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**The Domestic limitations to the Implementation of CEDAW to Combat Violence  
Against Women in Nigeria**

Master's thesis

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## List of Abbreviations/Acronyms

AU Protocol: African Union Protocol

CCA: Criminal Code Act (Southern Nigeria)

CEDAW: Convention on Elimination of all Forms of Discrimination against Women

CFRN: Constitution of Federal Republic of Nigeria

ESCR: Economic, Social and Cultural Rights

FEEDS: Federal Capital Economic Empowerment and Development Strategy

FEF: Freidrich Ebert Foundation

FGM: Female Genital Mutilation

FMWAYD: Federal Ministry of Women Affairs and Youth Development

LACVAW: Legislative Advocacy Coalition on Violence against Women

MDGs: Millennium Development Goals

NAPTIP: National Agency for Prohibition of Trafficking in Persons

NGO: Non – Governmental Organization

NHRC: National Human Rights Commission

NLR: Nigerian Law Report.

PCA: Penal Code Act (Northern Nigeria)

UN: United Nations

UNCEDAW: United Nations Committee on CEDAW

UNIFEM: United Nations Fund for Women

USAID: United States Agency for International Development

WHO: World Health Organization.

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## Introduction

Human evolution has shown that we are who we are today because of women. “From a mother’s love to her child, from manly men’s deep emotional attachment and dependency to their mothers to violence against women”,<sup>1</sup> as well as all other social debates based on either improving or shrinking the role and rights of women societies. Unfortunately, the latter is common in the Nigerian Society. Violence against women (VAW) is an international phenomenon faced by women in different parts of the world. The international community in recent years has increasingly identified VAW as a critical human right and global health issue.<sup>2</sup> The VAW can be physical, psychological, or sexual, and can involve both sporadic acts of violence and continuous abuse over time.<sup>3</sup> Study shows that in Nigerian, nearly three in ten women have at one point in time experienced physical violence since age 15, and 7% have experienced sexual violence, as well as spousal violence, is high, with one in four married women reporting that they have experienced physical, sexual, or emotional violence by their husband/partner.<sup>4</sup> While a greater proportion of women (35%) believe that wife-beating is justified for any specified reasons compared to 25% of men.<sup>5</sup>

VAW is conceivably the most general and socially tolerated violations of human rights that transcend borders, race, ethnicity, class, and religion, touching every aspect of women’s lives from home to the workplace, to the streets, and among women. As it affects 15-75% of women worldwide and poses a significant challenge to their wellbeing, health, and rights. Likewise, in

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<sup>1</sup> Ana Cecilia S. Bastos, Jaan Valsiner, Kristiina Uriko, (2012), Cultural Dynamics of Women's Lives, IAP, p.1.

<sup>2</sup> L. Blanchfield., et al, (2011). CRS Report for Congress Prepared for Members and Committees of Congress International Violence Against Women: U.S. Response and Policy Issues Tiaji Salaam-Blyther Specialist in Global Health. [www.crs.gov/RL34438](http://www.crs.gov/RL34438).

<sup>3</sup> Ibid.

<sup>4</sup> Gender in Nigeria Data from the 2013 Nigeria Demographic and Health Survey (NDHS). (2012), P.4. <https://dhsprogram.com/pubs/pdf/DM52/DM52.pdf>.

<sup>5</sup> Ibid.

Nigeria, it encompasses harmful cultural practices and behaviors as barriers to maintaining women's rights, access to workplace equal opportunities, and physical, psychological, and emotional attacks towards women. VAW Author like Igbokwe made scholarly efforts to understand the nature, effects causes, and extent of the effectiveness of various responses to VAW in African nations such as Nigeria.<sup>6</sup> In Nigeria, women constitute more than two-thirds of the 70 percent adult non-literate population in the nation. Even as women still make up nearly 49 percent of the overall population, they are discriminated against in all spheres of society. Norms and customs, especially in the Nigerian context, appear to display a preference for male children compared to girls in the family, thus increasing gender disparity, leaving women low in self-esteem and fostering a high incidence of VAW in Nigeria. As a member-state of the United Nations, Nigeria unreservedly signed and ratified several related international regional and national human rights conventions that provide for women's rights and the prohibition of gender-based discrimination through the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>7</sup> to eliminate VAW and pave the way for change in gender norms.

While Nigeria is a party to these human rights instruments. Nigerian women have yet to enjoy their rights. Thus, to understand VAW the General recommendation No. 19 on violence against women, states that discrimination against women as defined in article 1 of the Convention includes gender-based violence, that is, 'violence which is directed against a woman because she is a woman or that affects women disproportionately', and, as such, is a violation of their human rights.<sup>8</sup> The CEDAW regards gender-based violence against women to be "rooted in gender-related factors such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behavior. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it."<sup>9</sup>

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<sup>6</sup> C.C. Igbokwe, Michael Chijioke Ukwuma and Kelechi Juliet Onugwu, Domestic Violence against Women: Challenges to Health and Innovation, JORIND Vol. 11, Number 2, 2013 available online at [www.ajol.info/journals/jorind](http://www.ajol.info/journals/jorind); [www.transcampus.org/journals](http://www.transcampus.org/journals). Last accessed: 17.02.2020.

<sup>7</sup> See Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) UN/GA/RES/34/180, 18 December (1979).

<sup>8</sup> General recommendation No. 19 on violence against women CEDAW/A/47/38, 1992. (1992).

<sup>9</sup> General recommendation No. 35 CEDAW/C/GC/35, 2017.

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf).

Similarly, Article (1) of the UN Declaration on the Elimination of Violence against Women defines violence against women “as any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>10</sup> Furthermore, the Declaration stipulates that prohibited violence should include, but not restricted to, acts of physical, sexual, and psychological violence within the family, society, or committed or condoned by the State in which it occurs.<sup>11</sup> However, in Nigeria, there exist other forms of violence including Female Genital Mutilation FGM, Harmful Cultural Practices, and other acts that violate the fundamental rights and cause harm to women in society. In reality, like many women in African countries, Nigerian women suffer violence through their existence-cycle. One of the most straightforward and precise predictors of an international human rights treaty regime’s success is to what degree the convention has affected domestic policy formulation, legislative actions, court decisions, and civil society activities.

The object of the current analysis is the domestic hindrance and limitations to implementing CEDAW to combating VAW in Nigeria.

The purpose of this thesis is developed against this backdrop to recommend viable suggestions to the menace of VAW in Nigeria. Nigeria’s inability to implement CEDAW, to provide the relevant legal basis to implement its provisions entirely remains a significant barrier to the full recognition and enjoyment of equal rights and freedom by Nigerian women as codified in CEDAW.

The research problem is that there have been attempts to domesticate CEDAW and other instruments that affirm women’s rights have also been blocked because of the strong resistance of numerous state and none state, including cultural and religious institutions. Thus Nigerian women are unable to enjoy the rights enshrined in different instruments of human rights because such protections cannot be enforced in national courts. The thesis seeks to address this problem through the central question: what are the domestic limitations on implementing CEDAW in Nigeria. To answer the central question which is necessitated by Nigeria’s non-implementation of its international human rights obligations under the objectives of CEDAW, two other questions have to be answered to answer the main research question: What are the domestic limitations on of

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<sup>10</sup> The UN Declaration on the Elimination of Violence against Women.  
<https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx> Accessed: 2020-02-22.

<sup>11</sup> Ibid.

implementing CEDAW in Nigeria? To what extent does cultural resistance affect the status and implementation of CEDAW? How do state and non-state actors contribute to the implementation of CEDAW?

The author presents the hypothesis that, although the national law provides the necessary legislation for the protection of women against violence in Nigeria, this policy is not effectively implemented. This paper provides some recommendations with hopes that if adopted, the occurrence of VAW in Nigeria could decline.

The author uses qualitative research methods. Which consist of primary and secondary source of data collection is adopted in this thesis, such as review of past data, relevant journals, books, newspapers, government publications, past research, official archives, and law and court cases on VAW, to analyze the limitations to the role of CEDAW in combating VAW in Nigeria. Content analysis as a technique is used in this study to examine various documents that elucidate the role of international human rights instruments on the protection of women's rights in Nigeria. Additionally, the historical method is applied in the thesis to study the events of women's rights struggle in Nigeria that laid the foundation for the rights Nigerian women enjoy today. Therefore, the thesis will rely on available legal documents, past research, statements, and reports on VAW in Nigeria to reach a reliable conclusion.

The scope and limitation of this thesis topic within the context of international institutions, particularly the United Nations and its international human rights instruments on discrimination and VAW. These human rights instruments aim to protect the rights of women directly and indirectly through domestic enactment of policies directed at eliminating VAW. Within this context, the research focus on the role of CEDAW in combating VAW in Nigeria through several NGO to put pressure on domestic institutions to establish necessary mechanisms and policies to strengthen gender equality in all spheres of the society such as education and representation in government and decision making. The thesis, therefore, emphasizes the challenges that state and non-state actor's bodies pose to achieving CEDAW's objectives under its obligation. Furthermore, the thesis study the said backdrop and timeframe, examining VAW closely. The limitations of this research are specific difficulties faced when carrying out the research, which often restricts the study's scope. This covers the absence of existing and appropriate data, such as books, journals, and papers on Nigeria in the University Library, as well as the lack of sufficient, applicable, reliable, and up-to-date information and data from Nigerian institutions websites.



The thesis is novel and relevant because there is not enough scholarly research done to deal with issues emerging from violation of women's rights, including VAW in Nigeria which undermines the full realization of international human rights standards. Given the increasing relevance and topicality of VAW, further study such as this is required to analyze and tackle the prevalence of such violence to ensure a society free of violence through the implementation of the relevant human rights instrument such as CEDAW. Thus, these involve particularly Nigerian government in policymaking, to be able to use the suggestions to think outside of the box to accelerate the implementation of CEDAW bearing in mind the challenges in implementing the convention into domestic law. Additionally, this research is valuable to both academics and policymakers because it helps to recognize and specify key variables in the discourse on VAW. Furthermore, the study is also relevant to NGOs, women advocacy organizations operating nationally and globally for the empowerment of women as, they can use the outcomes of this study to adjust their strategy and concentrate mainly on pressuring certain agencies established, such as the legislative branches of government, the courts, and the National Assembly to resolve the hurdles.

To analyze the given problems the thesis is made up of three chapters and nine subchapters. The first chapter seeks to examine the forms of VAW prevalent in Nigeria. The subchapters study the international regional and national legal frameworks for women's rights protection relevant to Nigeria. Using the insights from relevant literature, legal documents, and reports. The second chapter assesses the historical background of women's rights struggle that shaped the rights Nigerian women enjoy today. It also explores the emergence of human rights in Nigeria, while studying the evolution of the Nigerian Constitution. This section also details Nigeria's adoption of CEDAW. Most material used in this chapter will come from organizational websites and official reports and statements giving that there are limited books and materials from Nigerian institutions official websites and at the university library. Lastly, the third chapter will analyze the limitation to implementing CEDAW in Nigeria to combat VAW in the nation. The chapter will also investigate the cultural resistance to implementing CEDAW as well as the role of state and non-state actors on CEDAW domestication. While looking at contributions of actors such as political will, religious institution, and Non-governmental organizations. Several court cases will also be included in the final section of the chapter to assess the effect of the Nigerian legal system in the administration of justice to victims of VAW, to ensure women's rights are protected in Nigeria.

## 1 Violence Against Women in Nigeria

This chapter explores relevant international and regional human rights treaties and declarations that promote and protect women's rights and oblige state parties to implement international standards of human rights into their domestic law to ensure women are protected from discrimination and VAW. Strategy structures and policy documents that address VAW are also included. The chapter also examines the legal rights of women in Nigeria and the provision under the Nigerian national law, as well as defines the forms of violence prevalence in Nigeria such as physical, sexual, and psychological violence with detailed examples.

VAW takes place in all geographic areas, nations, communities, and economic groups. Scholars interpret VAW as a symptom of the traditionally unequal power relationship between men and women and suggest that, over time, this disparity has contributed to pervasive cultural perceptions and attitudes that perpetuate a cycle of violence.<sup>12</sup> While VAW particular triggers differ on an individual case basis. A study by WHO established individual and societal risk factors that may raise levels of VAW.<sup>13</sup> While, community-related factors include cultural values that promote male dominance, high rates of crime, low economic conditions, and a lack of government policy and legal security; Personal factors that can result in a high risk of becoming a VAW survivor include living in poverty and a previous history of violence.<sup>14</sup> In 1979 the General Assembly ratified CEDAW throughout its preamble, it states why women often do not possess fair treatment with men given the availability of other human rights instruments. CEDAW is the most detailed women's rights treaty.<sup>15</sup> It opposes any form of discrimination against women and reaffirms the

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<sup>12</sup> L. Blanchfield, et al, (2011), CRS Report for Congress Prepared for Members and Committees of Congress International Violence Against Women, U.S. Response and Policy Issues Tiaji Salaam-Blyther Specialist in Global Health, p.2. [www.crs.gov/RL34438](http://www.crs.gov/RL34438)

<sup>13</sup> World Health Organization (WHO). Understanding and addressing violence against women, p.4. Retrieved April 15, 2020, from [https://apps.who.int/iris/bitstream/handle/10665/77432/WHO\\_RHR\\_12.36\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf?sequence=1)

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

value of maintaining equitable political, economic, social, cultural and civil rights for women and men regardless of their marital status, and requires States to implement national legislation banning discrimination (Articles 1, 2 and 3).<sup>16</sup> Requiring States to introduce urgent specific steps to speed up the attainment of parity between men and women in practice (Article 4), and to take initiative to change social and cultural factors that promote discrimination (Article 5).<sup>17</sup> Similarly, in 1993, the U.N. General Assembly in 1993, adopted a Resolution on the Elimination of Violence against Women (DEVAV).<sup>18</sup> Article 1 of the declaration provides that, ‘Violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.<sup>19</sup>

In Nigeria, there are regular cases of government authorities such as the police, violating the rights of citizens through sexual harassment, rape, and unlawful arrest of women.<sup>20</sup> This situation occurs in civil society, where the police that is meant to protect the people become the violators. Unfortunately, government officials often fail to uphold the standards of human rights. In addition to the general protection against violence for all persons, such as rights to life and the freedom from cruel and degrading treatment, women will the right to specific protection against violence perpetrated by the State or by third parties under unique treaties.<sup>21</sup> Locally, the situation is in no way better. For instance, in Nigeria, VAW is pervasive and at least 20% of Nigerian women face physical, sexual, and psychological violence from their husbands or relatives.<sup>22</sup> They were also found to be most likely to defend violence, including beating wife.<sup>23</sup> The reason for such justification of the act of violence against the female sex rest on the cultural and religious belief in most of Nigeria, especially in the northern region. In addition to the more general protection against violence for all persons, such as rights to life and the freedom from cruel and degrading treatment, women will have the right to specific protection against violence perpetrated by the State or by third parties under unique treaties.<sup>24</sup>

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<sup>16</sup> Ibid, see art. 1,2, 3 of CEDAW

<sup>17</sup> Ibid, article 4 and 5.

<sup>18</sup> United Nations Declaration on the Elimination of Violence against Women (CEDAW) GA/RES/48/104 (1993), art. 1. [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.21\\_declaration%20elimination%20vaw.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.21_declaration%20elimination%20vaw.pdf).

<sup>19</sup> Article 1, ibid,

<sup>20</sup> ECW/CCJ/APP/17/14, Dorothy Chioma Njemanze & 3 others v. The Federal Republic of Nigeria.

<sup>21</sup> Article 4 of the Maputo Protocol. <https://www.achpr.org/documentationcenter?search=protocol>.

<sup>22</sup> National Population Commission and ICF International, (2013), Nigeria Demographic and Health Survey, p. 93.

<sup>23</sup> Ibid.

<sup>24</sup> Article 4 of the Maputo Protocol. <https://www.achpr.org/documentationcenter?search=protocol>.

Women like every other human have rights. These legal rights are characterized as the presence of a right on an individual, a violation of which the suffered party can claim legal remedy in a court of law.<sup>25</sup> In other terms, legal rights are rights that have been vested with the full protection of the law, and if infringed, the individual impacted by the violation may claim remedy in a court of law. These rights include, (a) The right to life; (b) The right to equality; (c) The right to liberty and security of person; (d) The right to equal protection under the law; (e) The right to be free from all forms of discrimination; (f) The right to the highest standard attainable of physical and mental health; (g) The right to just and favorable conditions of work; (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.<sup>26</sup> Article (4) of DEVAW posits that States should denounce VAW and not invoke any practice, tradition, or religious meaning to avoid their responsibilities to eradicate it. States should follow a strategy of eliminating VAW by all reasonable means and without delay.<sup>27</sup>

In the past, VAW used to be treated as a matter of stigma, articulated in whispers.<sup>28</sup> However, in recent times it has become a part of the public discourse, giving victims the voice they need to come forward to speak their truth about their experience to create awareness on the effects of this violence. For this reason, every year women and men in more progressive countries around the world celebrate the International Day for the Elimination of VAW and the 16 Days of Activism against Gender Violence.<sup>29</sup> In celebration of women's journey in combating VAW around the world. Such debate for awareness of the violation of women's rights led the United Nations General Assembly to declare every November 25 as the International Day for the Elimination of Violence against Women and calls on state parties to unify in eliminating all forms of VAW.<sup>30</sup> However, access to justice can never be overstated in VAW.

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<sup>25</sup> D. A. Mwenedata (2016), a Critical Analysis of the Scope and Nature of the Concept of Human Rights. IOSR Journal of Humanities and Social Science, P. 56–58. <https://doi.org/10.9790/0837-2109105664>

<sup>26</sup> Ibid.

<sup>27</sup> A/RES/48/104 (1993), art.4.

<sup>28</sup> F. T. Susana (2003), Violence against Women, Health and Human Rights, Vol. 6, No. 2, Pg. 89.

<sup>29</sup> See UN Women (2011), 16 Days of Activism against Gender Violence. Accessed at:

<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/16-days-of-activism>.

<sup>30</sup> On October 19, (1999) the United Nations General Assembly declared November 25 as the International Day for the Elimination of Violence against Women. Accessed at: <https://www.un.org/en/events/endviolenceday/>.

## 1.1 Forms of Violence against Women in Nigeria

CEDAW's definition of discrimination includes "gender-based violence, which is violence that is directed against a woman because she is a woman or that affects women disproportionately."<sup>31</sup> Including acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.<sup>32</sup> Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."<sup>33</sup> VAW has in-depth consequences and has devastated neighborhoods and social structures. Further studies show increasing causal links between women's violence and HIV and AIDS.<sup>34</sup> These issues are addressed in the 2030 Sustainable Development Agenda adopted by all UN member states in 2015.<sup>35</sup> The Agenda focuses on the 17 Sustainable Development Goals (SDGs) that encourage all developed, developing and global partnership countries to take immediate action. Agreeing that poverty and other deprivations must be linked with policies to boost health and education, reduce inequality, and promote economic development.<sup>36</sup> Specifically, the Sustainable Development Goal No. 5, state that gender equality is a human right.<sup>37</sup> Arguing that insufficient progress on structural issues at the root of gender inequality, such as legal discrimination and low levels of political participation amongst others, undermines the ability to achieve this goal. The aforementioned goal implies that women should enjoy the same status as men so that they can fully realize their rights and have a meaningful impact in their respective societies. It has been found that most children, who grow up in households where violence occurs, may undergo a variety of psychological and emotional problems

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<sup>31</sup> RES/34/180, (1979), Art.1. <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> UN Women, 2011.

<sup>35</sup> The 2030 Agenda for Sustainable Development A/RES/70/1 (2015). <https://sustainabledevelopment.un.org/sdgs>.

<sup>36</sup> Ibid.

<sup>37</sup> Progress towards the Sustainable Development Goals: Special edition E/2019/68. (2019), Pg.11.

