GENDER JUSTICE IN NIGERIA: INCOHERENCE OF GLOBAL TREATIES AND CUSTOMARY LAW

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Nigeria is a signatory to numerous international treaties for the protection of women with attendant obligations of making her laws keep track with international legal standards. However, one thing is to subscribe to international legal documents, it's another to follow through by domesticating, implementing and ensuring their enforcement. This paper focuses on the development of international legal regime for women's rights and gender equality. The paper observed a wide gap between global standards and customary norms and practices. The paper identifies and highlights the several areas of Nigeria customary law lagging behind international legal standards on gender equality. Having observed a general lack of coherence between principles outlined in global treaties and customary law, the paper suggests ways of ensuring a convergence between global standards and Nigerian customary law.

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INTRODUCTION

The Nigerian nation-state was created by the British government in 1914 through the amalgamation of the separately administered northern and southern protectorates. At international, regional, sub-regional and national levels, global treaties are acknowledged as crucial for the protection of human rights and freedom. Global treaties became popular with the adoption of the Universal Declaration of Human Rights in 1948. Regardless of prevailing dominant discourse grounded in western theories, all human societies have their ideologies of human rights, albeit with cultural peculiarities. Discussions on gender dimensions of human rights enshrined in global treaties endorsed by Nigeria should necessarily be situated within the country's historical experience from the pre-colonial to the modern period. In pre-colonial Nigeria, human rights discourse is located within the various geo-political entities that comprised modern-day Nigeria before 1914. Rights in traditional African societies emphasised communal, rather than individual rights and freedoms. Strong cultural norms have placed women and children under the protective care of the male folk thereby inhibiting rather than enhancing the individual rights of the woman.

This paper reflects divergent views regarding the status of women in indigenous African communities in the light of sweeping modernisation and globalisation. This ranged from viewing women as '*jural minors*' under the guardianship of their husbands and fathers to portraying them as independent adults with full control over their individual lives and resources. The globalisation of human rights has meant that Nigeria is now signatory to several international (United Nations), regional (African Union) and sub-regional (Economic Community of West African States) treaties and conventions. Many of such conventions contain provisions for equality between men and women while enjoining State parties to eliminate all forms of discrimination on the basis of gender in their national laws. Of course, the most gender-specific is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), popularly termed as the Women's Bill of Rights, which Nigeria signed and ratified in 1985. Significant United Nations documents have built on the principles in CEDAW some periodic intervals since 1979. However, a cursory look at Nigerian law shows a wide gap remains between the endorsement of international, regional and sub-regional treaties and their domestication in Nigeria.

The foregoing issues constitute the focus of this paper and are addressed as follows. The first section explores the relevant global treaties

for the protection of women's rights. It conducts us through a theoretical review of international gender and human rights legal instruments and examines existing literature on human rights from a gender perspective. Section two investigates the human rights and gender dimensions of laws in pre-colonial, colonial and post-colonial Nigeria. It argues that while it is undeniable that the notion of human rights existed and some rights were protected in pre-colonial Nigerian societies, the rights of women and girls were often derogated. Examples included gender-bias in property rights, in marriages, in inheritance and succession, in widowhood and the exclusion of women and children from decision-making structures in some traditional societies. During colonial times, the subjugation to colonial authority carried with it the imposition of European values along with socially stratified differences in the enjoyment of rights based on race, class and sex. The repression of women's rights by the colonial state and the ensuing agitation by women to safeguard them was amply demonstrated by anti-colonial protests such as the Abeokuta women's riots and the Aba women's riots.¹

In post-independence, the rights of Nigerians are guaranteed by the Constitution.² However, there is a significant disparity between the *de jure* constitutional rights of women in principle and their *de facto* rights in practice. During the military era, while both men and women groaned under the repressive military regimes, women were disproportionately denied the right to political participation manifested by their under-representation in public office, a situation that persists, though to a lesser degree, under the democratic state.³ While these symbolise the general lack of coherence between global treaties and local realities, the appreciable efforts at domesticating for instance the Convention on the Rights of the Child (CRC) as state law in some states of the Federation have met with stiff resistance in other states. In view of the foregoing, the last section proffers policy recommendations for ensuring convergence of law between global treaties and local realities through their domestication and implementation at the local level.

¹ Funke Okome, *Domestic Regional and International Protection of Women against Discrimination*, <http://asqafrica.ufl.edu/files/okome-vol6-issue3.pdf>.

