with the generation and distribution of resources. It involves much more than that.<sup>54</sup>

Development has been defined as 'a process of economic, social and political change that produces improvements in standards of living, social well-being and political participation'.<sup>55</sup> Development is also 'the unfolding of people's individual and social imagination, in defining goals, inventing means and ways to approach them, learning to identify and satisfy social legitimate needs.'<sup>56</sup> Enlightenment campaigns educating women of their rights, provision of basic social amenities and infrastructure which aid in improving women's standards of living in rural areas, empowering women economically by providing credit facilities and access to and control of land, ensure full realisation of the human rights of all women and their protection against exploitation and violence; particularly domestic violence are a few of the roles government can play. Statutory regulation is another means in which government can enhance women's right. Worthy of note is the Violence Against Persons (Prohibition) Act passed into law in May, 2015. The essence of this enactment is to eliminate violence both in private and public life. The Act prohibits all forms of violence whether physical, sexual, psychological, domestic, harmful traditional practices, discrimination against persons. It provides protection as well as effective remedies for victims of violence and makes provision for the punishment of offenders. Although the Act applies to both male and female gender, its application is limited to the Federal Capital Territory, Abuja. State governments can take a cue by enacting similar legislation for the protection of persons especially women.

In a 2002 Joint Declaration of Special Rapporteurs on Women's Rights, it was observed that: 'Violence against women and girls is perpetrated in every country in the world. This occurs in situation of peace and conflict. However, the state agents and private actors responsible are not held to account. This climate of impunity encourages the persistence of such violations'<sup>57</sup> Amnesty International reports that

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<sup>52</sup> Social policies are measures that affect people's well-being, either through the provision of welfare services or by means of policies that impact upon livelihoods more generally. Conventionally, applied social policy has been considered synonymous with governmental intervention to provide social services, this involves government funding for key social sectors such as health and education. A. H. and J. Midgley, *Social Policy for Development*. (London, SAGE Publications Ltd., 2004) p.4.

<sup>53</sup> Cap A 9 Laws of the Federation of Nigeria 2004.

<sup>54</sup> C. Oputa: 'Women and Children as Disempowered Groups,' in A.U. Kalu and Y. Osibanjo (eds.): *Women and Children under Nigerian Law*, (Abuja, Federal Ministry of Justice, 1990) p. 12.

<sup>55</sup> A. Hall and J. Midgley, (n. 54) p. x.

<sup>56</sup> J. F. Rweyemamu, *Third World Options: Power, Security and the Hope for Another Development* (Dar Es Salaam, Tanzania Publishing House, 1992) p. 203.

<sup>57</sup> United Nations Joint Declaration of Special Rapporteurs on Women's Rights, 8 March 2002. <http://www.un.org/news/Press/docs/2002/wom1330.doc.htm> accessed on 29 September 2017

notwithstanding comprehensive international and domestic laws proscribing sex discrimination and promoting equality, women's human rights are systematically denied.<sup>58</sup> Much remains to be done, especially by African states in the protection and promotion of women's human rights, other than just ratifying human rights treaties.

## **6. Conclusion and Recommendations**

Cultural obstacles in Africa are deeply entrenched and the immediate and most effective measure to combat discrimination against women is through education, enlightenment or information campaign. Education is vital for the establishment of a culture where human rights are respected and promoted. This fact cannot be overemphasized. More enlightenment campaigns should be carried out by women activists and Non-Governmental Organisations. It is said that 'Knowledge is Power'. Continuous education will help to encourage the participation of women in the resistance and transformation of entrenched cultural practices. Article 5(a) of CEDAW which is in pari material with Article 2(2) of Maputo Protocol, provides that states parties shall take all appropriate steps to modify the social and cultural patterns of conduct of men and women in order to eliminate the prejudiced and traditional practices which are based on the idea of inferiority of women or the superiority of men or on the stereotype roles of men and women. State legislature in Nigeria should make laws similar to Violation of Persons (Prohibition) Act 2015, such laws should be all encompassing, geared towards abolishing harmful traditional practices such as polygamy especially in customary marriage, early and forced marriage, female genital mutilation, denial of women's land inheritance and violence including domestic violence. These adverse cultural practices should be regarded as contravening the principle of natural justice, equity, and good conscience. Administrative bodies which will be properly funded by Government should be set up to monitor the implementation of these laws. Women in cultural setting should be courageous and insist on their rights especially with respect to land ownership in order to be empowered economically. Women generally should have a common front against all forms of discriminatory practices irrespective of their diverse cultures.

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<sup>58</sup> Amnesty International Human Rights for Human Dignity: A Primer on Economic, Social and Cultural Rights (2005, Amnesty International Publications) 50.