<https://undocs.org/E/2019/68>.

that can be correlated with the perpetration or later in the life experience of abuse.<sup>38</sup> This widespread VAW in Nigeria (endorsed by customary, traditional, or religious law) is often ignored and justified by Nigerian officials, the majority of whom are male.<sup>39</sup>

The human rights centered approach would direct the state towards the widest definition of VAW because it encompasses all forms of violent crimes committed against women, such as psychological abuse, neglect, mal-development, oppression, coercion, and exploitation.<sup>40</sup> That would include unhealthy traditional practices such as genital mutilation, child marriage, honor killings, widowhood rites, girls coming-of-age ceremonies that include marking, tattooing, scarring, and honor crimes as well as State-tolerated sexism that deprives women of their fundamental human rights.<sup>41</sup> Statistics have shown that the extent of VAW in Nigeria is frighteningly high since the prevalence of VAW in Nigeria is grossly under-documented and inadequately reported.<sup>42</sup> Another study claims that sex trafficking, sexual violence in a situation of armed conflict, female infanticide, and violence in schools and the workforce, for instance, are considered to be substantially under-documented, especially in developing countries.<sup>43</sup> One can agree that the lack of attention and under-documentation of these cases poses a negative impact on combating violence perpetrated against women Nigeria. The occurrences of VAW are diverse such as beating, torture, battery, acid baths, rape, and in some society's death through honor killing.<sup>44</sup>

VAW takes place in all geographic areas, nations, communities and economic groups, and scholars interpret VAW as a symptom of the traditionally unequal power relationship between men and women and suggest that, over time, this disparity has contributed to pervasive cultural perceptions and attitudes that perpetuate a cycle of violence.<sup>45</sup> While VAW particular triggers differ on a case-

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<sup>38</sup> B. V. Brown, et al, (2003), as cited in UNICEF. (n.d.). Behind Closed Doors the Impact of Domestic Violence on Children, p.7. Retrieved April 20, 2020, from <https://www.unicef.org/media/files/BehindClosedDoors.pdf>

<sup>39</sup> International Human Rights Law Group, Promoting the Protection of Women's Human Rights. [http://www.hrlawgroup.org/country\\_programs/nigeria/womens\\_rights.asp](http://www.hrlawgroup.org/country_programs/nigeria/womens_rights.asp). Last accessed: 18/03/2020

<sup>40</sup> See Violence against Women, a Statistical Overview, Challenges and Gaps in Data collection and Methodology and Approaches for overcoming them, UN Division for the Advancement of Women in collaboration with, Economic Commission for Europe (ECE) and World Health Organization (WHO) No. 11-14, Geneva Switzerland, and April, 2005.

<sup>41</sup> Ibid.

<sup>42</sup> I, Nnadi (2012), An insight into violence against women as human rights violation in Nigeria: critique. *Journal of Politics and Law*, 5(3), 48-56.

<sup>43</sup> U.N. document, A/61/122/Add.1, July 6, 2007, pp. 66-67.

<sup>44</sup> N. Abdulraheem, et al (2014), Domestic violence against women in Nigeria, scourge devoid of solution. *Nigerian Law Journal*, 17(2), 78-104.

<sup>45</sup> L. Blanchfield, et al (2011), CRS Report for Congress Prepared for Members and Committees of Congress International Violence Against Women, U.S. Response and Policy Issues Tiaji Salaam-Blyther Specialist in Global Health, p.2. [www.crs.gov/RL34438](http://www.crs.gov/RL34438).

by-case basis, several studies have established individual and societal risk factors that may raise levels of VAW.<sup>46</sup> Community-related factors can include cultural values that promote male dominance, high rates of crime, low economic conditions, and a lack of government policy and legal security. Personal factors that can result in a high risk of becoming a VAW survivor include living in poverty and a previous history of violence.

Regularly, from one community to another a woman is raped, killed, or battered as a result of gender-based violence. Even though, Nigerian constitution guarantees to eliminate discrimination and VAW, as well as provides for women's rights. However, VAW remains a challenging human rights and health issue which spans across all religions, ages, and background in the nation and the victims of this violence are dehumanized by society, deprived access to justice and get very little or no protection from the law. Article 5 of CEDAW stipulates that "States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles for men and women; (b) 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."<sup>47</sup> Thus, to understand the forms of violence women face in Nigeria, the UN Women posit that the most common violation of human rights, such as sexual, physical, and psychological abuse occurs across all ages, cultures, geography races and religions.<sup>48</sup> This report reflects the reality and struggle of the average Nigerian woman. Additionally, these forms of violence prevail due to several factors such as culture and religion as well as the misplaced priority of the Nigerian government in response to the issue. CEDAW recommends that "States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate VAW, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence and the effect of those measures."<sup>49</sup> Issues stemming from the non-implementation of CEDAW and other instruments that deal specifically with women's rights protection which will be discussed in detail in the third chapter. As a result of these limitations, women's rights are still not afforded in reality. Even with all the legal frameworks

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<sup>46</sup> World Health Organization (WHO). Understanding and addressing violence against women, P. 3-5.

<sup>47</sup> Article 5 of CEDAW

<sup>48</sup> UN Women, (2014) Facts and figures: Ending violence against women. <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> Accessed: 2020-02-22.

<sup>49</sup> CEDAW/A/47/38, 1992. (e).

present, Nigeria still lags concerning respecting and protecting the fundamental rights of women in Nigeria.

### 1.1.1 Physical Violence

According to the CEDAW, This includes, “sexual harassment includes such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”<sup>50</sup> Some abusers are assiduous in controlling were to inflict physical injury by directing blows or injury to unusually seen parts of the body, such as the torso, instead of leaving marks on the face or limbs.<sup>51</sup> A recent study found that 28 percent of Nigerian women aged 25-29 have witnessed any type of physical abuse since they were 15 years of age.<sup>52</sup> Furthermore, the research indicates that 15% of people encountered physical abuse within 12 months of the survey. However, the extent of vulnerability to the likelihood of being a victim of such violence differed based on marital status: “44% of divorced, unmarried or widowed people recorded experiencing violence from 15 years of age, while 25% of married women or those living with their husbands encountered violence from 15 years of age.”<sup>53</sup> This shows the prevalence rate of violence within the household and the likelihood of married women to be victims or have experienced these forms of violence at some point in their life. Physical VAW is committed predominantly by men as a reaction to actual or perceived infidelity, marital disparity, financial issues, drug misuse or substance addiction, and sexual advance denial.<sup>54</sup> For example, in 2010, a local monarch in the name of Deji of Akure Oba Oluwadare Adesina reportedly battered his wife and was eventually deposed by the government at the time. It was reported that the monarch led a party of men to attack Bolanle Adesina, his estranged wife, who moved out of the palace to reside in her father’s home. She was later hospitalized after a substance suspected to be acid had been poured on her and subsequently died in

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<sup>50</sup> CEDAW/A/47/38, (1992).

<sup>51</sup> Ibid.

<sup>52</sup> United Nations, Nigerian women say ‘no’ to gender-based violence, Africa Renewal. Retrieved March 20, 2020, from <https://www.un.org/africarenewal/news/nigerian-women-say-‘no’-gender-based-violence>

<sup>53</sup> Ibid.

<sup>54</sup> M. K., Oluseyi, (2016), Assessing Domestic Violence in Nigeria, p.3.

<https://pdfs.semanticscholar.org/1ed9/c61b993e5f7d5078df6eaa8f1b4d03101606.pdf>



July 2011.<sup>55</sup> Unfortunately, the monarch did not face any economic or criminal prosecution for his actions. Even worse he was not arrested since in Nigeria this is often perceived as a private issue and should be resolved amongst the family.<sup>56</sup> However, the perpetrator was dethroned and banished from the community by the state government.<sup>57</sup> It is important to note that most violent occurrences are not reported due to dependency and a lack of livelihood, fear, and shame involved with being a survivor. This is true in Nigeria, given the high poverty rate.<sup>58</sup> Often, due to the frustration from the inability to meet up with the standard of living, some men take out this frustration on their partners and resort to taking drugs and alcohol. Currently, no law under the constitution expressly tackles this form of VAW, though the Nigerian government has taken judicial steps to prosecute individuals who abuse women in a couple of states, such as Lagos. Also, the government introduced the VAPP Act in 2015 to addresses VAW related concerns.

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<sup>55</sup> See, Pm News Nigeria. (2010). Wife Beating Deji of Akure Deposed.

<https://www.pmnewsnigeria.com/2010/06/10/wife-beating-deji-of-akure-deposed/>.

<sup>56</sup> O. Nwankwo (2008), Effectiveness of Legislation Enacted to Address Violence against Women in Nigeria, Pg.5.[https://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2008/expertpapers/EGMGPLVAW%20Paper%20\\_Oby%20Nwankwo\\_.pdf](https://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_Oby%20Nwankwo_.pdf).

<sup>57</sup> The Nigeria News. Dethronement of Deji of Akure, 13 June 2010. Retrieved April 17, 2020, From <https://www.thenigerianvoice.com/news/26881/dethronement-of-deji-of-akure.html>.

<sup>58</sup> As at April 2020, Nigeria records 48 percent poverty rate according to World Poverty Clock. Retrieved April 14, 2020, from <https://worldpoverty.io/map>.

### 1.1.2 Psychological Violence

This is typically marked by brutality and degradation crafted by exploiting deep-seated perceptions to undermine and terrorize the victim.<sup>59</sup> Most of the time, perpetrators cause extreme distress or misery by having the victim perform unpleasant things, use emotional blackmail or intimidation through threats to themselves or trusted people, even infants, through hurt and aggression.<sup>60</sup> While in some cases, some perpetrators exploit the survivor by pressuring her to rob the survivor of cherished and treasured things, such as babies, to show their divinity and power, to ensure complete subjugation and submission.<sup>61</sup> Sadly, this is often the case in Nigeria, as most women are often afraid to leave abusive partners to avoid losing custody of their child and what may become of the child if they choose to leave the marriage.<sup>62</sup> As a result, most Nigerian women stay and endure abusive relationships to protect their children. In most cases, psychological abuse involves several omissions or insensitive actions and through emotional neglect, the abuser is physically unable to react to the emotional state and desires of the victim.<sup>63</sup> CEDAW urges member states to take: Measures that are necessary to overcome family violence should include: Criminal penalties where necessary and civil remedies in case of domestic violence; Legislation to remove the defense of honor regarding the assault or murder of a female family member; Services to ensure the safety and security of victims of family violence, including refuges, counseling and rehabilitation programs; Rehabilitation programs for perpetrators of domestic violence; Support services for families where incest or sexual abuse has occurred.<sup>64</sup> In the absence of a constitutional provision to address physical violence in Nigeria. Victims are left with no security from this abuse. Hence the need to put in place an adequate mechanism to protect women's rights.

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<sup>59</sup> S. Christiane (2008), *Counselling Survivors of Domestic Abuse*. Jessica Kingsley Publishers London, p.25.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid, p.27.

<sup>62</sup> World Health Organization (WHO). *Understanding and addressing violence against women*, P. 3-5. Retrieved April 15, 2020, from [https://apps.who.int/iris/bitstream/handle/10665/77432/WHO\\_RHR\\_12.36\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf?sequence=1)

<sup>63</sup> Christiane Sanderson. (2008). *Counselling Survivors of Domestic Abuse*. Jessica Kingsley Publishers London and Philadelphia. P.25.

<sup>64</sup> CEDAW/A/47/38, 1992.

### 1.1.3 Sexual Violence

This involves rape, involuntary prostitution, and other forms of sexual harassment and it is Just like other types of violence, as stated above.<sup>65</sup> The obligation expands both to the actions of the government officials as well as the obligation to take measures to combat sexual violence. Thus, governments should prohibit officials from engaging in sexual VAW (including in places under government control such as the prisons), as well as a duty to enact legislation and policies to discourage these crimes by private citizens and to ensure that those liable are properly investigated and punished.<sup>66</sup> A report by the World Bank on ten chosen risk factors in the age category affecting girls and women between the ages of 15-44 considered rape and sexual violence riskier than obesity, car crashes, conflict, and malaria.<sup>67</sup> Another report by the UN High Commissioner on several Northern Nigerian states revealed that 676 households had reported instances of rape or sexual harassment, with the largest percentage of events recorded in Taraba state (51%), Adamawa state (23%) and Borno state (13%) respectively.<sup>68</sup> Unfortunately, the rates of VAW against women are higher in these parts of Nigeria due to tradition and religious belief since they are predominantly Muslim and observe sharia law.<sup>69</sup> Additionally, the Nigerian society precondition women who have experienced the violence of any form to remain quiet as any attempt to seek redress is often perceived as repugnant, since most family disputes are resolved within the family by elders or other means of domestic settlement that works in favor of the men. There is also the victimology of VAW where the victim rather than the perpetrator of violence is blamed for initiating violence.<sup>70</sup> In respect to this form of violence, the CEDAW urge “States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken”<sup>71</sup> however, these forms of violence are under-documented in Nigeria. Today, VAW is prevalent, especially sexual violence such as rape, which has increased women’s

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<sup>65</sup> Women’s Human Rights, International Justice Resource Center. Retrieved March 29, 2020, from <https://ijrcenter.org/thematic-research-guides/womens-human-rights/#CEDAW>.

<sup>66</sup> Ibid.

<sup>67</sup> Slovenia, United Nations Association. Violence Against Women. Retrieved April 26, 2020, from <http://www.unaslovenia.org/en/un/women>.

<sup>68</sup> UN High Commissioner for Refugees (UNHCR) December 2015 Protection Monitoring Report.

<sup>69</sup> Ibid.

<sup>70</sup> O. Akanle., A.D. Busari, (2015), Lasu Journal of Social Sciences, Vol: 10 pp: 98-120.

<sup>71</sup> CEDAW/A/47/38, 1992. (s).

susceptibility to HIV/AIDS.<sup>72</sup> CEDAW recommends that “States parties should ensure that laws against family violence and abuse, rape, sexual assault, and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.”<sup>73</sup>

For example, in June 2019, the Guardian reported that a woman named Bukola Dakolo, called out her childhood pastor for raping her when she was a teenager, a move that was met with mixed reactions as the majority stood with the accused, a pastor and labeled the accuser a liar for taking too long to come forward.<sup>74</sup> Regrettably, most victims of gender-based violence are often hesitant to speak about out.<sup>75</sup> Because of the stigmatization and fear of lack of believing if they eventually come forward about their experience in a society like Nigeria,<sup>76</sup> where victims are shamed and perpetrators are celebrated. Sadly, many of the victims reside in solitude and reluctant about reporting the violence mainly to the lack of effective response from the police.<sup>77</sup> Worse yet, some of the victims endorse it, arguing it is a sign of love.<sup>78</sup> The lack of implementation of CEDAW into the domestic laws of Nigeria limits women’s rights and access to justice to bring perpetrators of this crime to book.

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<sup>72</sup> National Coalition on Affirmative Action (NCAA). (2006). Promoting Equal Opportunity. National Gender Policy. Retrieved March 14, 2020, from [http://www.aacoalition.org/national\\_policy\\_women.htm](http://www.aacoalition.org/national_policy_women.htm)

<sup>73</sup> A/RES/45/155, 1992. Para.24 (b).

<sup>74</sup> The Guardian (2019), How Nigeria’s #Me-too moment’ turned against rape accuser. Accessed: <https://www.theguardian.com/global-development/2019/aug/06/nigeria-metoo-moment-accuser-busola-dakolo>.

<sup>75</sup> Federal Republic of Nigeria National Beijing + 25 Review Produced By the Federal Ministry Of Women Affairs and Social Development (FMWASD) (2019), Pg.34.

<sup>76</sup> Ibid.

<sup>77</sup> O. Nwankwo (2008), p.5.

<sup>78</sup> F. O. Benebo, et al (2018), Intimate partner violence against women in Nigeria: a multilevel study investigating the effect of women’s status and community norms. Pg.3. <https://doi.org/10.1186/s12905-018-0628-7>.

### 1.1.3 Female Genital Mutilation FGM

This form of violence is common in Nigeria especially the northern region. As defined by the World Health Organization (WHO), the process of female genital mutilation (FGM) involves procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons.<sup>79</sup> This harmful procedure provides no health benefits, and as a result, many young women die or experience severe health complications. Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) obliges States parties to ensure women are protected from being forced into performing harmful cultural tradition.<sup>80</sup> Similarly, the CEDAW Committee suggests that all States pass and adopt legislation to prohibit the abuse of FGM, in part to preserve the right to health.<sup>81</sup> However, in Nigeria, these laws cannot be directly enforced in domestic courts unless they had been included in domestic law. As the CEDAW did not follow the domestication procedure required by Section 12 of the CFRN enshrines clauses on the domestication of treaties in Nigeria stating, “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”<sup>82</sup> Furthermore, in Nigerian, some tribes exclude women from an inheritance, removed by in-laws from their lands and houses, deprived of their belongings, and compelled to indulge in dangerous sexual acts to maintain their assets. This barbaric traditional practices that violate women’s rights are existence in Nigeria. National statistics indicate elevated incidences of gender-harassment, and reports suggest that women and girls are more likely than men and boys to be targets of slavery.<sup>83</sup> While female genital mutilation (FGM) is banned in several Nigerian states, these laws are difficult to implement. Reports show that religion can either fuel or decrease the prevalence of traditional practices like FGM and early marriage.<sup>84</sup> Which is common in most northern states in Nigeria.

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<sup>79</sup> World Health Organization, (2014), Factsheet No. 241, Female Genital Mutilation.

<sup>80</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>81</sup> CEDAW Committee, General Recommendation, (1990), No. 14: Female Circumcision, UN Doc. A/45/38(SUPP), p. 438, <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom14>

<sup>82</sup> CFRN, Section 2 (1)

<sup>83</sup> Ibid.

<sup>84</sup> V. Van, et al (2016). Breaking a Culture of Silence: Norms that perpetuate violence against women and girls in North and South Nigeria. pg.9. <https://www.28toomany.org/static/media/uploads/Thematic Research and Resources/Social>

In conclusion, besides Article 42, which forbids discrimination on grounds of sex, there are no specific laws dedicated to women's rights and VAW in Nigeria under the CFRN. Therefore, courts resort to the general provisions under the constitution. Unlike other nations where ratification alone guarantees the treaty as part of the national legal system, Nigeria belongs to the dualistic system which needs the Senate (National Assembly) approval to integrate the terms of the treaty into the body of national legislation. Socio-cultural, economic, political, legal, and religious obstacles to the development and enforcement of women's rights exist in Nigeria.<sup>85</sup> Thus, the above-mentioned forms of violence, as well as traditional and culturally harmful traditions such as Female genital mutilation, widowhood rituals, and disinheritance, exist in Nigeria.

### Court Cases

In the Case of Mary Sunday, the case was filed before the Economic Community of West African States (ECOWAS) Court in August 2015 by the Institute for Human Rights and Development in Africa (IHRDA) and Women Advocate, Research and Documentation Centre (WARDC), on behalf of Mary Sunday. The case is about domestic violence perpetrated against Mary Sunday by her fiancé, a Nigerian Police Officer, in August 2012, resulting in deformation and incapacitation of the victim. The complainants alleged the State's failure to effectively investigate the incident, prosecute and punish the perpetrator of the violations.<sup>86</sup> In its verdict pronounced in Abuja, Nigeria, the ECOWAS Court found Nigeria in violation of Mary's right to access to justice, and right to have her cause heard. The Court, however, found Nigeria not to violate her right to freedom from discrimination and gender-based violence. The Court ordered the State of Nigeria to award Mary financial compensation for Fifteen Million Naira, equivalent to about forty-one thousand five hundred US dollars. Therefore, it was a case of a damage claim. In delivering the Court's decision, the Honorable Justice Micah Wilkins Wright held that the case was admissible; that the Applicants had established a cause of action and also have locus standi to file the case.<sup>87</sup>

Similarly, in the case of Dorothy Chioma Njemanze & 3 others v. The Federal Republic of Nigeria at the ECOWAS Community Court of Justice was heard on Monday, 30 November 2015. In its decision, the Court ruled that the plaintiff's detention was unconstitutional and violated the

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Norms/rr-breaking-culture-silence-enough-campaign-nigeria-280218-en.pdf%3Bjsessionid%3D2967ad420e0dec38ff1cf71d60fe61b0.pdf.