² See generally sections 33-46 or Chapter IV of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, commonly referred to as the Fundamental Rights provisions of the Constitution.

³ According to Femi Falana, "since military rule is antithetical to democratic governance, the Constitution became the first casualty" under military rule. FEMI FALANA, *FUNDAMENTAL RIGHTS ENFORCEMENT IN NIGERIA* 9 (Legal Text Publishing Company Ltd. 2010).

I. INTERNATIONAL COMMITMENTS ON GENDER

A. *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

CEDAW, often regarded as the Women's Bill of Rights, came into effect in 1979 as a firm commitment of all member states of United Nations to eliminate all forms of actions and attitudes which hitherto created preferences for men over women in any form, including trade and employment opportunities. A crucial part of the convention is Article 1 presenting the definition of discrimination which simply implies any act or practice which aims at excluding or preventing females from enjoying the same right as males. This definition covers the hitherto less pronounced property rights and trade-related discrimination which prevented the female from full benefits of ownership or inheritance of land. Article 15 is designed specifically to protect women's property rights. Women are to be accorded full legal capacity identical to that of men to conclude contracts and administer property. State parties agree that all contracts and legal instruments directed at restricting the legal capacity of women are deemed null and void. In most developing countries, existing customs often confer sole property rights on men ('the male child') after the death of a parent thereby discriminating against women ('the female child'). This is a barrier on the full exercise of economic rights of females under such circumstances. To this effect, Article 3 specifically declares that women have the same rights as men to enjoy all human rights and fundamental freedoms. The abolition, abrogation and repeal of such customary practices were declared deemed for implementation in all member countries.

In the field of employment, Article 11 declares that women shall have the same employment opportunities including the right to the application of the same criteria for selection in matters of employment and the right to work with equal remuneration as men. Article 5 makes express provision for elimination of pre-conceived ideas or notions, prejudices and customary practices that women are inferior to men who led to the delineation and classification of certain tasks as reserved mainly for men and others solely for women. This provision provided a level-playing field for male and female in the labour market, in all sectors of the economy and in the family. It also redefined the roles of men and women in the household. Gender inequality in employment organisations are to be eradicated.

B. Beijing Declaration

The United Nations Fourth World Conference on Women, Beijing 1995, marked a significant turning point in the global agenda for gender equality. The Beijing Declaration and Platform for Action which was unanimously adopted by 189 countries set an agenda for women empowerment and advancement especially in twelve critical areas of concern. The Conference summarily reaffirmed, as stated in the 8th Declaration, the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and especially the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Platform of Action which was based on the identified twelve critical issues of concern set strategic objectives and actions for the achievement of gender equality. In clear and bold terms gender mainstreaming was adopted as the preferred strategy for integrating gender issues into policies and programmes at all levels. Declaration 13 reiterates that women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process, and access to power, are fundamental for the achievement of equality, development and peace. Declaration 15 states that men and women have equal rights, opportunities and access to resources, equal sharing responsibilities for the family and that a harmonious partnership between them are critical to their well-being, their families as well as to the consolidation of democracy. Declaration 16 in addition, affirms that eradication of poverty, economic growth, social development, environmental protection and social justice requires the involvement of women and that equal opportunities and equal participation by men and women are keys to people-centred sustainable development.

In Declaration 24, all member countries were mandated to take necessary measures to eliminate all forms of discrimination against women and the girl child as well as remove all obstacles to gender equality, advancement and empowerment of women. In order to achieve this, the countries were instructed in Declaration 26 to promote women's economic independence, including employment opportunities and eradicate the persistent and increasing burdens of poverty on women. This is to be achieved by addressing the structural causes of poverty through changing of economic structures, ensuring equal access for all women, including those in rural areas, ensuring that they are made vital development agents and made to have equal access to productive resources. The determination to achieve these female empowerment mandates by the Conference is

enshrined in Declaration 35.

The Platform for Action highlighted specific objectives and assigned specific roles to the relevant institutions for implementation. It should be noted that in each case, governments were to enact laws and amend relevant sections of the existing ones to protect the resolutions in the declarations and tailor every action towards the achievement of the stated strategic objectives. Non-Governmental Organisations (NGOs), regional development banks, bilateral and multilateral donor agencies at international, regional and sub-regional levels are also assigned specific roles towards the actualisation of the objectives.