<sup>85</sup> The Nigeria NGO Coalition on CEDAW (2008), CEDAW and Accountability to Gender Equality in Nigeria, a Shadow Report. (2008). P.11.

<sup>86</sup> ECW/CCJ/JUD/11/18, Mary Sunday v. Federal Republic of Nigeria.

<sup>87</sup> Ibid.

right to freedom of liberty since the Defendant State had given no facts that these women were prostitutes. The Court also ruled that marking woman prostitutes was verbal abuse which violated these women's right to dignity. The Court also held that the detention breached these women's right to be protected from cruel, inhuman, or degrading treatment; and it also constituted discrimination based on gender.<sup>88</sup> The Court found that there were multiple violations of articles 1, 2, 3 and 18 (3) of the African Charter on Human and Peoples' Rights; articles 2, 3, 4, 5, 8 and 25 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol); articles 2, 3, 5 (a) and 15(1) CEDAW; articles 2(1), 3, 7 and 26 of the International Covenant on Civil and Political Rights (ICCPR); articles 10, 12, 13 and 16 of the Convention against Torture (CAT); and articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights (UDHR). The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs were each awarded damages for Six Million Naira (about USD16, 500). However, the claim of the 2<sup>nd</sup> Plaintiff was dismissed for being statute barred under the Protocol creating the Court.<sup>89</sup>

Both cases were presented before the ECOWAS court. In both cases, the victims resort to the regional court to seek justice and the lack of explicit women's rights provided under the CFRN that specifically deals with cases of VAW. These cases are an example of the prevalence of VAW in Nigeria. It is pertinent to note that, this case reflects a positive example of women's right implementation of the CEDAW principles even though there is a lack of national legislation. Thus, it is necessary to include CEDWA into the CFRN to combat issues that concern women's rights violations in all spheres of society.

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<sup>88</sup> ECW/CCJ/APP/17/14, Dorothy Chioma Njemanze & 3 others v. The Federal Republic of Nigeria

<sup>89</sup> *Ibid.*

## 1.2 International Law and Violence against Women

In the last decades, VAW has been acknowledged in international law as a violation of human rights. Historical accounts from various societies represent efforts to establish the intellectual framework for the inferior role of women compared to men. The international discourse on human rights and women's rights, in particular, took firm hold in the twenty-first century, famed for the advancement of the basic principles of promotion and preservation of human rights.<sup>90</sup> Opposition to institutional discrimination against women intensified with the universal recognition of the right to be free from discrimination as basic rights. Nigeria is a member state to several international, regional human rights instruments that provides for women's rights and prohibit discrimination and VAW. Most important are the Universal Declaration of Human Rights,<sup>91</sup> the United Nations Charter (1948),<sup>92</sup> CEDAW (1979)<sup>93</sup> and its Optional Protocol (1999),<sup>94</sup> the UN Declaration on VAW,<sup>95</sup> the Beijing Platform of Action, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. All these instruments urge and oblige the State parties to take appropriate steps to refrain from all forms of discrimination against women. Nigeria is obligated to promote and protect women's rights in line with the human rights guidelines of these instruments through domestication into the Nigerian national law to ensure women benefit from the provisions and have access to equal rights and justice.

The United Nations (UN) originated as an international coalition for stability and protection of human dignity after the conclusion of the Second World War played a significant role in providing substance to the definition of human rights in 1945. The Charter and the UN reaffirmed the confidence of member states in universal human rights, in the integrity and equality of the human in equal rights for men and women.<sup>96</sup> The UN stressed that VAW was the most pervasive and

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<sup>90</sup> M. Imasogie, (2014), Cultural Impediments to the Domestication of Women's Rights Instruments in Nigeria, pp.3. [www.iafor.org](http://www.iafor.org).

<sup>91</sup> Nigeria is a signatory to Universal Declaration of Human Rights, History of the Document, A/RES/217(III), (1948). Article 1.

<sup>92</sup> Articles (13); 3 and 55(c) of the UN Charter.

<sup>93</sup> Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979) RES/34/180, was ratified by Nigeria in 1985.

<sup>94</sup> Optional Protocol to CEDAW. A/RES/54/4, (2004)

<sup>95</sup> UN G.A. Declaration on the Elimination of Violence against Women, A/RES/48/104, (1993)

<sup>96</sup> Ibid.



prevalent form of human rights violations and its prevention relied on the successful enforcement of policies to ensure its root causes and consequences were followed at all levels.<sup>97</sup> Article (1), one of the objectives of the United Nations is to pursue universal cooperation in upholding and fostering respect for human rights and fundamental freedoms for everyone, without distinction, inter alia, as regards genders.<sup>98</sup> As well as to support equal rights and opportunities for women, for this reason, the Convention on the Elimination of All Forms of discrimination against women (CEDAW) was established in 1979, to foster issues regarding women's rights violation. While VAW was not explicitly included in the original document of the Convention, CEDAW did have provisions related to state duty to address particular forms of VAW (see, for example, Article 6). However, the ensuing UN Declaration on the Elimination of Violence against Women (DEVAW) stress further by recognizing that VAW is an obstacle to the achievement of equality, development, and peace, and it violates the rights and fundamental freedoms of women.<sup>99</sup> Thus, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”<sup>100</sup> To eliminate any form of justification for VAW, the convention lays forth a universal concept of discrimination against women, to ensure that those who discriminate on the grounds of gender may no longer argue that there is no specific definition.

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<sup>97</sup> See UN, To Redress Violence against Women, 'Prevalent and Pervasive', Victims Must Not Be Returned to Egregious Situations. <https://www.un.org/press/en/2011/wom1846.doc.htm> Accessed: 2020-02-25.

<sup>98</sup> Article 1 of the UN Objective.

<sup>99</sup> D. E., Shalala, (1998), Women's rights are human rights. In *Global issues* (Washington, D.C.), Vol. 3, Issue 2, P.73. <https://doi.org/10.5840/studpracphil2000218>.

<sup>100</sup> DEVAW/ A/RES/48/104 (1993), art.5.

### 1.2.1 The Universal Declaration of Human Rights

In 1948, the UN General Assembly adopted The Universal Declaration of Human Rights (UDHR). The declaration was the product of World War II experience.<sup>101</sup> With the conclusion of the war and the establishment of the United Nations, the international community once again agreed to never allow such atrocities of the war to occur again. The declaration defines human rights as fundamental to all human beings and requires governments to take action to protect the human rights of all beings.<sup>102</sup> The declaration is traditionally the first universal tool to define a person's freedoms and rights. Member states of the UN, including Nigeria, are party to the Charter. The declaration was established never to place a binding obligation on member states but instead to establish an appropriate principle under which individuals should interact against each other.<sup>103</sup> Not only has the universal acceptance of this declaration earned it significant moral weight but has made the most interpreted declaration in the world, used as a reference in various domestic and international human rights forums. Article 2 of UDHR provides a general non-discrimination clause: "everyone is entitled to all the rights and freedoms outlined in this Declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status."<sup>104</sup> Although the UDHR did not address VAW in its documents. However, it provides for the fundamental human rights of all persons (women) such as the right to life and liberty amongst other rights under article 1. The Charter also emphasizes equality and non-discrimination based on gender as mention above and protects women's human rights.

### 1.2.2 CEDAW

UN Convention on the Elimination of Discrimination against Women (CEDAW) is a pivotal women's rights instrument that was adopted in 1979 by the U.N. General Assembly and ratified by

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<sup>101</sup> Universal Declaration of Human Rights, History of the Document (1948), A/RES/217(III), (1948).

<https://www.un.org/en/sections/universal-declaration/history-document/index.html>

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Article 2 of UDHR, (1948).

189 nations. It is the most detailed women's rights convention and it condemns all kinds of discrimination against women and reaffirms the value of maintaining women and men equal political, economic, social, cultural, and civil rights.<sup>105</sup> The Convention was ratified by Nigeria in 1985.<sup>106</sup> Acknowledging that, equality of women's rights is a fundamental UN concept. For this reason, the Preamble to the United Nations Charter establishes, as one of the core goals of the Organization with the reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."<sup>107</sup> Given the Charter's creation, women had not been able to enjoy the rights which were guaranteed to them and in reaction, several significant resolutions and protocols were hammered out by the Commission on the Status of Women (CSW).<sup>108</sup> In these particular areas, it was assumed that the general human rights treaties better-secured women's rights. So, the CSW, therefore, agreed, in 1974, to prepare a single, systematic, and legally binding instrument and the 1960s saw the rise of a new consciousness of the trend in many parts of the world. As an international legal treaty, it defines the universality of the standards of equality for men and women and calling for steps to be adopted by States Parties to guarantee fair protection for women worldwide.<sup>109</sup> It provides for the adoption of legislation that prohibits discrimination against women at the state level.<sup>110</sup> Because the central purpose of the Convention is to call special attention to the inequalities that women have experienced over the years and to take concrete urgent steps to resolve the imbalances.<sup>111</sup> Article 24 of the convention provides that state parties must undertake to adopt all necessary measures at the national level aimed at achieving a full realization of the rights recognized in the Convention.<sup>112</sup>

CEDAW was identified as a "Bill of Rights for Women" because of its lead role in placing the female half of the world population in the center of human rights issues.<sup>113</sup> Its preamble describes what is defined as VAW and develops an initiative for collective intervention to eliminate that

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<sup>105</sup> Convention on the Elimination of all Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13.

<sup>106</sup> See the Federal Ministry of Women Affairs and Social Development.  
<http://www.womenaffairs.gov.ng/index.php/cedaw>.

<sup>107</sup> United Nations, Short History of CEDAW Convention. Retrieved March 16, 2020, from <https://www.un.org/womenwatch/daw/cedaw/history.htm>.

<sup>108</sup> *Ibid.*

<sup>109</sup> National Coalition on Affirmative Action (NCAA), (2006).

<sup>110</sup> *Ibid.*

<sup>111</sup> United Nations, Short History of CEDAW Convention. Retrieved March 16, 2020, from <https://www.un.org/womenwatch/daw/cedaw/history.htm>.

<sup>112</sup> See Article 24 of CEDAW.

<sup>113</sup> CEDAW, (2012), 30 years working for Women's Rights. P.4.

<https://www.ohchr.org/Documents/HRBodies/CEDAW/30thAnniversaryCEDAW/CEDAWCommemorativePublication.pdf>.

violence.<sup>114</sup> CEDAW is an effort to eradicate VAW by keeping countries to account for discrimination in their territories. For this reason, the rights explicitly enshrined in CEDAW include all facets of women’s lives including, political involvement, education health, employment, marriage, family ties, equality before the law and discrimination, and VAW amongst others.<sup>115</sup> Alike other international instruments, CEDAW stipulates that women shall have equitable political, economic, social, cultural, and civil rights regardless of marital status and allows States to pass national laws banning discrimination under Articles 1, 2, and 3 of the convention.<sup>116</sup> Also, Article (4) requires States to take immediate special steps to speed up the achievement of parity between men and women in reality<sup>117</sup> and to take initiative to change social and cultural trends that perpetuate discrimination (Article 5).

Furthermore, the Convention establishes the foundation for achieving gender equality by ensuring women’s access to equitable opportunity in all fields of life-political, economic, social, and cultural.<sup>118</sup> Given many universal human rights conventions, women are still yet to attain equal rights with men. Additional measures required to secure women’s human rights as the reality of women's “humanity” did not guarantee the security of their freedoms.<sup>119</sup> Through the adoption of the Convention, States are meant to pursue several steps to eliminate discrimination against women of all forms.<sup>120</sup> Also, the Convention reflects in its preamble that the elimination of VAW and the advancement of equality between women and men are core United Nations values that constitute binding responsibilities under the United Nations Charter and other instruments.<sup>121</sup> Noting that discrimination against women contradicts the values of equal protection and regard for human dignity, constitutes an impediment to women’s inclusion in the economic, political and social existence of their countries on an equal level with men.<sup>122</sup>

CEDAW is the only global human rights convention that establishes women’s reproductive rights, which focuses on traditions that allow custom as dominant factors that influence gender norms and family ties. Although, CEDAW does not specifically address VAW. In its General

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<sup>114</sup> Ibid.

<sup>115</sup> See Woman of the World, What is CEDAW, Australian Human Rights Commission. Retrieved April 5, 2020, from <https://www.humanrights.gov.au/our-work/woman-world-what-cedaw>

<sup>116</sup> Ibid, (Article 1, 2, 3).

<sup>117</sup> Ibid, (Article 4).

<sup>118</sup> Ibid, 10.

<sup>119</sup> Ibid.

<sup>120</sup> See CEDAW. Retrieved March 17, 2020, from <https://www.un.org/womenwatch/daw/cedaw/index.html>.

<sup>121</sup> CEDAW, (2012), 30 years working for Women’s Rights. P.4.

<sup>122</sup> Ibid

Recommendation No. 19 (1992) on violence against women, the Committee stated that VAW is “violence directed against a woman because she is a woman or affects women disproportionately.”<sup>123</sup> The terms of CEDAW represented a standard shift in classifying violence in the home as a breach of women’s human rights and in denying justification of VAW on grounds of tradition or culture.<sup>124</sup> Some scholars assign partial blame for VAW in general, to a perceived “culture of violence” in contemporary Africa in which violence is embraced as a way to resolve conflicts and relate this to the colonial past when Africans were treated violently by the colonialists.<sup>125</sup> Nevertheless, across the world, it has been found that nearly one out of every four women experiences domestic violence from those who claim to love or support them. Though, the frequency of VAW varies across countries and continents, with a universal negative effect on individuals and families and has direct links to health problems.<sup>126</sup>

CEDAW also stresses the obligation to take steps to combat VAW. As a general obligation, states parties accept that conventions and other private instruments restricting women’s legal ability ‘shall be found null and void’.<sup>127</sup> This is detailed in the General Recommendation 35 of the CEDAW Committee according to which the state parties are expected to “ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. Fees or court charges should not be imposed on victims/survivors”.<sup>128</sup> Similarly, in December 1993, the Resolution on the Elimination of Violence against Women acknowledged that VAW threatens women’s rights and basic freedoms.<sup>129</sup> Also, the Convention imposes legal obligations for all countries who have signed to be obliged by the Convention by ratification or accession, and these nations are regarded as “Parties of Governments.”<sup>130</sup> To review the progress of member states of the convention, there is an existing committee in a place whose primary responsibility is to assess enforcement of the CEDAW provisions, through analyzing reports that are regularly sent by States parties in line with Article 18

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<sup>123</sup> CEDAW/A/47/38, 1992.

<sup>124</sup> W. Lynn., H. Sarah, (2005), Honor Crimes, Paradigms and Violence against Women, Spinifex Press. Pp.13.

<sup>125</sup> Bowman, C. (2002). Theories of domestic violence in the African context. *American University Journal of Gender, Social Policy the Law*, 11(2), p. 847-864.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid, (Article 15).

<sup>128</sup> CEDAW General Recommendation No. 35 on gender-based violence against women. <http://docstore.ohchr.org/>.

<sup>129</sup> Resolution on the Elimination of Violence Against Women

<sup>130</sup> CEDAW, (2012), 30 years working for Women’s Rights. P.4.

of the convention.<sup>131</sup> Based on such findings, it makes suggestions and guidelines for each State Party referred to as Concluding Observations.<sup>132</sup> Nigeria on its part is yet to meet most CEDAW obligations regarding equal economic, social and political rights of Nigerian women as well as providing women the right to protection against gender-based violence in its optional protocol on discrimination against women.<sup>133</sup>

### 1.2.3 African Charter on Human and People's Rights (ACHPR)

Like other human rights instruments, the ACHPR provides for the promotion and protection of women's rights. As well as a strong and beneficial impact on environmental protection, civil and political freedoms, and global corporate control in Nigeria.<sup>134</sup> Nigeria signed it in 1983.<sup>135</sup> As well as its optional protocol in 2004.<sup>136</sup> After which it included the treaty into its domestic law,<sup>137</sup> and internalized it through the Federal Ministry of Women Affairs and Social Development (FMWASD) in its domestic operations.<sup>138</sup> Nigeria's inclusion of the ACHPR into its CFRN as part of the Nigerian public law presents a powerful standard for the protection of women's rights in Nigeria.<sup>139</sup> As well as Nigeria's adherence to human rights principles. Besides, the protocol to the African Charter, under its provisions explicitly deals with issues of VAW, child abuse, domestic and workplace protection, assaults against women and other gender-related issues to create safety and development for women in Africa.<sup>140</sup> Generally, aside from the various legal mechanism put in place to eliminate VAW, the issue of gender-based violence remains on the rise. The need to eliminate the gross violation of women's rights in Africa necessitated the creation of a legal framework that would undeniably define the rights of women and advocate that African states protect those rights. For this goal to be achieved, the African Charter on Human and Peoples Rights, include direct provisions for the protection of women's rights in the society at the regional and

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<sup>131</sup> Ibid

<sup>132</sup> Ibid.

<sup>133</sup> Optional Protocol to the Convention on the Elimination of Discrimination against Women Adopted by General Assembly A/RES/54/4, (1999).

<sup>134</sup> African Charter on Human and Peoples' Rights, (ACHPR) (1981). Art.2.

<sup>135</sup> C. Ojukwu, (2000), Enforcement of the African Charter on Human and Peoples' Rights as Domestic Law in Nigeria. International Legal Practitioner, P.1.

<sup>136</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (2005).

[https://au.int/sites/default/files/treaties/37077-treaty-0027\\_-\\_protocol\\_to\\_the\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_on\\_the\\_rights\\_of\\_women\\_in\\_africa\\_e.pdf](https://au.int/sites/default/files/treaties/37077-treaty-0027_-_protocol_to_the_african_charter_on_human_and_peoples_rights_on_the_rights_of_women_in_africa_e.pdf)

<sup>137</sup> African Charter on Human and Peoples' Rights, Art. 4-5.

<sup>138</sup> Federal Ministry of Foreign Affairs and Social Development (FMWASD), (1995). Retrieved March 20, 2020, from <http://womenaffairs.gov.ng/index.php/about-us/about-us>.

<sup>139</sup> See African Charter on Human and Peoples' (Enforced and Ratified) Act, (1990). <http://www.nigeria-law.org/African%20Charter%20on%20Human%20and%20Peoples'%20Rights.htm>.

<sup>140</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (2005), art.2 (1).

domestic levels.<sup>141</sup> Alike the UDHR, Under Article 18 (3) the Charter provides that, State parties shall ensure the elimination of all forms of discrimination against women and also ensure the protection of the rights of women as stipulated in international declaration and Conventions.<sup>142</sup> This laid the foundation for the primary acknowledgment of women's rights under Article 66, as well as the Protocol to the African Charter on Human and Peoples' Rights on Women's Rights in Africa.<sup>143</sup> The protocol comes to be the first legal framework for the protection of women's rights in Africa. Some writers Nigeria did not only adopted CEDAW but have also drafted policies for its enactment, under the constitution.<sup>144</sup> The abovementioned international human rights treaties and policies present the standard for juxtaposition by which the rights and status of women in every society can be evaluated. The abovementioned international human rights treaties and policies present the standard for comparison by which the rights and status of women in every society can be evaluated.

#### 1.2.4 UN Declaration on Elimination of Violence Against Women (DEVAW)

Was ratified by the United Nations General Assembly in 1993, and defined VAW as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty,

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<sup>141</sup> ACHPR (1981), Art.1 and 2.

<sup>142</sup> Ibid, Article 18 (3).

<sup>143</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (2005). Art.2 (1).

<sup>144</sup> Section 12 of the Constitution of the Federal Republic of Nigeria, (1999).

whether occurring in public or private life'.<sup>145</sup> Article 2 stresses on the broad scope of forms of VAW which encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.<sup>146</sup> The Declaration urges states to 'take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women'.<sup>147</sup>

Following the declaration, the Human Rights Commission adopted Resolution 1994/45 appointing a Special Rapporteur on VAW, with four main objectives, including looking for evidence on VAW and suggesting steps, forms, and means to eradicate VAW.<sup>148</sup> The DEVAW and the General Recommendation No. 35 of the CEDAW Committee enact the 'principle of due diligence' obligation. States have a responsibility under this obligation to take effective steps to prevent and defend women from violence, to prosecute perpetrators of violent acts, and to reward victims of violence. The concept of due diligence is important in that it offers the essential connection between human rights commitments and private individual actions.

#### 1.1.4 Beijing Declaration and Platform for Action

Was adopted during the Fourth World Conference on Women held in Beijing (1995) represented an additional landmark in pursuing the path of protecting women from explicit and implicit abuse.<sup>149</sup> It was adopted by Nigeria in 1995. Like other women's rights instruments such as CEDAW, the declaration further stressed on the importance of women's rights in society. It represented an

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<sup>145</sup> UN G.A. Res. 48/104, Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December (1993), art. 1.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid, article 4.

<sup>148</sup> OHCHR, Violence against women. Retrieved April 5, 2020, from <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>.

<sup>149</sup> O. Akanle, D. A., Busari (2015), Lasu Journal of Social Sciences. Vol: 10, Pg.2.



additional landmark in pursuing the path of protecting women from explicit and implicit abuse.<sup>150</sup> The conference successfully developed some policy-oriented path for promoting gender equality and women's abbreviated rights prevention and provides for more female inclusion in politics and other spheres of life, at least 35 percent.<sup>151</sup> Other platforms, schemes, and frameworks have been designed essentially to address VAW and promote gender equality. The Beijing Declaration and Platform for Action is the point of reference for the creation of ensuing international, regional, and national gender equality and women empowerment frameworks.<sup>152</sup> It also urges that state parties punish perpetrators of VAW and state must 'refrain from engaging in VAW and exercise due diligence to prevent, investigate and, under national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons'.<sup>153</sup> An example is a Violence against People Prohibition Act adopted in line with the Beijing platform to foster women's rights protection in Nigeria.<sup>154</sup> The declaration acknowledges that many problems lie ahead. For instance, some of the social standards and structural factors undermining gender equality and women's empowerment appear as strong as they were almost three decades ago. This makes resolving current gender disparities more challenging.

## 1.2 The Legal and Policy Framework for the Protection of Women in Nigeria

Nigeria gained its independence from Britain in 1960. Nigeria has three arms of Government, the Executive, Legislative, and Judicial.<sup>155</sup> There are 36 states and Federal Capital Territory, Abuja as well as 774 Local Government Areas.<sup>156</sup> In Nigeria, there are two dominant religions, Christianity and Islam, and a variety of indigenous beliefs across the country as well as three major ethnic

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<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> The Women's Convention in Nigeria, Heinrich Böll Stiftung, Abuja office, Nigeria.

<https://ng.boell.org/en/2013/10/14/womens-convention-nigeria>. Accessed: 2020-02-25

<sup>153</sup> Strategic objective D.1, Chapter I Resolutions Adopted by the Conference Resolution 1 Beijing Declaration and Platform for Action (1995), p.51. Retrieved April 4, 2020, from <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA E.pdf>.

<sup>154</sup> Ibid.

<sup>155</sup> Abara, C. J., (2012), Gender and Ethnic Inequalities, Discrimination and other Human Rights Abuse., p.3.

<https://www.fihrm.org/wp-content/uploads/2017/07/Chinwe-Abara.pdf>.

<sup>156</sup> Ibid.

groups, the Hausas, the Yoruba, and the Igbo.<sup>157</sup> Northern Nigeria is home to Islamic communities like the Hausas, the Fulani, and the Kanuri, the Igbo are predominantly Christian and are based in the eastern part of the country, while the Yoruba, who observe either Christianity or Islam, is situated in the western part of the country.<sup>158</sup> The Judicial system in Nigeria is plural, while in the northern regions there is constitutional and sharia law intermingling with customary laws in rural areas.<sup>159</sup> The parallel implementation of this three-tier framework provides different degrees of protection for women.<sup>160</sup> Nigeria has a federalist system of government; both the federal and state legislatures have the constitutional right to enact legislation that concerns women and the National Assembly must enact a law before it can be legally permissible in the State.<sup>161</sup> Which makes pursuing redress for VAW case in Nigeria almost impossible.

The Nigerian Constitution affords women some legal protections.<sup>162</sup> These rights are complemented by national policy and legal framework that acknowledges gender disparity through various federal and state sectors and conceptual areas. The fundamental rights clauses of the Constitution<sup>163</sup> as well as the various international human rights principles adopted by Nigeria such as CEDAW.<sup>164</sup> However, equality, dignity, and government policy at the moment does not support restructuring customary laws and practices but are firmly committed to protecting women's rights in society.<sup>165</sup> The lack of reform and proper implementation of its international obligation remains a challenge to protecting women in Nigeria which is the reason Nigeria lags in its human rights scores, compared to other countries of the world.<sup>166</sup> Contrary to the provisions of international law and treaties, in Nigeria men and women are not equal in society.<sup>167</sup> Yet, it may seem that the abovementioned legal frameworks are ineffective in protecting the average Nigerian woman from violence and enforcement of punishment on perpetrators. Although, the Nigerian constitution deals with gender

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<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> World Bank, (2019), Gender-Based Violence, an Analysis of the Implications for the Nigeria for Women Project. Pp.6. [www.worldbank.org](http://www.worldbank.org)

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> CFRN Section 33.

<sup>163</sup> CFRN Chapter IV section.

<sup>164</sup> (CEDAW) (1979) RES/34/180.

<sup>165</sup> I. Worugji, R. R. Ugbe, (2013), Judicial Protection of Women's Rights in Nigeria, the Regrettable Decision in *Mojekwu v. Iwuchukwu*. University of Botswana Law Journal, 16, 59-72.

<sup>166</sup> Odejide, 2017, as cited in Ekhaton 2019.

<sup>167</sup> Nigeria (2018), Global Gender Gap Index 2018. <https://countryeconomy.com/demography/global-gender-gap-index/nigeria>.

discrimination as one of the prohibited reasons on which prejudice is forbidden.<sup>168</sup> Yet, the definition of discrimination provided for in Section 42(1) (a) (b), (2) and (3) of the 1999 Federal Republic of Nigeria Constitution is limited.<sup>169</sup> While under the provisions of CEDAW, Violence or discrimination against women is explicitly defined as “any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their Marital status, on the grounds of gender equity, human rights and basic freedoms in political, economic, educational, cultural, constitutional or other areas.<sup>170</sup> Adopting CEDAW is one thing, domesticating it is another and in the case of Nigeria, its inability to implement the convention opens doors to more discrimination and VAW in Nigeria. Giving that CEDAW recommends that state parties must ensure that legislation on gender-based violence provides adequate protection to all women and respect for their integrity and dignity.<sup>171</sup> Several reports have also shown that Nigeria has not been successful in providing women the necessary protection. The reason is that the court of law does not refer to the provisions of CEDAW when addressing the violation of women's rights. But instead, refer to the general provisions of the constitution. This is because there are limitations within article 12 that contradicts the power of the court of law in providing justice.

### 1.2.3 Constitutional rights

The Constitution of the Federal Republic of Nigeria (CFRN) (1999) affords basic privileges that apply to its citizens under section 33.<sup>172</sup> These involve but are not limited to, the right to life (33);<sup>173</sup> the right to the dignity of the human person (34);<sup>174</sup> the right to personal liberty (35);<sup>175</sup> the right to a fair hearing (36);<sup>176</sup> the right to private and family life (37);<sup>177</sup> the right to freedom of thought (38);<sup>178</sup> conscience and religion (39);<sup>179</sup> the right to freedom of expression and the press (40);<sup>180</sup> the

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<sup>168</sup> The Nigeria NGO Coalition on CEDAW (2008), CEDAW and Accountability to Gender Equality in Nigeria, a Shadow Report. (2008). Pp.29.

<sup>169</sup> See, Section 42(1) (a) (b), (2) and (3) of the Constitution of the Federal Republic of Nigeria, (1999).

<http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.html>.

<sup>170</sup> Article 4 (c) of the CEDAW.

<sup>171</sup> See NCAA, Domestication of CEDAW. [http://www.aacoalition.org/domestic\\_cedaw.htm](http://www.aacoalition.org/domestic_cedaw.htm).

<sup>172</sup> See Chapter IV on Fundamental Rights, of the Constitution of the Federal Republic of Nigeria (1999), as amended in 2010. Section 33. <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>173</sup> *Ibid.*, section 33.

<sup>174</sup> *Ibid.*, 34.

<sup>175</sup> *Ibid.*, 35.

<sup>176</sup> *Ibid.*, 36.

<sup>177</sup> *Ibid.*, 37.

<sup>178</sup> *Ibid.*, 38.

right to peaceful assembly and association (41);<sup>181</sup> the right to freedom of movement (42);<sup>182</sup> the right to freedom from discrimination (43);<sup>183</sup> the right to acquire and own immovable property (44);<sup>184</sup> restriction on and derogation from fundamental human rights (45);<sup>185</sup> and right to special jurisdiction of High Court and Legal aid (46).<sup>186</sup> In general, while the CFRN guarantees for the protection of women's rights against violation, it leaves gaps that justify other discriminating archaic law. These laws include some aspects of the Constitution, Customary law practices, the Penal Code Act among others.

Chapter II of the constitution on the Fundamental Objectives and Directive Principles of State Policy. Provide for the rights of all citizens under section 17(1), the state's social order is founded on the ideals of freedom, equality, and justice. Section 17(2) notes that in furtherance of the social order: (a) every citizen shall have equality of rights, obligations, and opportunities before the law; and (b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.<sup>187</sup> The inference of section 17 is that everyone is equal and there should be no form of inequality; all citizens, whether male or female, should be treated equally. This suggests that male citizens should not dominate their female counterparts. However, the provisions of Chapter II of the Constitution are plain policy guidelines and are unenforceable because of the implicit constraints in Section 6 (6) (c) of the same constitution. "The judicial powers vested following the foregoing provisions of this section: shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution."<sup>188</sup> Consequently, these provisions do not give legal protection to women and in case of violation, it cannot be remedied in court.

Likewise, the prohibition of discrimination on grounds of sexuality is provided for in Section 42. However, sub-section (3) of the provision stipulates that nothing in subsection (1) of this section

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<sup>179</sup> Ibid., 39.

<sup>180</sup> Ibid., 40.

<sup>181</sup> Ibid., 41.

<sup>182</sup> Ibid, 42.

<sup>183</sup> Ibid, 43.

<sup>184</sup> Ibid,. 44.

<sup>185</sup> Ibid., 45

<sup>186</sup> Ibid., 46

<sup>187</sup> CFRN, Chapter II on the Fundamental Objectives and Directive Principles of State Policy. Art.17.

<sup>188</sup> Section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria.

invalidates any law by reason only that the law imposes restrictions concerning the appointment of any person to any office under the State or as a member of the armed forces or police or to an office in the service of a body, established directly by any law in force in Nigeria.<sup>189</sup> This gives a scope for women to be discriminated against. Thus, access to public service positions can be limited to women. For example, section 111(g) of the Police Act forbids a married woman's enlistment into the police force.<sup>190</sup> Likewise, an unmarried police officer who is pregnant may lose her employment and can only be identified on the consent of the Police Inspector General.<sup>191</sup> Additionally, a single police officer can only marry until she obtains the police commissioner's official approval.<sup>192</sup> Similar limitations are not in place for men, the law directly discriminates against women, which has drastic economic implications for women and violates Article 11 of the CEDAW,<sup>193</sup> as well as the constitution non-discrimination provision under section 42.<sup>194</sup> In addition to the Constitution, other national law includes clauses that protect women's freedoms in Nigeria. Such as the Criminal Code and Penal Code among others.

### 1.3.1 Nigerian Customary laws

Nigeria is a multi-ethnic nation, Nigerian legislation comes from three different laws: the Customary law, the Sharia law, and the English Law obtained from England as well as 350 customary laws, subject to validity testing and the Charter of 1886 of the Royal Niger Company which specifies that the customs and laws of the people of its territories shall be preserved and upheld in the administration of justice.<sup>195</sup> Many Nigerian customary laws are made up of several gender inequality. A dimension of this traditional law that breaches women's rights is the tradition of widowhood.<sup>196</sup> However, several states have legislated against this law with the suggestion that these practices do not pass the test of inconsistency within these states.<sup>197</sup> Another of those customs is the tradition of child marriage. Some cultures in Nigeria encourage child marriage which leads to

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<sup>189</sup> Section 42 (3) of the 1999 Constitution.

<sup>190</sup> Section 111(g) of the Police Act.

<sup>191</sup> Section 127 of the Police Act.

<sup>192</sup> Section 124 of the Police Act.

<sup>193</sup> CEDAW/RES/34/180, (1979), art.11. Provides that, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

<sup>194</sup> Section 42 of CFRN.

<sup>195</sup> C.W. Newbury (1965), *British Policy towards West Africa: Selected Documents (1875 – 1914)* Hutchinson & Co. Publishers Ltd. Pg.254.

<sup>196</sup> M. Ellsberg., Heise. L (2005), Pg.14.

<sup>197</sup> The Prohibition of Infringement of Widows and Widowers Fundamental Rights Law (2001).

the girl-child having children before the full development of her body with its consequences.<sup>198</sup> In these marriages, the brides are unable to manage the uncertainties that existence will force upon them with far-reaching mental, psychological, physical, and economic implications. Until now, the Marriage Act does not allow for the age of marriage, however, a variety of laws were passed as a reaction to this.<sup>199</sup> Under CEDAW the minimum age for marriage is 18, as does the Child Rights Act (2003),<sup>200</sup> and guarantees men and women equal rights in marriage, in terms of consent to marriage, child custodial rights, the right to divorce and all other marital privileges.<sup>201</sup>

Nigeria is a multi-ethnic nation, with various customary laws. The Nigerian law generally includes the English Law obtained from Britain during the colonial era and 350 customary laws, subject to validity testing.<sup>202</sup> Through the following three tests: an Islamic or customary law must be repugnant to natural justice, a good conscience, and equity. Secondly, an Islamic or customary law must not be incompatible, directly or by implication with any law presently in force. Lastly, Islamic or customary law norms must be contrary to public policy.<sup>203</sup> The Charter of 1886 of the Royal Niger Company specifies that the customs and laws of the people of its territories are preserved and upheld in the administration of justice.<sup>204</sup> The Act repealed some norms deemed barbaric and inappropriate in the Islamic and customary law. This relates to some of the discriminating provisions included in some legal acts used in Nigeria today. Many Nigerian customary laws support and are the cause of gender inequality. These customary laws are unwritten indigenous Nigerian customs observed by different ethnic groups in Nigeria. In some parts of Nigeria. For example, in the eastern part of Nigeria, the Igbo ethnic group rely on customary law to solve issues regarding land, and the right of inheritance. A dimension of this traditional law that breaches women's rights is the tradition of widowhood. Several states have legislated against this law with the suggestion that these practices do pass the test of inconsistency within these states.<sup>205</sup>

Another of those customs is the tradition of child marriage which affects the developmental cycle of children (girls). Correspondingly, in these unions, they are unable to manage the uncertainties that

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<sup>198</sup> Fatima L. Adamu & Oluwafunmilayo J. Para-Mallam (2012) The role of religion in women's campaigns for legal reform in Nigeria, *Development in Practice*, Pg.59. DOI: 10.1080/09614524.2012.685875

<sup>199</sup> Child Rights Act, Child Rights Laws of Lagos and Benue States and the Girl Child Marriages and Female Circumcision (Prohibition) Law, Cross River State, (2000).

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> C.W. Newbury (1960) *British Policy towards West Africa: Selected Documents (1875 – 1914)*, pg.254.

<sup>203</sup> A.A. Oba (2011), *Religious and Customary Laws in Nigeria*. pg.888. <https://www.Cia.Gov/Library/Publications/The->

<sup>204</sup> Ibid. C.W. Newbury (1960), pg.254.

<sup>205</sup> The Prohibition of Infringement of Widows and Widowers Fundamental Rights Law (2001).

existence will force upon them with far-reaching mental, psychological, physical, and economic implications. An indication of this is the Marriage Act, which does not specify for a minimum age for marriage, even though it punishes marriage with a minor without seeking the permission needed under section 48.<sup>206</sup> However, several laws were passed as a reaction to this.<sup>207</sup> Equally, Under Section 18 of the Marriage Act, the written consent of the father of either party to an intended marriage is required if he or she is under 21 years of age.<sup>208</sup> Mothers can only consent to marriage only if the father is dead or of unsound mind or absent from Nigeria that the written consent of the mother may be required. This provision is rather discriminating against women and perceive women as a last resort concerning decision making in the family.

#### 1.2.4 Other legislative acts

The Violence against Persons Prohibition Act (VAPP) 2015<sup>209</sup> is a domestication of some of the broad principles of the Beijing Platform for Action and the CEDAW. The Act is focused on more than a decade of multi-stakeholder collaboration between the Legislative Advocacy Coalition on Violence against Women (LACVAW), several women rights-focused NGOs, Women in Parliament caucuses, and the Federal Ministry of Women's Affairs and Social Development. The act puts women's rights within a hierarchical framework of independence from economies.<sup>210</sup> The VAPP Act addresses issues that have not been previously recognized under Nigerian law, such as economic abuse, a predominant form of gender-based violence suffered by Nigerian women in the past. It can be argued that the goal of defending the right of women is justifiable in the light of what the rule of law establishes.<sup>211</sup> The Act provides for victims of domestic violence to request for a restraining order against perpetrators. Section 38(1) stipulates that victims of violence have the right to all remedies permitted by international law. Issues not recognized under Nigerian law, for example, economic abuse, are dealt with in this Act.<sup>212</sup> Besides, the Act offers a specific description of actions that are defined as violent in this respect and does not restrict abuse to physical or sexual

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<sup>206</sup> Marriage Act (2004), section 48 CAP M6 LFN.

<sup>207</sup> Child Rights Act, Child Rights Laws of Lagos and Benue States and the Girl Child Marriages and Female Circumcision (Prohibition) Law, Cross River State, (2000).

<sup>208</sup> Marriage Act. Section 18.

<sup>209</sup> Violence Against Persons Prohibition Act (VAPP) (2015) <https://www.naptip.gov.ng/wp-content/uploads/2017/05/Violence-Against-Persons-Prohibition-Act-2015-1.pdf>.

<sup>210</sup> Federal Republic of Nigeria National Beijing + 25 Review Produced by the Federal Ministry of Women Affairs and Social Development, (2019), p.6.

<sup>211</sup> Ibid.

<sup>212</sup> Violence Against Person (Prohibition) (VAPP) Act, (2015), section 12

violence but includes economic damage as well and includes protections which criminalize rape, physical damage, spousal abuse, harmful cultural practices, intimidation, coercion, and political violence As well as VAW. The Act forbids, among many issues, FGM and inappropriate widowhood practices.<sup>213</sup> Each of these acts is punishable ranging from life in prison in some cases of rape, to two years prison sentences or the alternative of a fine for giving the judiciary misinformation. Several states also domesticated the statute, such as Abia, Benue, Bayelsa, Benue, Cross Rivers, Edo, Osun, Ogun, and Rivers state. Thus VAW, including female genital mutilation, is regulated and forbidden only marginally in the nation.