C. Beijing Declaration + 5

The UN General Assembly meeting tagged, “Women 2000: Gender Equality, Development and Peace for the Twenty-first Century”, took place between 5 and 9 June, 2000, at the United Nations Headquarters, New York, five years after the 1995 Beijing Declaration. The adopted outcomes are contained in the document entitled “Further actions and initiatives to implement the Beijing Declaration and Platform for Action”. The meeting was conveyed mainly to review progress in the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and the Beijing Declaration and Platform for Action.

D. Beijing Declaration +10

The meeting of the General Assembly of the United Nations on the review of the United Nations Millennium Declaration held 14 to 16 September, 2005. The meeting reaffirmed the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women and the outcome of the twenty-third special session of the General Assembly. It welcomed the progress made thus far towards achieving gender equality, stressing that challenges and obstacles remain in the implementation of the Beijing Declaration and Platform for Action and, in this regard, pledged to undertake further action to ensure their full and accelerated implementation especially in the identified twelve thematic areas. The assessment areas include:

Women and Poverty: Many factors were recognised as having contributed to widening economic inequality between men and women. These include income inequality, unemployment and deepening poverty levels. More so, gender inequalities and disparities in economic power-sharing, unequal distribution of unremunerated work between men and

women, lack of technological and financial support for women's entrepreneurship, unequal access to, and control of capital, particularly land and credit, and access to labour markets, as well as all harmful, traditional and customary practices, were pointed out to have constrained women's economic empowerment and exacerbated the feminization of poverty.

Education and training of women: It was observed that there must be an increased awareness that education is one of the most valuable means of achieving gender equality and the empowerment of women. However, in some countries, efforts to eradicate illiteracy and strengthen literacy among women and girls and to increase their access to all levels and types of education were constrained by the lack of resources and insufficient political will and commitment to improve educational infrastructure and undertake educational reforms.

Women and health: It was recognised that more programmes have to be implemented to create awareness among policy makers and planners of the need for health programmes to cover all aspects of women's health throughout women's life cycle. These have contributed to an increase in life expectancy in many countries. Limitations still exist however, in that there is still a wide gap between and within rich and poor countries with respect to infant mortality, maternal mortality and morbidity rates, as well as with respect to measures addressing the health of women and girls, given their special vulnerability regarding sexually transmitted infections, (including HIV/AIDS and other sexual and reproductive health problems), together with endemic infectious and communicable diseases, such as malaria, tuberculosis, diarrhoeal and water-borne diseases and chronic non-transmissible diseases.

Violence against women: Reports revealed that governments have initiated policy reforms and mechanisms, such as interdepartmental committees, guidelines and protocols, national, multidisciplinary and coordinated programmes to address violence. Some Governments (Nigeria inclusive) have also introduced or reformed laws to protect women and girls from all forms of violence and laws to prosecute the perpetrators. It was however identified that there is a lack of comprehensive programmes dealing with the perpetrators, including programmes, where appropriate, which would enable them to solve problems without violence. Inadequate data on violence further impedes informed policymaking and analysis. Socio-cultural attitudes which are discriminatory and economic inequalities reinforce women's subordinate place in society. This makes women and girls vulnerable to many forms of violence, such as 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.

Following the evaluation of progress made in the ten years since the Fourth World Conference on Women in implementing the Beijing Declaration and Platform for Action, as well as the current challenges affecting its full realization, governments recommit themselves to the Beijing Declaration and Platform for Action and also commit themselves to further actions and initiatives to overcome the obstacles and address various identified challenges. In taking continued and additional steps to achieve the goals, governments recognize that all human rights are universal, indivisible, interdependent and interrelated, and are essential for realizing gender equality, development and peace in the Twenty-first century.

E. Beijing +15

The Commission on the Status of Women undertook a fifteen-year review of the implementation of the Beijing Declaration and Platform for Action and the outcomes of the twenty-third special session of the General Assembly. Emphasis was placed on the sharing of challenges and good practices with a view to overcoming remaining obstacles and new challenges, including those related to the Millennium Development Goals (MDGs).

F. Beijing +20

At the fifty-ninth session of the Commission on the Status of Women (CSW) which took place at the United Nations Headquarters, New York, in March, 2015, the Commission undertook a review of progress made in the implementation of Beijing Declaration and Platform for Action. It was revealed that more than 100 countries of the world still have laws limiting women's participation in the economy.

G. African Charter on Human and Peoples Rights

In Africa, regional documents have extended the promotion and protection of human rights. These include the African Charter on Human and Peoples Rights (1981), African Charter on the Rights and Welfare of the Child (1990), Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights (1998) and the Protocol to the African Charter on Human and Peoples'

Rights on the Rights of Women (2003).