### The Criminal Code Act (CCA)

It is applicable in the southern and western parts of Nigeria. The CCA is embedded in the Nigerian criminal justice system and includes laws that protect women from violence. The CCA defines what constitutes abuse, breach of civil rights, and criminal acts.<sup>214</sup> Unlike the PCA, for example, it is a crime for a husband to assault his wife.<sup>215</sup> The punishment depends on the degree and impact of the aggression he used on his wife and is punishable by 2, 3, or 7 years in prison, depending on whether he is guilty of assault, injury, or grievous damage for his conduct. Within Criminal Code section 358, rape carries a life sentence. Chapter 21 of the Code often covers a broad spectrum of offenses, including initiating or facilitating the seduction of a child within sixteen years; kidnapping of girls within the age of eighteen with the purpose of carnal knowledge and sex trafficking. Nevertheless, The Code also contains provisions that uphold the tradition of violence and inequality against women. For example, sections 216 and 360 of the Code provide for sexual abuse offenses against a boy/girl correspondingly.<sup>216</sup> Whereas in the case of a boy victim the violation is punishable by sentence for a maximum of seven years, in the case where for the same crime the victim is a girl, it is punishable by a sentence for a maximum of two years. Again the problems resulting from the restrictions imposed on the implementation of section 218 render the law a caricature. For example, the prosecution is restricted within two months following the occurrence of the offense. Only on the

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<sup>213</sup> Ibid, see (VAPP) Act, section 6, 13 and 46.

<sup>214</sup> Criminal Code Act, chapter 77, (1916). Retrieved April 17, 2020, from <http://www.nigeria-law.org/Criminal Code Act-Tables.htm>.

<sup>215</sup> See, section 40 of the Constitution of the Federal Republic of Nigeria.

<sup>216</sup> D.C. Brody, J. A. James (2014), Criminal Law. 3rd Edition. Pg. 292. <https://books.google.ee/books?>



substantiated witness evidence will an individual be prosecuted. Such restrictions allow criminals lenience and perpetrator to go unpunished while the victim is deprived of justice.

## The Penal Code Act

Like the CCA, the Penal Code introduced in 1960 into Nigerian criminal law is applicable in the Northern part of the nation.<sup>217</sup> The Code is enshrined with provisions protecting women and girls from rape, sexual harassment, and incest.<sup>218</sup> But there are also provisions in the Code that legitimize VAW. The Sharia Penal Code is in effect in Nigeria with clauses covering oppressive flogging and stoning to death for fornication and adultery in over thirteen Northern states.<sup>219</sup> This discriminatory act of VAW is provided for under the Sharia law, permitting the punishment of wives as a means of rectification.<sup>220</sup> This act violates Article 4 of the 1993 UN Declaration on VAW, which stipulates that States shall reject VAW and should not invoke any practice, tradition, or religious value to evade their elimination obligations.<sup>221</sup> While certain sections of the State PCA is yet to test VAW in the Northern part of the nation, there are other clauses of the same codes that protect women's rights against violence; for example, Section 239 of the Zamfara State Sharia Penal Code Law of (2000) forbids and punishes sex trafficking.<sup>222</sup> In the case of Safiya Hussein of Sokoto State who was sentenced to death by stoning for adultery, the issue was the trial of Sharia Court Judge who misinterpreted the substantive Penal Code and refused to comply with all the procedural protections applicable to convicted persons such as Safiya under the Sokoto State Criminal Procedure Code Rule of 2000.<sup>223</sup> Initially, the Penal Code was operational in all the states in the North. However,

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<sup>217</sup> Penal Code (Applicable in Northern Nigeria) Federal Provisions Act of Nigeria, (1960).

<sup>218</sup> Ibid, Penal Code section 282, 268 and 390 respectively.

<sup>219</sup> See for example Human Rights Watch. (2002). Sharia Stoning Sentence for Nigerian Woman. <https://www.hrw.org/news/2002/08/20/sharia-stoning-sentence-nigerian-woman>

<sup>220</sup> Penal Code, section 55 (1).

<sup>221</sup> Article 4 of the UN Declaration on Violence against Women.

<sup>222</sup> 239 of the Zamfara State Sharia Penal Code Law of (2000). Section 239.

<sup>223</sup> See details of the case at Yawuri, A. M. (2007), On Defending Safiyatu Hussaini and Amina Lawal. Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook, (August 2003), Pg. 129–132.

recently some northern states have extended the responsibility of the Penal Codes to criminal matters. Accordingly, the Sokoto State Sharia Court of Appeal, under section 187(2) of the PCA, permitted Safiya's appeal and overruled her prosecution based on a miscarriage of justice contrary to the nature and purposes of the Sharia Criminal Justice Framework embodied in the Law.<sup>224</sup>

## The National Gender Policy of (2006)

Before the VAPP, the National Gender Policy was adopted and signed by all 36 states.<sup>225</sup> The overarching objective of the National Gender Policy was to create a stable society, free from discrimination, to unleash the maximum capacity of all social classes regardless of gender or conditions, to foster the enjoyment of basic human rights and to secure the welfare, social, economic and political well-being of all persons with a purpose to achieving equal sustainable economic growth;<sup>226</sup> Evolve an evidentiary framework of planning and governance where human, social, financial and technological assets are mobilized quickly and successfully for sustainable development.<sup>227</sup> Statistics have shown that one in three women and girls between the age of 15 and 24 has been victims of violence in Nigeria.<sup>228</sup> Currently, there is far fewer women participation in elective and appointive roles in diverse national institutions.<sup>229</sup> This is agreeable due to the rate at which VAW continues to prevail in Nigeria. Whereat least 28 percent of women in Nigeria have at one point in their life suffered physical violence.<sup>230</sup> Culturally, these forms of violence are often excused and accepted, and not condemned. Sadly, most VAW is perpetrated by a male such as brothers, fathers, and husbands.<sup>231</sup> The percent of violence increase every time VAW is ignored. Nigeria has attempted to address the VAW also through institutional mechanisms. Such as the creation of the Federal Ministry of Women Affairs and Social Development (FMWASD) in 1995.

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<https://ssrn.com/abstract=1470205>. <https://nigerianwomentrustfund.org/wp-content/uploads/National-Gender-PolicySituation-Analysis.pdf>

<sup>224</sup> Ibid.

<sup>225</sup> National Gender Policy (2006).

<sup>226</sup> National Coalition on Affirmative Action (NCAA). (2006).

<sup>227</sup> Ibid.

<sup>228</sup> British Council. (2012). Gender in Nigeria report. Improving the Lives of Girls and Women in Nigeria, Issues Policies Action 2nd edition.p.13. Accessed at: <https://www.britishcouncil.org/sites/default/files/british-council-gender-nigeria2012.pdf>.

<sup>229</sup> L. Kelly (2019). Barriers and enablers for women's participation in governance in Nigeria. pg. 4.

[https://assets.publishing.service.gov.uk/media/5d430c8eed915d09ddb354a/596\\_Nigerian\\_Women\\_Governance.pdf](https://assets.publishing.service.gov.uk/media/5d430c8eed915d09ddb354a/596_Nigerian_Women_Governance.pdf).

<sup>230</sup> National Population Commission and ICF International, (2013), Nigeria Demographic and Health Survey, at 304.

<sup>231</sup> I. Nnadi, (2012), pg. 50

To provide an administrative center to tackle the issues facing women.<sup>232</sup> As part of a response to the UN Agreement developing institutional frameworks for advancing women's issues.<sup>233</sup> Although the Commission acknowledged its functions as a federal body, it was somewhat ad-hoc with no clear and sufficient budget allocation.<sup>234</sup> In 1995, the FMWASD indicated that Nigeria had accomplished one of the Beijing Declaration and Platform for Action objectives.<sup>235</sup> According to international human rights standards, Nigeria's Constitution guarantees equality for all Nigerian citizens irrespective of ethnic group, place of origin, gender, religion, or political opinion. However, disregarding the provision of CEDAW, implies it does not establish the prohibition of discrimination against women.

In conclusion, women do not get afforded legal protection when faced with discrimination or VAW. Due to factors such as religious and cultural resistance to the provisions of women's rights instruments mentioned in this thesis such as CEDAW. The realization of the objectives of CEDAW through its implementation is more theory than practical. Since the government focuses more on ratification of treaties rather than putting the right mechanism in place to ensure that these instruments reflect on the legal outcomes in Nigeria through domestication. Knowing that these international frameworks aim to ensure that people can enjoy their life free from all forms of violence, with access to basic amenities and justice systems. However, the lack of motivation in bringing these instruments into fruition raises questions concerning Nigeria's adherence to its international human rights obligations.

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<sup>232</sup> World Bank. (2019). Gender-Based Violence: An Analysis of the Implications for the Nigeria for Women Project. Pp.8. <http://documents.worldbank.org/curated/en/731521555064925144/pdf/Gender-Based-Violence-An-Analysis-of-the-Implications-for-the-Nigeria-for-Women-Project.pdf>

<sup>233</sup> Federal Ministry of Foreign Affairs and Social Development (FMWASD), (1995). Retrieved March 20, 2020, from <http://womenaffairs.gov.ng/index.php/about-us/about-us>.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

## 2 Women's Rights Struggle and the Emergence of CEDAW in Nigeria

This chapter discusses women's rights and Nigeria's international human rights obligation specifically CEDAW, which provides for the protection of women's right to equal treatment and opportunity in society. Also, it shed light on women's struggles in fighting against discrimination and the promotion of equal rights and opportunity in Nigeria. Through several historical events that have come to shape the freedom of women all over Nigeria enjoy today. Furthermore, chapter studies the background and formation of CEDAW and brief background of Nigeria's adoption of this important women's rights.

### 2.1 An Overview of Women's Right in Nigeria

Globally, women makeup around half of the world's population and typically contribute to social growth in critical ways. Nigerian women play a significant role in food production, and major agricultural processes, including harvesting, processing, transport, and marketing. As well as Participation in political activities.<sup>236</sup> Of these various positions listed, women's movement has created the latter. Nigerian women have indeed come a long way to achieving the rights they now enjoy, but the reality is still really disappointing. In Nigerian women still play a marginal role in society, especially in politics, even though their rights were assured under the 1979 constitution. Shockingly, one can agree that gender disparity within the Nigerian political structure still exists. Since, in most Nigerian government offices, like the office of the President, the relevant positions are held by men. While Women are only used as basic objects of their partners and not as equal human beings. An example is the role of the first lady of Nigeria, during previous regimes since Nigeria became a democratic state in 1999, the role of the first lady used to be significant to the affairs of the state as well as women empowerment. However, since the current Mohammadu Buhari regime, there is a drastic limitation to the role of the first lady (due to Islamic belief on the role of women). More shockingly, during a 2016 presidential visit to Germany, the president insisted that the duties of the first lady are in the kitchen and the bedroom.<sup>237</sup>

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<sup>236</sup> O. I. Aina (1993), *Mobilizing Nigerian Women for National Development: The Role of the Female Elites*. African Economic History, 21, Pg.21. <https://doi.org/10.2307/3601806>.

<sup>237</sup> See BBC News, *Nigeria's President Buhari: My wife belongs in kitchen*, Retrieved March 18, 2020, from <https://www.bbc.com/news/world-africa-37659863>.

Historically, Nigerian women played a crucial role in politics and other spheres of society during the pre-colonial era when the African social structure and the mode of division of labor were along gender lines, and women dominated such occupations as food producers, mat weaving, and pottery making, and cooking.<sup>238</sup> One can attribute the upturn in women's rights in Nigeria today, to the efforts of Nigerian women who indulged in politics and activism through women's empowerment. In 1929, the Aba Women Riots began and the origin of the riots emerged from 1 January 1914, when the first colonial governor of Nigeria, Lord Lugard, founded the structure of indirect rule in Southern Nigeria.<sup>239</sup> Under this scheme, the British administrators ruled locally by way of "warrant chiefs", effectively Igbo designated by the governor. The riot was driven by women in the provinces of Calabar and Owerri in south-eastern Nigeria, which was recognized in British colonial history as the "Aba Women's Riots of 1929" or as the "Women's Revolution."<sup>240</sup> Thousands of Igbo people mobilized a huge uprising against the policies implemented in southeastern Nigeria by British colonial authorities, touching upon the most severe threat to British control in colonial history.<sup>241</sup> It took months for the riot to overthrow the regime and this move has been recorded as the landmark symbol of feminist and anti-colonial activism.<sup>242</sup> These women were in charge of supplying food to the rising urban communities in Calabar, Owerri, and other Nigerian regions.<sup>243</sup> They believed the taxes would push many of the women on the street out of business and severely threaten the people's supply of food and non-perishable products.<sup>244</sup> During this period, these women targeted colonial run businesses and Barclays Bank and burst into prisons, freeing inmates, as a result, the colonial soldiers and police shot into the crowds at Calabar and Owerri, murdering over 50 people and injuring over 50 others. During this two-month-long riot, at least 25,000 Igbo women participated in the demonstrations against British officials. They then targeted and burnt colonial-run Native Courts and this resulted in the colonial authorities abandoning their plans to place a tax on women's business sector and curtail the warrant chief's control. Today, the women riot is regarded as the first significant hindrance for Colonial authority in Nigeria and West Africa.<sup>245</sup> Another example is women's suffrage. Women's rights activists such as Funmilayo Ransome-Kuti and Margaret Ekpo led several protests against the colonial regime that significantly shaped the

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<sup>238</sup> F. O. Falola (2007), the role of Nigerian women. Britannica. <https://www.britannica.com/topic/role-of-Nigerian-women-1360615>.

<sup>239</sup> Black Past, (2009), Aba Women's Riots (November-December 1929). <https://www.blackpast.org/global-african-history/aba-womens-riots-november-december-1929/>.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

<sup>242</sup> O. Abegunrin, et al (2016), Pan-Africanism in Modern Times: challenges, concerns, and constraints.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Black Past, (2009), Aba Women's Riots (November-December 1929).

women's rights movement in Nigeria. During the women's suffrage, the politics of southern Nigeria was challenged in waves, beginning in 1950, and in the general elections of 1959, where women participated and sought seats, but no Northern women (mostly Muslim) were permitted to vote and in 1958, women from Southern Nigeria were granted the freedom to vote. However, in 1978 Northern women got their full voting rights 20 years later.<sup>246</sup> This is because most northern states still live by the Sharia law which in several ways restricts the rights of women.<sup>247</sup> Nonetheless, women's struggle against sexism and gender-based violence has been a debate since the 19th century. When women's movements started to take form during the struggle for national liberation and the development of the standard of life.<sup>248</sup> During this period, feminism gained interest, as a consequence of numerous efforts by women to secure equality for both women and men. Its objective was to ensure that women should have no less political, cultural, and civil rights just because they are women.<sup>249</sup> Women's movement has gained more ground in Nigeria in its present form coherent, coordinated, with clear goals and ideology, with the establishment of the Women in Nigeria (WIN) movement in 1983 following a national conference on the same issue in 1982.<sup>250</sup> Undoubtedly, before the advent of international human rights in Nigerian women have been fighting for equal rights and opportunities through the abovementioned movements to demand their rights. However, it was not until recently with several international, regional, and domestic women's human rights treaties, conventions, and policies that women's rights progressed in Nigeria.

## 2.2 Development of Human Rights in Nigeria

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<sup>246</sup> Ibid.

<sup>247</sup> Legit Nigeria. (2019), Rights of women in Nigeria: a long way. <https://www.legit.ng/1213013-history-womens-rights-nigeria.html>.

<sup>248</sup> Ibid.

<sup>249</sup> O. Elizabeth, (2018), History of feminism in Nigeria. Retrieved March 18, 2020, <https://www.legit.ng/1120101-history-feminism-nigeria.html>.

<sup>250</sup> Ibid.

Nigeria saw the emergence of human rights following the advent of colonial rule. Human rights and fundamental freedoms were accepted in traditional Nigerian cultures and in the modern notion, the concept of freedom was not formed.<sup>251</sup> Rights such as the right to kin, family and tribe identity, freedom of speech, opinion and participation, as well as the right to possess the private property and the right to participate in the administration of the affairs of society were jealously guarded and the restoration of fundamental human rights in Nigeria in the modern sense could be traced back to the 1960 Independence Constitution and the subsequent ones.<sup>252</sup> The 1960 Constitution on Independence and the 1963 Republican Constitution provide for provisions to protect fundamental human rights. The Constitutions of 1979<sup>253</sup> and 1999 went further by proposing a bill of rights. Under the Nigerian Constitution, chapter II on Fundamental Objectives and State Policy Principles also acknowledged economic, social, political, and cultural rights.<sup>254</sup> The consolidation of human rights provisions in the Nigerian Constitution's aims was to establish a system that preserves political freedom and the social and economic well-being of Nigerians.<sup>255</sup> In places where the Sharia legal system has been firmly entrenched, particularly in the northern region, human rights and basic freedoms have been specifically protected and assured is based on the principles of Islam, which hold equity and justice in high regard. Nonetheless, Colonialism has generally tough traditional values and restricted Nigerian political and economic freedoms.

Not until 1922, that the British Colonial Government proposed a restricted franchise for the first time in Nigeria.<sup>256</sup> As a result of the relentless agitation by early Nigerian nationalists for better political representation led to increased political rights in the pre-independence constitutions resulting in the 1954 Constitution.<sup>257</sup> The constitution was the fourth and last of Nigeria's pre-independence constitutions. The Constitution was considered to have been a roadmap to Nigeria's independence, and it also contains the federal concept in its features that distinguish it from earlier.<sup>258</sup> Even the basic rights and freedoms have been included in the constitutions of Nigeria since 1960. The enforcement of the rights has remained problematic as the nation has suffered

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<sup>251</sup> National Action Plan for the Promotion & Protection of Human Rights in Nigeria 2006 Federal Republic of Nigeria. <https://www.ohchr.org/Documents/Issues/NHRA/nigeria.pdf>.

<sup>252</sup> Ibid., see also S. Eleanya (2018), Nigeria Constitution Development History and legal Complex. <https://lawnigeria.com/2018/03/nigeria-constitution-development-history-and-legal-complex/>

<sup>253</sup> CFRN (1999).

<sup>254</sup> See chapter II of the CFRN, (1999), <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

several military coups.<sup>259</sup> Nigeria had its democratic transition in 1999, and this step had a significant and far-reaching impact on Nigerians fostering and preserving democratic values and individual freedoms.<sup>260</sup> During the Sani Abacha regime in 1993, rights such as freedom of expression, press, and speech were restricted and punishable by death or prison sentence. From the period of 1994 to 1998, Nigeria experienced the most recorded violation of human rights of all kinds and then military leader General Abacha made sure to silence any opposing voice by all means possible even through extrajudicial killings.<sup>261</sup> Since Nigeria was a sovereign state there was little the international community could do to intervene in what could be termed a gross violation of human rights Nigeria has ever experienced.<sup>262</sup> With the help of willful Nigerians led by civil society groups and professional bodies in the field of human rights, they engaged the military in the fight for a better society ruled by constitutionalism, social justice, the rule of law, and respect for human rights.<sup>263</sup> This ultimately led to the Constitution of the Federal Republic of Nigeria and the creation of democracy and democratic institutions in 1999.<sup>264</sup> With its first successful democratic election and democratic president after years of military rule which was accompanied by constant oppression and human rights violation. It is also pertinent to note that during this period all forms of discrimination and VAW were at its peak since it was a military regime and rights were limited during this time.

Today, most of these struggles might not match with the modern definition of a movement, but various forms of interest groups see themselves as part of the same movements.<sup>265</sup> Throughout Nigeria, it can be said that one of the oldest and largest women's movement is the National Council of Women's Societies (NCWS) established in 1958.<sup>266</sup> Nevertheless, the NCWS struggles were mostly unnoticed. One would assume this was because of the absence of media coverage. Nowadays, with the help of technological advancement people can easily sign online petitions from

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<sup>259</sup> Federal Republic of Nigeria, (2006), National Action Plan for the Promotion & Protection of Human Rights in Nigeria, p.3. <https://www.ohchr.org/Documents/Issues/NHRA/nigeria.pdf>.

<sup>260</sup> Ibid.

<sup>261</sup> I. Enemaku, (2016), Chronology of Major Political Events in the Abacha Era (1993-1998).

<https://books.openedition.org/ifra/653?lang=en>.

<sup>262</sup> Ibid,

<sup>263</sup> Federal Republic of Nigeria, (2006), Pg.3.

<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

<sup>266</sup> B. Madunagu, (2008), the Nigerian Feminist Movement, Lessons from 'Women in Nigeria'. (WIN). Review of African Political Economy, 35(118), 666-672. Retrieved February 20, 2020, from [www.jstor.org/stable/20406565](http://www.jstor.org/stable/20406565).

<sup>266</sup> Ibid.,



home to demand their rights. This shows that women in Nigeria have over the years stood against the authorities to demand their rights in a masculine society where discrimination prevails. Paving the way for more women's rights achievements in Nigeria in recent years.

### 2.3 Nigeria's Accession to CEDAW

In 1985, Nigeria became a State Party to the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) when it ratified it unreservedly, signed the Optional Protocol in 2000, and ratified it in 2004.<sup>267</sup> As a party to CEDAW, Nigeria agrees to all necessary measures, including the implementation of legislation and immediate special measures to allow women to retain all of their human rights and basic freedoms. As discussed above, CEDAW is a significant legal tool for ensuring fair justice for women across the world. Under its obligation, Nigeria is obligated to report to the CEDAW Committee, which is responsible for monitoring the national enforcement of the Convention principles.<sup>268</sup> The process of realizing the rights set out in the Convention involves continuing efforts on the part of States which are expected to submit periodic reports to the Committee after submitting an initial report, generally every four years. Following ratification, since 1998 Nigeria has provided the requisite initial report shortly after one year of ratification. It further has submitted the correct corresponding reports; the 2<sup>nd</sup> and 3<sup>rd</sup> reports (1997), and the combined 4<sup>th</sup> and 5<sup>th</sup> (2003), 6<sup>th</sup> (2006), and currently the 7<sup>th</sup>-8<sup>th</sup> reports (2015) through the Federal Ministry of Women Affairs and Social Development to the CEDAW Committee.<sup>269</sup>

The Nigeria NGO coalition on CEDAW in its report expressed that: CEDAW is yet to be domesticated in Nigeria, more than 39 years after its ratification protection.<sup>270</sup> The report further stressed that: this is due to so many other inter-related factors including lack of political will, politics and power play, perceived conflicts between the spirit and letter of CEDAW with cultural and religious norms and other ingrained inequalities between the sexes reflected in the patriarchy

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<sup>267</sup> The Nigeria NGO Coalition on CEDAW (2008), CEDAW and Accountability to Gender Equality in Nigeria, a Shadow Report. (2008). P.8.

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NGA/INT\\_CEDAW\\_NGO\\_NGA\\_41\\_9726\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NGA/INT_CEDAW_NGO_NGA_41_9726_E.pdf)

<sup>268</sup> The Nigeria NGO Coalition on CEDAW Report for the forty first (41st) Session of the Committee on the Elimination of All Forms of Discrimination Against Women CEDAW and Accountability to Gender Equality in Nigeria. A Shadow Report (2008), Pg.8.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid., pg. 11.

which marks everyday life in Nigeria.<sup>271</sup> The concept of equal rights is fundamental to the Convention. Nevertheless, the concept of equality has become controversial as historically the word ‘equality for women implies the right to be equal with men’. The justification for this interpretation arose from the reality that women were confronted with significant inequality in terms of job prospects, salaries, access to quality health, rights within themselves. CEDAW requires States to take appropriate measures to eliminate discrimination in matters relating to marriage and family and underlines the equal responsibilities of men and women in the context of family life (Article 16). Until this moment, steps towards domestication of this convention to experience its full benefits in the society have failed woefully.

Furthermore, the Convention also emphasizes the need for childcare facilities and other social services to help women satisfy family obligations along with work responsibilities and participation in public life (Article 11). Equally, as a party to the Convention, and in compliance with its responsibility under Article 18, Nigeria submits a Periodic Country Report detailing progress towards the Convention’s implementation.<sup>272</sup> These reports are discussed at meetings of specialists on the CEDAW Committee and during its 639<sup>th</sup> UN meeting in 2004, the Committee considered the 4th and 5th Combined Reports of Nigeria following its oversight obligation as well as seeks to provide tangible proof of the progress Nigeria has made in implementing steps to achieve the CEDAW expectations.<sup>273</sup> In its comment concerning the 2<sup>nd</sup> and 3<sup>rd</sup> periodic report, the Committee stated that cultural stereotypes predominate discriminatory to women, including, though not limited to, polygyny, cruel rituals endured by widows, and other harmful traditional practices.<sup>274</sup>

Furthermore, a state party to CEDAW, articles 2, 5, 11, 12 and 16 of the Convention requires for a state to act to protect women against discrimination of any kind occurring within the family, at the workplace or in any other area of social life, by taking into account the Economic and Social Council resolution 1988/27, which recommends that states include in their periodic reports to the Committee information about: (1). The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace, etc.); (2). Other measures adopted to eradicate this violence; (3). The

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<sup>271</sup> Ibid.

<sup>272</sup> Compiled by the Nigeria NGO Coalition on CEDAW Report for the forty first (41st) Session of the Committee on the Elimination of All Forms of Discrimination against Women Cedaw and Accountability to Gender Equality in Nigeria, A Shadow Report, (2008), pp.65.

<sup>273</sup> Ibid.

<sup>274</sup> Ibid.

existence of support services for women who are the victims of aggression or abuses; (4) Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.<sup>275</sup> However, to date after subsequent reports, Nigeria is yet to make concrete progress concerning achieving most of its international obligation.

Notwithstanding the conflicting scope of data in the different levels of national development as well as in progress towards the adoption of the Convention. Along with the various international and regional conventions ratified by Nigeria. Recognizing this issue, several UN Member States have committed efforts to eliminating gender-based discrimination and ending abuse against women by ratifying CEDAW and signing the Beijing and Millennium Declarations as well as the UN Security Council Resolution discussing the gender effects of violence.<sup>276</sup> All the same much has not been achieved in the area of eliminating this malady since the state's domestic laws aimed at eliminating VAW have not accomplished the intended effect.<sup>277</sup> Due to the lack of proper implementation of these laws domestically. Regrettably, after more than three decades since its adoption, the convention is yet to be domesticated in Nigeria. This setback according to Nigeria NGO coalition on CEDAW, may be attributed to so many interlinked reasons such as the lack of political will and policy which contradicts CEDAW's concept and letter with cultural resistance and religious standards, and other entrenched gender disparities embodied in the patriarchy that defines Nigeria's daily existence.<sup>278</sup> This observation reflects the major issues that hinder the implementation of this CEDAW in Nigeria.

Therefore the pledge of freedom that CEDAW keeps for Nigerian women remains unfulfilled and the condition of women is deteriorating and the disparities of representation are growing in Nigeria.<sup>279</sup> There is more reason now than ever to finally domestic the convention into national law, as it allows for testing its efficacy in combating VAW and discrimination in Nigeria. Though, the adoption of CEDAW led to substantive progress and demonstrated at various levels of government, such as the presentation of a national bill on VAW before the National Assembly, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act and the Child Rights Act of 2003 was adopted, the 1999 Nigerian Constitution made provisions for the promotion and protection of

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<sup>275</sup> Ibid.

<sup>276</sup> Ending Violence against Women & Girls Evidence. Data and Knowledge in the Pacific Island Countries Literature Review and Annotated Bibliography. (2010). <https://www.unicef.org/evaw.pdf>.

<sup>277</sup> Ibid.

<sup>278</sup> The Nigeria NGO Coalition on CEDAW (2008), CEDAW and Accountability to Gender Equality in Nigeria, a Shadow Report. (2008). Pg. 11.

<sup>279</sup> Ibid.

women's rights in Nigeria, as well as the adoption of a National Policy on women by the Federal Government in 2000, in efforts to promote the representation of women in the legislative and executive arms of the Government to 35 percent. As well as several other treaties and policies that promote the protection of women's rights in Nigeria. Still, discrimination persists, women representation in politics is still low and VAW frequents across all social classes of Nigerian society, due to lack of legislation that dispenses effective protection for women. However, Nigeria's 7<sup>th</sup> and 8<sup>th</sup> periodic reports to the CEDAW Committee state that the Nigerian Law Reform Commission (NLRC) has concluded work to mainstream gender equality and CEDAW provisions into the laws of Nigeria and the sections of different national laws requiring amendment.<sup>280</sup> Including laws identified in the study conducted by the Women Development Centre which seeks to repeal section 55 of the Penal Code of Northern Nigeria, section 55 of chapter 198 of the 1990 Labor Act of Nigeria and section 360 of the Criminal Code.<sup>281</sup> Until this moment, these changes are yet to take effect, as discriminatory laws are still in effect in Nigeria.

In conclusion, women's rights are and were neglected, dismissed in Nigeria. The Nigerian woman's position is often perceived to be that of being seen but not recognized. Too often tradition is used to justify denying women's rights.<sup>282</sup> Such violence happens more often than none because VAW remains a challenging human rights issue that is present across Nigeria's demographic. Also, there is no coordinated system that tackles the problem of women's lack of legal assistance at the legislative level to eliminate the gap and grants millions of women and girls access to justice.

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<sup>280</sup> Nigeria 7th and 8th Periodic Report CEDAW/C/NGA/7-8. (2014). Pg. 10.

<sup>281</sup> Ibid.

<sup>282</sup> I. W. Irene, Africa: the Maputo Protocol, Evaluating Women's Rights. <http://allafrica.com/stories/20150613037.html>.

### 3.1 Domestic Limitation to Implementing CEDAW in Nigeria

This chapter analyzes the major limitations of the domestic implementation of CEDAW in Nigeria. Through an in-depth analysis of the role of state and non-state actors such as the National Assembly, Cultural Resistance, and NGOs. The chapter argues that the Nigerian government and human rights organizations are not paying adequate attention to cultural beliefs and practices surrounding respect for human rights, perpetuating the idea that the best way to guarantee human rights in Nigeria is to condemn VAW and enact laws that protect women.

International reforms and efforts to integrate the (CEDAW) into Nigerian legislation have failed, mainly due to lack of political will, cultural and religious resistance to the convention. In its report, the CEDAW Committee recommends that the State party: (a) Undertake comprehensive law reform, in the context of the ongoing constitutional review process, in order to harmonize conflicting provisions under statutory, customary and Islamic personal laws and ensure that they fully comply with the Convention; (b) Ensure that the ongoing constitutional review process addresses the applicability of statutory, customary and Islamic personal laws, which afford varying degrees of protection for women and girls, in order to guarantee all women the same rights and protections against discrimination; (c) Expedite the repeal or amendment of all discriminatory laws identified by the Nigerian Law Reform Commission following its comprehensive audit of discriminatory laws in the State party and include religious leaders in the process of addressing issues of faith and human rights, so as to build on several “faith for rights” initiatives and identify common ground among all religions in the State party, as acknowledged by the delegation.”<sup>283</sup> This is a reflection of the effect the Christian and Islamic religious beliefs in Nigeria have on social life and the essence of gender roles and ties in particular. The beliefs and symbols of Christian and Islam transcend individual, society, and organizational behavior, as people form a tangible undercurrent of spiritual, social, political, and economic existence.<sup>284</sup>

Under article 9, CEDAW recognizes that, “(1). States Parties shall grant women equal rights with men to acquire, change, or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the

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<sup>283</sup> CEDAW Committee (2017), Concluding observations on the combined seventh and eighth periodic report of Nigeria. <http://docstore.ohchr.org/>. Para. 12.

<sup>284</sup> Ibid. Kanyoro and Oduyoye 1992, in P.J Funmi, (2010). Pg. 5.

husband; (2). The convention urges states to grant women the freedom to obtain, alter or maintain their nationality and their children's nationality and all States Parties must commit to taking effective action against all aspects of women's slavery and abuse.<sup>285</sup> However, the Nigerian Constitution remains rooted in the patriarchal structure that created it, given its prohibition of discrimination on grounds of citizenship. It does not afford women the right to grant their partner citizenship. This is evident in the following examples, Section 26 of the Constitution discriminates against women in the aspect of the right of residency. The same law grants men in Nigeria the opportunity to afford citizenship through filing for their foreign partners. Under section 26 (2) (a) of the Nigerian constitution, provides that any woman who is or has been married to a citizen of Nigeria can file for citizenship.<sup>286</sup> However, Nigerian women cannot constitutionally apply the same rights to their foreign spouses.<sup>287</sup> There is no such law that guarantees such rights under the constitution. This discriminates against women in the aspect of the right to residency. Notwithstanding these legislative systems, Nigerian women tend to experience various types of violence in both the private and public spheres. CEDAW recommends that "The citizenship status of Nigerian women must be reviewed to give women citizens the same rights as Nigerian men."<sup>288</sup> At the moment, there are no changes made to this law. One can hope that soon Nigeria would adhere to the recommendation of CEDAW to foster women's rights.

To further shrink the rights of women, section 29(4) (b) states "any woman who is married shall be deemed to be of full age"<sup>289</sup> This provision is oppressive and promotes child marriage. Some of the reasons for this is that domestic mechanisms are ineffective because, in most cases, their provisions are not consistent with those of universal human rights frameworks.<sup>290</sup> An indication of this is the Marriage Act, which does not impose a minimum age for marriage, but it punishes marriage with a minor without getting the permission needed.<sup>291</sup> Similarly, the PCA Permits a husband to hit his wife to punish her.<sup>292</sup> This provision is a violation of section 34(1) of CFRN confers on "individual respect for the dignity of his person." Moreover, the Nigerian Criminal code does not acknowledge

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<sup>285</sup> Ibid.

<sup>286</sup> Chapter 3, section 26 (2) (a) of the Constitution of the Federal Republic of Nigeria 1999, (the Nigerian Citizenship Act).

<sup>287</sup> See for example, Foreigner Unable to Gain Nigerian Citizenship Using wife's Nationality Speaks out. (2019, December 9). <https://www.legit.ng/1283117-foreigner-unable-to-gain-nigerian-citizenship-using-wifes.html>

<sup>288</sup> CEDAW Shadow Report (2008). Pg. 15.

<sup>289</sup> CFRN, section 29(4) (b).

<sup>290</sup> Eniola, B. O. (2018). Gender Parity in Parliament: A Panacea for the Promotion and Protection of Women's Rights in Nigeria. *Frontiers in Sociology*, 3, Pg. 5. <https://doi.org/10.3389/fsoc.2018.00034>.

<sup>291</sup> Marriage Act, section 48. CAP M6 LFN, 2004).

<sup>292</sup> Penal Code, Section 55.

marital rape. Section 6 of the Criminal Code defines unlawful carnal knowledge as that which takes place otherwise than between husband and wife, and the offense is complete upon penetration.<sup>293</sup> Whilst rape is a punishable offense by a life sentence, under the Penal Code Act (PCA)<sup>294</sup> it does not cover marital rape as it is traditionally considered a husband's right. Also, the Criminal code does not provide civil remedies that can be relevant to a woman.<sup>295</sup> Several provisions of PCA states that a husband cannot be guilty of marital rape the PCA states: "A man is said to commit rape if he has sexual intercourse with a woman in any of the following circumstances: (a) against her will (b) without her consent (c) when her consent has been obtained by putting her in fear of death or hurt (d) with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married (e) with or without her consent when she is under fifteen years of age or of unsound mind."<sup>296</sup> In other terms, marital rape is not a crime in Nigeria, therefore no form of protection for women in Nigeria. Both definitions run contrary to the principles of CEDAW and the Protocol to the African Charter on Women's Rights in Africa, of which Nigeria is a party.

Furthermore, Article of 7 of CEDAW urges that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country."<sup>297</sup> Firstly, women are yet to enjoy these rights fully. Because international treaties must follow the domestication procedure under Article 12 of the CFRN before it can become part of the national law of the State.<sup>298</sup> Since the mid-1990s, there has been increasing awareness of the extensive issue of VAW in Africa and most especially in Nigeria given that it is the most populous country in the

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<sup>293</sup> Criminal Code, section 6. See also, B. A. Ijeoma (2018), Marital Rape. <https://thenigerialawyer.com/marital-rape-by-ben-ijeoma-adigwe-esq/>

<sup>294</sup> Penal Code Act (PCA), (1960)

<sup>295</sup> Ibid.

<sup>296</sup> Penal Code, Section 127.

<sup>297</sup> CEDAW, Art. 7

<sup>298</sup> The Women's Convention in Nigeria, Heinrich Böll Stiftung, Abuja office, Nigeria.

<https://ng.boell.org/en/2013/10/14/womens-convention-nigeria>. Accessed: 2020-02-25

continent.<sup>299</sup> As a democratic nation, adopting this convention was a turning point for women's rights in Nigeria, because the Convention is focused on three main interrelated principles, which are equality, non-discrimination and the obligation of the State. Those standards establish the basis for formulating policies to promote women's human rights, which provides sensation to the Convention's articles. Bearing in mind that the various legal mechanisms for the protection and promotion of women's rights have not been domesticated. Which remains a significant barrier to the complete recognition and enjoyment of freedoms by Nigerian women as enshrined in CEDAW. One such explanation for this is the absence of representation of women in the National Assembly. Irrespective of women's ability to engage in decision-making systems at all levels is assured in both international and domestic instruments. The under-representation of women in the federal and state legislatures, significant governmental decision-making roles, and religious leadership is marginalizing, especially at the federal level.

Firstly, the Nigerian Parliament is male-dominated given the fact that the CFRN grants every person the freedom to vote in politics. Correspondingly, the Constitution acknowledges the privilege of women to vote and to be a vote as Members of Parliament.<sup>300</sup> Nevertheless, the marginalization of Nigerian women remains evident in the national laws and customs which are a major feature of Nigerian sources of law. Additionally, patriarchy, cultural, and religious dogmatism are also contributing factors. This makes the issue of women's rights extremely sensitive. Presently, there is far fewer women inclusion in elective and appointive roles in diverse national institutions.<sup>301</sup> For instance, Nigeria's total female political representation in parliament is less than 6 percent and the ministerial level is 8 percent.<sup>302</sup> This is contrary to the declaration made at the fourth World Conference on women in Beijing, which advocated 30% affirmative action. Urging state parties such as Nigeria to increase the level of participation of women in politics.<sup>303</sup> Equally, the National Gender Policy recommended 35 percent of affirmative action and seek a more inclusive representation of women in both elective political and appointive public service

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<sup>299</sup> Nigeria is ranked the most populous country in Africa with a 200 million population, see, African Countries by population report. (2020) Accessed: <https://www.worldometers.info/population/countries-in-africa-by-population/>

<sup>300</sup> CFRN, sections 77 and 106.

<sup>301</sup> L. Kelly (2019). Barriers and enablers for women's participation in governance in Nigeria. Pg. 4.

[https://assets.publishing.service.gov.uk/media/5d430c8eed915d09ddb354a/596\\_Nigerian\\_Women\\_Governance.pdf](https://assets.publishing.service.gov.uk/media/5d430c8eed915d09ddb354a/596_Nigerian_Women_Governance.pdf).