II. RATIFICATION AND IMPLEMENTATION OF INTERNATIONAL TREATIES

According to Okpara,⁴ a Treaty “is an agreement formally signed, ratified, or adhered to between two nations or sovereigns”. It is an international agreement concluded between two or more state parties in written form and governed by international law. Other terminologies adopted for describing a Treaty are Accord, Convention, Covenant, Declaration or Pact. The word “Protocol” also means a treaty which revises or adds to the provisions of the earlier treaty.

Nigeria is a state party to all the numerous treaties discussed above and other treaties which she had ratified. In international law, ratification means the final establishment of consent by the parties to a Treaty to be bound by it.⁵ It usually includes the exchange of deposit of instruments of ratification. Thus, a State which ratifies a treaty agrees to be bound by it on the basis of *pacta sunt servanda*.

Countries have different ways of transforming treaties into local laws. In Nigeria, like in most Commonwealth countries, transformation is by domestic legislation. Section 12(1) of the 1999 Constitution provides 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.

A treaty which is yet to be domesticated binds nobody. Such non-incorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties. Indeed, as Okpara⁶ rightly observed, non-incorporated treaties have no effect in Nigeria upon the rights and duties of citizens either at common law or as statute law. Our domestic courts have no jurisdiction *de jure* to construe or apply them. However, *de facto*, they indirectly affect the rightful expectation by the citizens that government acts affecting them would observe the terms of treaties to which Nigeria is a party.

The legal position in Nigeria contrasts with what happens in some countries like France and the USA.⁷ For example, in France and USA transformation is automatic. Treaties or agreements duly ratified or

⁴ Okpara, *op.cit.*

⁵ BYRAN A. GARNER, BLACK'S LAW DICTIONARY 1540 (8th Edition).

⁶ See generally OKPARA, HUMAN RIGHTS LAW & PRACTICE IN NIGERIA CHENGLO LIMITED (Enugu, Nigeria 2005). See also *Abacha v. Fawehinmi* [2002] All E SCNQR 489.

⁷ Article 55 of the 1958 French Constitution.

approved are once published superior to that of the domestic law. In the US, a treaty once duly made and is ratified by the US, becomes self-executory. Thus, there is automatic incorporation. According to Article VI of section 2 of the American Constitution 'all treaties made ... the supreme law of the land and the judges shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding'.

III. INTERNATIONAL RECOURSE SYSTEMS

It should be noted that filing of complaints to the UN from Nigeria in respect of violation on human rights is possible. This possibility has been created by the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, all of which are binding on Nigeria.

It is significant for a country like Nigeria that there are international recourse systems. The word 'recourse' suggests an act of seeking help or assistance. In other words, and for our purpose, it means a method by which a right may be enforced. International law has many ways through which guaranteed rights may be monitored or enforced. Two systems make up the recourse machinery at the international plane and they are those based on the Charter and those originating from Treaties.

Organs originating from the Charter: This category includes the General Assembly, The Economic and Social Council (ECOSOC), the Commission on Human Rights, the Commission on the Status of Women and other organs or bodies emanating directly or indirectly from the UN Charter. Each of these organs has the power to create a subsidiary organ to assist in the implementation of its functions, as it may deem necessary. The principal organs derive their legitimacy and power from specific provisions of the UN Charter. This is why they are called UN Charter based organs.

Organs originating from Treaties: This category of system of enforcement and protection of human rights is created out of the provisions of treaties. They arise because specific treaties provided for their creation. For instance, the Committee on the Elimination of Racial Discrimination was created in 1969 to monitor the implementation of the Convention on the Elimination of Racial Discrimination. The Human Rights Committee was established in 1977 under Article 28 of ICCPR to oversee the enforcement of the ICCPR. Likewise, the Committee on Economic, Social and Cultural Rights was created in 1985 to monitor the implementation of ICESCR. In

existence are also the Committee on the Elimination of Discrimination against Women of 1981 (CEDAW); the Committee against Torture (1987); and the Committee on the Rights of the Child, 1990.