<sup>302</sup> World Bank (2018), Gender Data Portal: Nigeria. <http://datatopics.worldbank.org/gender/country/nigeria>. See also O. Oluyemi, Monitoring Participation of Women in Politics in Nigeria, Pg. 1. Retrieved March 17, 2020, from [https://unstats.un.org/unsd/gender/Finland\\_Oct2016/Documents/Nigeria\\_paper.pdf](https://unstats.un.org/unsd/gender/Finland_Oct2016/Documents/Nigeria_paper.pdf)

<sup>303</sup> See Beijing Platform of Action.



positions.<sup>304</sup> Also, the Nigerian judiciary at both the federal and state levels is still very limited. This shows Nigeria is yet to attain the expected 35% affirmative action in line with the Beijing Platform for Action. Nigeria's abandonment of its international obligation further decreases the prospect for more women to participate in administrative and top-level positions in the future. There is a huge gap in female participation in politics and executive decision making roles in Nigeria compared to most countries in Europe and other parts of the world where women are appointed leaders.<sup>305</sup> Acknowledging the immense role of women and the ability to drive social and political growth, thus turning the world into a stronger one. This reflects the need to encourage and support more women to achieve exposure and become part of decision-making bodies. Furthermore, women have an immense ability to drive social and political growth, thus turning the world into a stronger one.<sup>306</sup> Likewise, Nigerian women play a significant role in the nation's development. However, due to restrictions, their contributions and capability are not recognized and completely explored.<sup>307</sup> Women are not well included in Nigerian politics, laws, and policies that are open to gender priority at the state or national level. This may lead to the inability to recognize women's civil rights and the trivialization of VAW. The CEDAW Committee recommends "Nigeria must as a matter of priority, come up with and implement a 30% Affirmative Action in all spheres in fulfillment of the principle of equality stipulated in CEDAW. We further recommend a 50% representation of women the language and provisions of the Constitution It in all spheres and sectors."<sup>308</sup>

Secondly, there are regional gaps in the enjoyment of women's rights in Nigeria. People in places where legislation has been passed to protect a specific right would enjoy these protections, whereas women in surrounding states do not have access to such rights. The lack of harmony in the Nigerian legal system is the reason some laws are applicable in some states such as Lagos and some southern states but invalid in other parts of Nigeria specifically the Northern Muslim states. One example of such lack of domestication relates to the rights of the child making the recent domesticated Child Rights Act invalid in any other part of Nigeria.<sup>309</sup> As previously mentioned, the power of the

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<sup>304</sup> National Gender Policy (2006). Pg. 3.

<sup>305</sup> Women Leaders Worldwide 1960-2020 Statistics (2020). <https://www.statista.com/statistics/1058345/countries-with-women-highest-position-executive-power-since-1960/>.

<sup>306</sup> L. Wangnerud (2009), Women in Parliaments: Descriptive and Substantive Representation. Pg.4. <https://doi.org/10.1146/annurev.polisci.11.053106.123839>.

<sup>307</sup> E. Mayah, et al (2017), Inequality in Nigeria: Exploring the drivers, Pg.18. [www.oxfam.org](http://www.oxfam.org).

<sup>308</sup> CEDAW shadow report (2008), Pg. 15.

<sup>309</sup> 11 Nigerian the states like, Adamawa, Bauchi, Borno, Gombe, Kano, Sokoto, Zamfara, Katsina, Yobe, Kebbi, and Jigawa are yet to sign the child Rights Act. Premium Times Nigeria. (2019). UPDATED: 11 states in northern Nigeria yet to pass child rights law. <https://www.premiumtimesng.com/news/more-news/329511-12-states-in-northern-nigeria-yet-to-pass-child-rights-law-unicef-official.html>.

National Assembly resides in the Northern part of Nigeria. This is because they have the majority seat in the senate and are Muslims whose judgments are crowded by religion and cultural dogmatism. Hence, the rejection of bills concerning human rights such as women's rights and the child's right that may threaten their beliefs. Also, the northern region has the highest rate of child marriage, therefore, signing the child right bill would mean ending child marriage in the north which is almost impossible because they believe the grounds for such marriage is prescribed under the sharia law since there is no stated minimum age for marriage as previously discussed in this chapter.<sup>310</sup>

Besides the Federal Capital Territory and State house of Assembly is called on in their respective States also to adopt the legislation.<sup>311</sup> Since CEDAW is a treaty concerned with women's rights, it comes into the scope of treaties, under section 12 (3) of the CFRN,<sup>312</sup> to become effective across Nigeria. Even so, in 2007, the National Assembly presented the abolition of all forms of discrimination against women in Nigeria and Other Related Matters Bill but it was outvoted in 2007.<sup>313</sup> However, in its 7<sup>th</sup> and 8<sup>th</sup>-period report, Nigeria posited that "Nigerian parliament at different levels has continued to make laws to firmly curtail all offensive practices against women. The "Gender and Equal Opportunities Bill 2010: A Bill to Incorporate, Domesticated, And Enforce selected aspects of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, and the National Policy on Women and other Matters Related Therewith", due for re-presentation to the National Assembly has been emulated by many state assemblies with an emphasis on ensuring equal opportunity. Also, related laws are being passed by different State assemblies."<sup>314</sup> Also, Nigeria's recent report to CEDAW state that: "the FMWASD continues to hold consultations with government officials, political leaders and members of the National Assembly, NGOs and other relevant stakeholders to re-introducing the Bill for passage before the expiration of the current Legislative Session."<sup>315</sup> As previously noted, the low women representation in decision-making at the parliament to enforce change limits the drive towards enforcing change and realization of gender equality policies. Currently, Nigeria has no explicit law enacted to protect women from violence, nor is the issue taken seriously. This can be attributed to

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<sup>310</sup> See for more data on early marriage in Northern Nigeria - Child Marriage Around the World. Girls Not Brides. Retrieved April 27, 2020, from <https://www.girlsnotbrides.org/child-marriage/nigeria/>.

<sup>311</sup> The National Coalition on Affirmative Action (NCAA), (2006).

<sup>312</sup> section 2 (3) of the CFRN (1999) as amended

<sup>313</sup> Ibid.

<sup>314</sup> Nigeria 7th and 8th Periodic Report CEDAW/C/NGA/7-8. (2014), table 2.3, Pg. 10.

<sup>315</sup> Nigeria 7th and 8th Periodic Report CEDAW/C/NGA/7-8, Pg. 10.

the fact that Nigeria has not adopted any legislation allowing the Convention to be domesticated, which has greatly impeded the adherence and implementation of the provisions of CEDAW.

Lastly, there is an excessive delay in executing justice in Nigeria where any legal process can have extended and unreasonable length.<sup>316</sup> Quite frequently, by a variety of circumstances: attorneys preparing letters adjourning proceedings, the failure of judges and magistrates to issue decisions on schedule, police or jail departments refusing to present convicted people in trial or the law that, if a judge or a magistrate is moved and a new one takes over a trial.<sup>317</sup> Under article 15 of CEDAW, “(1) States Parties shall accord to women equality with men before the law; (2) States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals; (3) States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void; (4) States Parties shall accord to men and women the same rights concerning the law relating to the movement of persons and the freedom to choose their residence and domicile.”<sup>318</sup> Notwithstanding the constitutional clause on equality before the law, the constitution, sharia law, and the customary law allow for oppressive clauses. Women who enter into customary or Islamic marriage are discriminated against because women who are married under civil law receive stronger constitutional protections concerning marriage divorce, child custody, properties, and crimes. In recent times it has been almost an established reality that trials will take many years in litigation before they are concluded. In these conditions, people are hesitant to pursue efforts to implement their constitutional rights. Such delays will not only erode popular faith in the legal proceedings but also threaten the very life of the courts.<sup>319</sup> Even though Section 36 (1) of the CFRN provision for a fair trial.<sup>320</sup> As well as the recommendation of CEDAW on access to justice “Locus standi must be extended to allow a third party (or at least the National Human Rights Commission) to take up women’s human rights issues to support women’s access to justice and enforcement of women’s

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<sup>316</sup> N. S. Okogbule (2005), Access to Justice and Human Rights Protection in Nigeria - Sur - International Journal on Human Rights. <https://sur.conectas.org/en/access-justice-human-rights-protection-nigeria/>.

<sup>317</sup> Ibid.

<sup>318</sup> CEDAW, Article 15

<sup>319</sup> Preventing delay tactics in criminal trials in Nigeria (2016). Punch Newspapers. <https://punchng.com/preventing-delay-tactics-in-criminal-trials-in-nigeria/>.

<sup>320</sup> CFRN, section 36 (1).

human rights.”<sup>321</sup> Still, the same issues regarding the delay in the execution of justice prevail in Nigeria.

### 3.1 Cultural and Religious Resistance to CEDAW

Inherently the Nigerian culture is patriarchal. In certain areas of Nigeria, this is attributed to the influence of diverse religions and customs. Where women are treated as the ‘weaker sex’ and discriminatory practices are accepted by State and society (especially men).<sup>322</sup> Several authors argued that “the traditions and culture of every society determine the values and behavioral patterns of the people and society—a culture that attributes superiority to one sex over the other exposes the sex that is considered to be inferior to various forms of discrimination”<sup>323</sup> In Nigeria, culture is widely understood to mean the African traditional way life. Which is related closely with oral myths, rituals, and age-long customs that precede colonial rule, providing a context for engagement with the natural and supernatural world.<sup>324</sup> Hence, female subordination and coercion are seen as rooted in the essential nature of male and female identity confirmed by the regulations of ‘culture’ and divine ordinances.<sup>325</sup> Thus, Nigerian women and men continue to support natural, cultural, and religious justifications for the omnipresent discriminatory treatment towards women and, particularly concerning marital affairs, property, inheritance, and widowhood rights, female autonomy and involvement in processes of household and public decision making.<sup>326</sup> In the case of *Eshugbayi Eleko v. The Officer Administering the Government of Nigeria*,<sup>327</sup> Customary law was referred to as unwritten customs and traditions which were recognized by members of the community as compulsory. Customary law was also characterized as a mirror of appropriate usage.<sup>328</sup>

The conflict between culture, faith, and the equality of women and men has been a huge concern in the international arena. These conflicts occur in the background of virtually all religious and

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<sup>321</sup> CEDAW Shadow report (2008) Pg.15.

<sup>322</sup> E. O. Ekhaton (2015). Women and the law in Nigeria: A reappraisal. *Journal of International Women’s Studies*, 16(2), 285–296.

<sup>323</sup> (Ngwankwe, 2002:143; Alemika, 2010, as cited in Ekator 2015. Pg. 285).

<sup>324</sup> F.J. Para-Mallam (2010). Promoting gender equality in the context of Nigerian cultural and religious expression: beyond increasing female access to education. *A Journal of Comparative and International Education*, 40(4), Pg. 463. <https://doi.org/10.1080/03057925.2010.490370>

<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*

<sup>327</sup> *Eshugbayi Eleko v. The Officer Administering the Government of Nigeria* (1928) NLR.

<sup>328</sup> *Owoyin v. Omotosho* (1961) 1 All NLR 309.

conservative orthodox societies, resulting in limitations to women's rights which differ in type and intensity. Females will not achieve complete autonomy without reform in cultural dominance and the elimination of patriarchy within the social structures. It can be done by improving the social and cultural conduct of men and women and by establishing that family literacy provides a clear view of maternity as a social role and appreciation of men's and women's shared obligation in their children's education and growth. Besides, the issue of gender dynamics and stereotyping tends to influence the inclusion of women in Nigerian decision-making. Women are limited to occupations and fields which are stereotyped. Women are often restricted to professions deemed "womanly" and thus they are not allowed to pursue their natural ability. Given the shared adherence to traditional and oppressive ideas about the role of women in society, community and religion are not stagnant.<sup>329</sup> Women are subject to influences from industrialization and globalization that modify women's societal insights including women's beliefs of themselves, the world in which they live and their life expectancies, and bearing in mind the paradoxical relationship between gender, culture, and religion is important.<sup>330</sup> Nigerian women are intensely dedicated both as defenders and prisoners to a societal system under which they are both motivated and powerless.<sup>331</sup> The role of women is taken for granted in traditional Nigerian societies. Women are expected to feed the kids and look after the family. These mainstream perceptions have implications for social and economic growth and did not bode well. Females had fewer chances for schooling than males. They were often refused employment in some male-dominated professions like architecture, architecture, and community planning. This reflects a stereotype that immediately assumed that traditional systems were bastions of patriarchal and illiberal traditions that excluded women.

In its shadow report, the CEDAW committee recommends the immediate domestication of CEDAW; Immediate passing of the National Bill on VAW into law; Incorporation of CEDAW and other Human Rights treaties into local laws; Government must ensure that there is national legislation prohibiting all forms of obnoxious and harmful practices against women and girls. The government must uphold the human rights of women under the Sharia legal system and customary laws as practiced presently in Nigeria, under which Nigerian women are disproportionately affected and discriminated against.

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<sup>329</sup> P. j. Funmi (2010) p.467.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

To date, Nigeria has no explicit law enacted to protect women from violence, nor is the issue taken seriously. One explanation could be that for most African cultures including Nigeria, the notion of family is still prevalent, viewed as private and outside State regulation. While the Nigerian government has made attempts over the years to improve the legal protection of women and girls, the problem of VAW has not been given special attention.<sup>332</sup> As it is regarded as a private issue that should be solved within the family. The implementation and execution of international human rights instruments are still badly organized and combined with a lack of consistency with government policies from one administration to another. Essentially, it leaves the federal government lacking powerful treaty-making rights. The entire state is bound by treaty obligations, regardless of whether it is a monist or a dualist federal state. Besides, implementation and policy consistency would have a huge positive impact on the improvement of Nigerian women's economic situation and thereby narrowing the current disparity in gender social and economic inequality. The lack of adequate legislation and implementation has exposed these practical limitations.

Another limitation of the implementation of Cedaw in Nigeria is Religion. In Nigeria, like most African nations, religious leaders are feared, respected, and held in high regard. Hence, faith takes a significant role in people's lives and the country's patriarchal structure enforces VAW as an instrument for correcting action and enforcing male domination, particularly in marriages.<sup>333</sup> Religious institutions play crucial positions in defining the country's cultures and beliefs. So it is no wonder that religious organizations play a part in fostering these activities.<sup>334</sup> Actions against VAW have been unsuccessful as they are seen to conflict with theological philosophies which see as "unclean", and virtuous women being depicted as "submissive", Furthermore, some religions frown against divorce, which further complicates women leaving violent relationships.<sup>335</sup> In Nigeria, women's complete involvement in political and social life appears to be a myth. Because women's position seems to remain in the domestic realm. Women are put in a lesser role than male; women are prohibited from taking on certain leadership roles. However, recently, Political parties, such as the All Progressive Congress (APC) and People's Democratic Party (PDP) have abolished payment fees for candidacy forms to women aspirants to promote and encourage women to take up political roles, but few women currently hold federal executive posts and a relatively limited number of

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<sup>332</sup> Ibid.

<sup>333</sup> See section 55 of the Penal Code.

<sup>334</sup> Voice of Youth (2019). Religion, women and gender-based violence in Nigeria. <https://www.voicesofyouth.org/blog/religion-women-and-gender-based-violence-nigeria>.

<sup>335</sup> Ibid.

women run for elective offices. Women seem to be either pure supporters or part of political party women's wings under which they serve as performers or mobilizers at political rallies.

Also, Religious institution has a stronghold on people lives. In Nigeria, almost everyone is a practicing Christian or Muslim, and the religious beliefs and the position of religious leaders are very prominent. Thus approval or resistance to the new legislation was strongly linked to how it was perceived as relevant to the religious communities so their leaders, and compliant with religious practice.<sup>336</sup> CEDAW's basic concepts are deemed consistent with religious values. However, federal law has little effect until it is enacted and enforced in state law.<sup>337</sup> Some States Parties to CEDAW have made reservations to its essential articles and refused to acknowledge their obligation to enforce them and weakening the Convention's effectiveness and general legitimacy. However, other States Parties, such as Nigeria may formally acclaim the Convention but at the same time adhere to their culture, religion, and national heritage and continue to discriminate against women.<sup>338</sup> Religious extremism challenges the universal legitimacy of the CEDAW in its various ways. Christians and Muslims have common opinions on certain facets of CEDAW. They consider different factors as contradicting their religious doctrines. None of the main religious organizations or faith communities endorsed or opposed CEDAW. This results from their differing opinions regarding the convention between followers of both faiths. As a result, the domestication bid failed due to the strong resistance of religious and traditional forces, especially the Catholic Church headed by (associations of Catholic women) and Muslim groups.<sup>339</sup> CEDAW was viewed as an abortion law that gives women unrestricted freedoms, complete equality in marriages, and overturns men's traditional leadership role.<sup>340</sup> While the female adherents and traditionalists opposed CEDAW because it threatened the institution of motherhood, their male counterparts saw CEDAW as a threat to male power and privilege.<sup>341</sup> This stance is contrasted by the bill to support widows, which, by comparison, was seen as helpful to church leaders, consistent with Christian doctrine, and a means to further eradicate traditional religious values. Their interests, power, and credibility were also essential characteristics of individuals and organizations promoting

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<sup>336</sup> O.J. Para-Malam, et al, (2012), the role of religion in women's campaigns for legal reform in Nigeria, *Development in Practice*, pp.2-3, DOI: 10.1080/09614524.2012.685875.

<sup>337</sup> O. J. Para-Mallam, et al (2011). *The Role of Religion in Women's Movements: The Campaign for the Domestication of CEDAW in Nigeria*. Religions and Development Research Programme, 59, pg. 5.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Ibid.

<sup>341</sup> F.J. Para-Mallam (2010), Promoting gender equality in the context of Nigerian cultural and religious expression: beyond increasing female access to education. *A Journal of Comparative and International Education*, 40(4), Pg. 467. <https://doi.org/10.1080/03057925.2010.490370>.

or opposing the campaigns. The religious leaders were the Representatives of the National Assembly, and initial campaigning measures centered on influencing them, but it became clear that they were all motivated by their theological doctrines, prominent religious figures, the media, and their allies, as well as their social status in a patriarchal system. There are reports of teenage girls that are sometimes sexually assaulted and defiled, often by very close relatives and others meant to be their protectors.<sup>342</sup>

### 3.2 Federal Governments and the Role of States and Non-State Actors in the Implementation of CEDAW

This section analyzes the role of state and non-state actors in the implementation of the process of CEDAW. The first part of the section deals with the role of state actors. While assessing several limitations discriminating factors resulting from the non-implementation of CEDAW such as lack of political will, low representation of women in the parliament, delay in access to justice. The subsequent subsection looks at the role of non-state actors such as NGOs and Religious Institutions in the realization of CEDAW in Nigeria.

Nigeria's failures to implement its international treaty obligations threaten the hope for a society free of discrimination and VAW. One of the major limitations to implementing CEDAW in Nigeria can be attributed to the lack of political will on the part of the government. This is due to the government's inability to establish mechanisms for the enforcement of women's right instrument. The CFRN grants legislative rights to the federal and state legislatures in the following lists (exclusive and concurrent). Matters that come under the exclusive legislative framework are dealt with by the National Assembly, while concurrent legislation address issues that could be passed by both the national and state legislatures.<sup>343</sup> Issues touching on women's and girl's rights fall under the concurrent legislative list. It implies that all federal and state legislatures have the authority to legislate on women's issues. The national government and several state governments have passed legislation to protect the rights of women. Regardless of its show of support for CEDAW's general principles, including the protection of women's dignity and well-being, regard for women's human

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<sup>342</sup> N. David, et al (2018), Child sexual abuse and disclosure in south western Nigeria: A community based study. *African Health Sciences*, 18(2), 199–208. <https://doi.org/10.4314/ahs.v18i2.2>.

<sup>343</sup> Concurrent list deals with matter such collection of taxes, monuments, electoral laws, archives, collection of taxes electric power.



rights, the eradication of discrimination, and unwanted sex. Amongst others.<sup>344</sup> Then the National Assembly went on to oppose gender equality and focused primarily on three provisions (Articles 10, 12, and 16) of CEDAW. A state legislator is strongly influenced by the dominant religion of the State, thus, resistance to the three documents considered inconsistent with religious values by Muslims and Christians has so far exceeded the supposed advantages of implementing CEDAW into Nigerian legislation.<sup>345</sup> At this point, one can see the cultural and religious dogmatism at play. The negative outcome of the convention was aided by the male dominance of the National assembly (Muslim majority) and top religious authorities. Because the political elites in the senate have the same cultural and religious resistance to women's rights and VAW. These elites influence policies and what happens in the nation. The National Assembly member's description of 'gender equality' is based on a traditional patriarchal spectrum that viewed the man as the first of the equals. With resistance to the notion of gender equality because it is perceived as suggesting equal existence as well as positions, and a lack of men's status, influence, and rights.

Furthermore, the key restriction to the implementation of treaties resides within Section 12 of the 1999 CFRN with clauses that give the National Assembly the sole power to the domestication of treaties in Nigeria, as follows: "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly."<sup>346</sup> Thus, the National Assembly has to give effect to the treaty by enacting and implementing necessary laws and make federal laws concerning matters included in the exclusive legislative list to implement a treaty.<sup>347</sup> For any such law to have a legal effect, it has to be ratified by a majority of all the Houses of Assembly in the Federation.<sup>348</sup> To enact laws, it takes at least 23 National Assembly member's consent to pass a bill such as CEDAW. It further states that the adoption of an exclusive set of treaties that concern matters depends on the exclusive legislative list. This implies that the National Assembly alone is allowed to domesticate treaties. Furthermore, subsection (2) specifies that this right to create laws related to the execution of treaties shall also cover treaties concerned with subjects not contained on the concurrent and exclusive legislation list and the local government lists come under state jurisdiction.<sup>349</sup> In other terms, any treaty that

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<sup>344</sup> O.J. Para-Malam, et al, (2012), the role of religion in women's campaigns for legal reform in Nigeria, *Development in Practice*, pp.2-3. <https://doi.org/10.1080/09614524.2012.685875>.

<sup>345</sup> *Ibid*.

<sup>346</sup> CFRN, section 12 (1).

<sup>347</sup> Section 2 (2) of the Constitution.

<sup>348</sup> *Ibid*, section 12 (3).

<sup>349</sup> CFRN, section 2 (2).

concerns matter on the exclusive legislative list including, the election of the president and vice president, diplomatic, consular, external affairs, and implementation of treaties amongst others,<sup>350</sup> would have binding legal effect in Nigeria only with the National Assembly's ratification. However, children, women, and civil rights are not listed on the Exclusive list. That is because they come under the concurrent list. Consequently, falling under section 12 (3). This means the enactment of the law lies within the jurisdiction of the states and so far 11 states in the Northern region are yet to domesticate it. One may argue that section 12 is unclear (ambiguity) because it does not leave room to deal with international laws. Rather, it only states that laws could be enforceable only through the National Assembly and the power of the Assembly comes from the Northern party of Nigeria who is the majority in the National Assembly. Whose judgment and decision are crowded by ethnic, cultural, and religious sentiments to the idea of equality. When such a life-changing decision is left with people of like minds towards the protection promotion of women's rights then the implementation of such policy is bound to fail. Thus, this leaves the constitution to delegalize and decided by humans.

Non-state actors like Ngo's role in the domestication of CEDAW in Nigeria has been critical. But often, historically ignored. Non-state actors can either strengthen or argue strongly against the implementation of CEDAW guidelines. The Nigerian women's coalition for the domestication of CEDAW was founded in 1998 consisting of 150 other civil societies and women's organizations and continues to campaign for the domestication of CEDAW into the national law.<sup>351</sup> To ensure the protection of women's rights in Nigeria. While NGOs may serve as negotiators in lobbying for social reform between grassroots initiatives and the state, they are mostly established and operated by influential elites, inspired by international ideas and reliant on external financing.<sup>352</sup> Specifically, it gazed with skepticism at the elite Nonprofits and professional women that controlled the CEDAW coalition.<sup>353</sup> The activities of Non-state actors often strengthen and argue strongly against the CEDAW guidelines. However, under CEDAW and other similar conventions, this does not eliminate the state responsibility as the state is liable for the actions of such non-state actors.<sup>354</sup> Therefore, the state is responsible for crimes committed by non-state actors as states must control

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<sup>350</sup> J. Isawa Elaigwu (2006) the Federal Republic of Nigeria. para.20.

[http://www.forumfed.org/libdocs/Global\\_Dialogue/Book\\_2/BK2-C08-ng-Elaigwu-en.htm](http://www.forumfed.org/libdocs/Global_Dialogue/Book_2/BK2-C08-ng-Elaigwu-en.htm)

<sup>351</sup> The National Coalition on Affirmative Action (NCAA), (2006), Promoting Equal Opportunity, National Gender Policy.

<sup>352</sup> O. J. Para-Mallam (2012), The role of religion in women's campaigns for legal reform in Nigeria, *Development in Practice*, 22:5-6, 803-818, DOI: 10.1080/09614524.2012.685875.

<sup>353</sup> *Ibid.*

<sup>354</sup> *Ibid.*

actors such as multinational corporations (MNCs), private educational agencies, religious groups, and private companies.<sup>355</sup> These non-state actors are at the center of human rights violations. Cultural resistance overlaps religious dogmatism and is deeply rooted in the minds of the elites that rule this institution and as well as the NGOs. The same as the political elites in the National Assembly who are resistant against women are stakeholders and fund these NGOs. Thus, they influence the affairs of the NGO's and this would most definitely affect the implementation process and progress of CEDAW.<sup>356</sup> Also, women's advocacy groups in Nigeria have advocated the abolition of discriminatory stipulations in the law and the implementation of new legislation covering acts of VAW not covered in the past.<sup>357</sup> NGOs also play an important part in the observing and adopting CEDAW by disseminating awareness of CEDAW and its rights; influencing states, companies, and individuals to enforce CEDAW; preparing shadow to the four-year national government evaluations sent to the CEDAW Committee and supplying information to the Committee; and Providing national policymakers with details on the development, challenges, and solutions to allow a more successful implementation of human rights. Also, legal activism by various groups has led to the development of new legislation at the state and federal level.<sup>358</sup> As discussed above, Nigeria's criminal laws, the South Criminal Code, and the North Penal Code do not adequately protect women against violence.

On one hand, there has to be some form of partnership between the government and the NGOs for the successful formulation and implementation of any policy such as CEDAW. In the absence of partnership, policy implementation becomes a challenge as a result of this almost non-existence relationship between both parties. This is due to the existing clash of interest between the state and the NGOs. In this case, the key goal of the NGO is to promote policies and put pressure on the state to make policy changes that affect women's rights through the adoption of CEDAW, and when there is no partnership with the government it becomes a challenge. NGOs have restricted participation in the policy-making process that benefits Nigerian women. For example gender policies on women's rights such as CEDAW. Secondly, there is a communication gap between the state and the NGO. This due to the state trying to save it's and restricted public information. For example, there is a media clampdown in the current administration compared to the Goodluck

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<sup>355</sup> Ibid.

<sup>356</sup> C. A. Odinkalu, (2008), *Domesticating CEDAW in Nigeria: A Stakeholder Analysis and Report*, report, Abuja, Nigeria: UNIFEM.

<sup>357</sup> C. Onyemelukwe, (2016), *Legislating On Violence against Women: Critical Analysis of Nigeria's Recent Violence against Persons Prohibition Act, 2015*. *Depaul Journal of Women, Gender and the Law*, 5(2), P.8.

<sup>358</sup> Ibid. 4.

Jonathan administration (2010-2015) here the government showed more transparency. Also, during the current administration, there is limited public information and the government plans to introduce a social media bill to regulate social media to restrict freedom of speech. Such restriction on public information limits the role of NGOs and access to information on current issues. Additionally, the Nigerian government relies on NGOs to promote projects such as HIV/AIDS and cancer awareness amongst others. However, the government only regards NGOs on certain issues to work on projects and after that, they move on since there is no long-term partnership. The process of implementing CEDAW should not be short term, but rather a long term project that needs elaborate awareness. To educate men as well as security agencies such as the police other groups that are likely to perpetuate this form of VAW through sensitizations on women's rights and the consequences of violating these rights. Also, most times the NGO might need to continue to pursue these projects but the government may end up pulling out which results in communication fall.

Furthermore, NGOs in Nigeria are entangled in issues stemming from a lack of funding. For instance, a state that is reluctant to close its gender gap is unlikely to provide financial support to civil society organizations. As a result, NGOs are often reluctant to discuss corruption due to avoid losing the source of their funding. Also, most of the NGOs are hampered due to this absence of funding. Secondly, there is likely to be a clash of interest resulting from policies between the state and NGOs. For instance, the implementation of CEDAW. In some African countries like Zimbabwe, Egypt, and Ethiopia amongst others, there exist legal limitations to the operations of NGOs.<sup>359</sup> Because they need to follow strict government guidelines which often reduce their capacity.<sup>360</sup> Similar restrictions to NGO's activities are also present in Nigeria. Thus, affecting and restricting the impact and activities of NGOs in pushing for changes that promote and protect women's rights in society. For example, in 2017, an anti-NGO bill was submitted before the House of Representation. "A bill for an act to provide for the establishment of the non-governmental organization's regulatory commission for the supervision, coordination, and monitoring of nongovernmental organizations, civil society organizations, etc., in Nigeria and for related matters

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<sup>359</sup> Freedom House (2019), the Spread of Anti-NGO Measures in Africa: Freedoms under Threat. <https://freedomhouse.org/report/special-report/2019/spread-anti-ngo-measures-africa-freedoms-under-threat>.

<sup>360</sup> See, Restrictions on NGOs worldwide undermining human rights, says UN senior official (2012), UN News. Retrieved April 25, 2020, from <https://news.un.org/en/story/2012/04/409482-restrictions-ngos-worldwide-undermining-human-rights-says-un-senior-official>.

(hereinafter referred to as the NGO bill).”<sup>361</sup> This bill not only threatens the existence of civil society in Nigeria, but it also violates human rights under section 40 of the CFRN.<sup>362</sup> As well as other regional and international human rights instruments.

On the other hand, while there are very credible and impactful NGOs driving for change that promotes women’s rights and works in the interest of women in Nigeria. There are also NGOs whose credibility is highly questionable and this also includes the role they play in the implementation procedure of women’s right treaties specifically CEDAW. Firstly, NGOs are seen as tools to their financial donors and stakeholders some of whom, as previously mentioned above are the political elites in the National Assembly with cultural and religious resistance to women’s rights. This makes NGO’s not so independent because their fundings can be traced to politicians which affect their decisions and engagements. Secondly, some NGOs have lost their credibility in the face of the people. For example, the Oxfam scandal.<sup>363</sup> There were reports about the Bill and Melinda gates foundation vaccines on cervical cancer (HPV). For instance in 2010, In India, over thirty thousand girls were vaccinated without proper consent from families, and scores of these girls were hospitalized and some ended up dead, which later resulted in the expelling of the Foundation from the country.<sup>364</sup> Most times, the majority of these NGOs do not have the interest of the people at heart, the drive to meet a need, or find a solution to women’s issues. Lastly, most NGOs, especially in Nigeria, are established for their selfish interest and the funds that come to the organizations. Hence, the presence of corruption within these NGOs, such as cases of embezzlement of funds and money laundering.<sup>365</sup>

To conclude, An Increase in women representation in the Nigerian political plane and the decision-making process of Nigeria would encourage more women to get involved. By so doing, women can sponsor bills that protect and promotes women’s right across Nigeria. The world is constantly changing and laws must evolve as well. Ultimately, the constitution is the highest law of the land and as such should overshadow the Sharia law, customary law, religion, and culture. Thus, these

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<sup>361</sup> Amnesty International Nigeria Memorandum Submitted to the House of Representatives Committee on CSO’s and Development Partners on Bill Hb585 Ngo Bill Threatens Freedoms in Nigeria (2017), Pg. 1.  
<https://www.amnesty.org/download/Documents/AFR4475902017ENGLISH.pdf>.

<sup>362</sup> CFRN, section 40, on Freedom of Association.

<sup>363</sup> The Economic Times (2014), Controversial vaccine studies: Why is Bill & Melinda Gates Foundation under fire from critics in India? <https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/controversial-vaccine-studies-why-is-bill-melinda-gates-foundation-under-fire-from-critics-in-india/articleshow/41280050.cms>

<sup>364</sup> Ibid.

<sup>365</sup> Smith, D. J. (2012). AIDS NGOS and corruption in Nigeria. *Health and Place*, 18(3), 475–480.  
<https://doi.org/10.1016/j.healthplace.2011.11.002>.

legal frameworks come under the constitution and the provisions of the constitution must be explicitly express that it aims to promote women's rights. It must raise its bar on national human rights above cultural resistance and above the sharia law. Human rights should be applicable irrespective of the region of the country. For example, the legal system of the United State, each state are independent in their affairs. However, no decision of the state can surpass constitutional rights. NGOs should ensure to maintain transparency in their activities and retain the standards of an independent body free from an external intervention such as the state and politicians. So that there are no sentiments in their dealing and decisions. While working in the interest of the people for a better human rights inclusive nation.

## Conclusion

To tackle the concerns stemming from VAW, there is a need to extend advocacy towards the male demographic who are most probable to be the offenders of this violence. Also, religion would a big role in reducing VAW in Nigerian, as a result, religious authorities should be sensitized, whereas the church's top female members should be empowered to support poorer women get justice; instead of asking the women to pray against violence. Also, it is important to probe the patriarchal conception of men as symbols of power that have been used to expose women to violence through various religious systems. Despite the existence of international legal instruments as well as the movement for the promotion and the protection of human rights, women's rights specifically have continued to be violated within the national jurisdictions. This thesis studied the different forms of violations that take place within Nigeria and what accounts for such continuous violations. The purpose is to identify the causes of VAW in Nigeria as well as factors that weaken the effectiveness of the domestic mechanisms. Afterward, it attempts to introduce the implementation and enforcement of CEDAW as an alternative to domestic ineffectiveness. This study discovered several political and socio-cultural limitations that affected the domestic mechanisms resurfacing in the context of CEDAW. It concludes with recommendations that could address these exasperating challenges that threaten both domestic and international women's rights mechanisms. Statistics identified Nigeria as one of the cases of continued violation of women's rights in all forms. Physical violence is the most predominant in Nigeria as this violence is towards all age brackets irrespective of marital status. Physical violence is observed in teenagers and up to the retirement ages such as women in the 60s. The reason is that the period signals the most productive and active period of a

woman's life when they try to be well engaged in society and it is, therefore, becoming the most endanger years. Regarding marital status, single and unmarried experience violence less regularly than the married and divorced since they have lesser contact with their partner. Hence, there is a high rate of physical violence committed in marriage since they live in the same home in order to dominate the partner or reaction to perceive infidelities. The divorced are also at a higher risk because of the gruesome idea of honor killing while they attempt to go into another relationship. The data showed that most married and divorced had experienced physical violence at least once since the age of 15. This creates a link to continued violence from the age of 15 to the period of being married or divorced. Psychological violence has a lesser occurrence in Nigeria as the partners express their aggression in the physical senses. That is rather than ignore, omit, or become insensitive, the victim is physically attacked. Nevertheless, physical violence also results in the psychological effect on the victims. Just like physical violence, the occurrence of sexual violence also hits high numbers in Nigerian society. This predominance of sexual violence in Northern Nigeria takes the form of rape and sexual harassment in which most are mostly unreported. Another research has shown that there is a significant number of rape victims among women with HIV/AIDS. New forms in which sexual harassment is taking place online through social media are also gradually growing all over the country with the increased use of social media networks. The fading act of Female Genital Mutilation (FGM) still require to be pointed out since it is still prevailing in remote areas that have not been reached by the intervention of anti-FGM programs or in community cultures that has to remain secretive.

Observing that violation against women is interconnected; that is physical violence can take place alongside sexual violence leading to psychological effects on the victim, the causes of the continued violation of women's rights are also interconnected. This is reflected in the socio-cultural practices that overlap with the religious and legal system such as Sharia-law. Harmful cultural practices are mentally coded in the society's norms and customs that reflect a picture of the female gender as a commodity, a second-class community member to the other gender, and as an object to be used and brutalized. There have been movements against cultural, religious, and legal systems within the country that promote VAW. A notable example is the Aba women riot of 1929 that challenged the actions of colonialists that affect the women and their business. Subsequently, women had taken part in the defense of their territories while taken up jobs in the Second World War since Nigerian males have been drafted into the army to fight under the Union Jack. The role of Women in the Nigeria Independence movement also signals the struggle for repositioning the female gender in the all system that attempts to limits women's rights. The post-independence period has featured

women's struggle such through movements such as NCWS, WIN, and other women associations in pursuit of suffrage. Nevertheless, these struggles have not been able to pull down most of the ideas that expose the women to abuses and violations of their rights whether on a larger systemic level or at the individual level.

In addressing the issue of VAW, the Nigerian legal system has continued to develop to allow for the elimination of VAW, however, some challenges weaken the effectiveness of these instruments. The general fundamental rights clauses featured in the constitution serves as general protection of human rights while the National Gender Policy addresses gender inequality issues. Several sections of the constitution make provision for protection against discrimination on gender basis. The problems of the Nigerian legal system in the non-adaptive nature of the instruments to the on-going violations alongside eminent threats to women, the lack of reforms, and proper implementation on the sides of the law enforcement agencies. Other problems include penal code that outrightly states the punishment of women as a remedy in the issues of marriage in the Sharia Law. The role of non-state actors such as multinational corporations has also promoted discrimination against women in employment areas as well as leadership positions. NGO as a non-state actor has also been weakened since most NGOs are financed by elite hence they determine the tune of the piper or in other words, NGO dances to the beat of the elite who led the procession against the domestication of CEDAW. The alternative to local ineffectiveness of women's right protection that leads to the total elimination of VAW is a boomerang strategy; which is the use of international instruments in promoting VAW as a result of the weakness of the domestic instruments.

The international community has also established a specialized convention that focuses on the rights of women. The CEDAW serves as the leading international instrument for mitigation VAW. Emanating from the United Nations UDHR, CEDAW was adopted to serves as a legal instrument. It defines VAW in its facets as well as stating the rights to be granted to women in all ramifications; equality under the law, politics, education, health, employment, marriage, and family. It made provision for what state responsibility is the elimination of VAW. All member states are expected to domestically implement this convention as an act of complete ratification. According to this, Nigeria, a member of the UN, should ratify and domesticate CEDAW. Hence it was signed by the Nigerian government in 1985 which mandated the submission of reports every four years. Several obligations of the CEDAW are yet to be fulfilled by the Nigerian government including the domestication of the convention subject to the upper chamber of government. Therefore, in the judgment of the courts in Nigeria, CEDAW has not yet be referred to in deciding a case. This study



identified the absence of CEDAW clauses in the CFRN, lack of detailed investigation into the cases of VAW, lack of alternatives such as homes and shelters as remedies for the victims as key factors that promote ineffectiveness in the domestic legal mechanisms used by Nigeria in protecting women. Also, the continuous laxity on fulfilling the obligation state in the CEDAW by the Nigerian government reflects its lack of political will to eliminate VAW. Other factors identified include the delay in the execution of justice and the intervention of religious institutional heads in passing a bill in promoting CEDAW. As a result, the resurfacing of cultural resistance and religious dogmatism not only as causes of VAW but hindrance to the CEDAW. This will mean that cultural and religious idea that promote VAW exist in the mind of both the public and the members of the chambers of government. A point for further research is to examine how the representation of women in the Nigeria Senate affects the domestication of CEDAW in the constitution and the legal system of Nigeria.

## Recommendation

This study concludes with the recommendation that could counter the effect of the tumultuous causes of VAW and lead the path to the full enshrinement of CEDAW in Nigeria. Firstly, there is a need for more intense and aggressive campaigns against VAW. The more the public is aware of the higher the possibility of eliminating all forms of violence the less violation of women's rights. The utilization of online and on-land platforms such as social media, radio, television, and newspapers will ensure that the public is well informed on the challenges. Also, government agencies such as the Police force should be rehabilitated and educated on how to respond to cases of VAW. Protest like the Aba Women Riots in a 21-century context can pave the path to the full realization of women's rights in Nigeria. The FMWASD should promote and sponsor legislation to protect women and ensure that current laws are implemented to protect the girl child and women from all kinds of violence against. Initiatives should be made to address workplace abuse. Also, legislation to stop certain types of discriminatory cultural traditions such as widowhood practices should be enforced. A synergy between the Ministry of Women's affairs and the Ministry of Education can promote a driving force that can push legislation that eliminates all forms of religious and cultural practices that lead to VAW. Through the inclusion of human rights education in all levels of education in all 36 states of the nation. However, if the government of Nigerian struggles to put CEDAW as a priority, an external mechanism such as sanctions and isolation of Nigeria from the

international community because of attaining a improve standard for women in the country. Finally, further research can also be carried out on the processes and best practices in other states in the implementation of CEDAW as a lesson for Nigeria.

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