IV. EVOLUTION OF HUMAN RIGHTS IN NIGERIA

There is no denying of the existence of some recognition of human rights in pre-colonial era in the various indigenous communities now presently known as Nigeria. Each ethnic grouping had its own notion of human rights which the natives enjoyed in varying degrees in their communal native settings. However, the socio-economic and political inequalities of the native societies as well as the gender imbalance of the pre-colonial era far outweigh any quantum of recognition placed on people's rights and individual freedom. Interwoven with native law and customs were the African traditional beliefs, meta-physics, religion, magic, superstition and voodooism which greatly constrained the practice of human rights wherever they existed. Slavery, which existed before the arrival of the white man, and the slave trade which the white man introduced, were major derogations from human rights. Other forms of derogation include the Osu Caste system in Igboland, trial by or deal which beclouded the criminal justice system in Yorubaland, the purdah system under Islamic autocratic regimes which denied women any public status and the killing of twins in the far-eastern communities around Calabar. Thus, the practice of human rights in pre-colonial times was hardly visible.

The colonial period (in spite of the civilization which came with it), arguably, did not witness an enhancement of human rights practice as may be thought. In fact, the colonial period has been described⁸ as a period of diminished or even extinguished human rights activity.⁹ This informed Onje Gye-Wado's¹⁰ conclusion that:

“The basic underlying tendency and means of action of colonialism was the subjugation of the colonized peoples to the rules of the colonizers, the fact of colonialism suggests the erosion of human rights. Thus, the colonized peoples' civil and political rights were non-existent”.

The imposition of English law on Nigeria meant that customary law

⁸ Onje Gye-Wado, *Human Rights and Reconstruction in African Law, Justice and the Nigerian Society* (I. A. Ayua ed., Essays in Honour Hon. Justice Mohammed Bello, NIALS 1995), as quoted in OKPARA OKPARA, *HUMAN RIGHTS: LAW AND PRACTICE IN NIGERIA* 47 (Chenglo Ltd. Nigeria 2005).

⁹ FEMI FALANA, *FUNDAMENTAL RIGHTS ENFORCEMENT IN NIGERIA* 2 (Legal Text Publishing Company Ltd. Lagos, Nigeria 2004).

¹⁰ Onje Gye-Wado, *Human Rights and Reconstruction in African Law, Justice and the Nigerian Society* (I. A. Ayua ed., Essays in Honour of Honourable Justice Mohammed Bello, NIAS 1995).

and the indigenous legal system became inferior. The customary norms of the natives were only accepted as valid if they were not repugnant to 'natural justice, equity and good conscience'. Customary law was allowed to exist side by side with the English law. The administration of English law and English-type courts do not on their own guarantee the enjoyment of full rights of liberty, due process, free speech, etc. to the colonial subjects.

It is significant that post-independent Nigeria witnessed the entrenchment of human rights provisions in the Constitution. However, the entrenchment of fundamental rights in the Constitution in post-colonial Nigeria has not meant an end to the agitation for the actualisation of human rights especially in the protection of vulnerable people and for self-actualisation among the minority groups. It may be said for example, that whether in pre-colonial, colonial or post-colonial times, the general trend has been that women in particular under strong cultural and religious inhibitions, have enjoyed a situation, which, in the face of the modern notions of human rights, is still 'dehumanizing'.

V. AGE-OLD GENDER DISPARITY

Olarinde¹¹ posited that the status of the African woman in the traditional and cultural settings was not better than that of a slave and has always been culturally, economically, psychologically and sexually. In native Africa, a female was little more than a piece of property.¹² She was an 'inferior being', a 'beast of burden', a 'sexual objec't and a victim of male viciousness. This makes many writers to view the African woman as a depository of an unfair culture. Buchi Emecheta corroborating this assertion puts it mildly:

The African woman 'has a position and status, which is in many ways definitely inferior to that of a man, and this is in spite of the fact she does most of the hard work in supporting the family. They were regarded as socially inferior to men, and were always treated as minors before or after marriage a woman was under the control of her father or husband and on his death of some other male member of her family. She could never sue independently at court she would own property but could not dispose of it without her guardian's consent'¹³.

The subjugation of women under traditional beliefs in African traditional settings is age-long. Feminism is almost synonymous with

¹¹ E. S. Olarinde, *Some Injuries to the Rights of Women and Proposed Remedies*, 1(1) NIGERIAN FEMINIST LAW JOURNAL (1993).

¹² E. S. Olarinde, *Some Injuries to the Rights of Women and Proposed Remedies*, 1(1) NIGERIAN FEMINIST LAW JOURNAL (1993).

¹³ Buchi Emecheta, *op.cit.* at 175

weakness and is a disadvantage. A female suffers from various disadvantages from cradle to the grave. She suffers from all sorts of discrimination and humiliation from her immediate family, the extended family and the society at large. Feminism is shackled by African traditional religion, cultural beliefs and practices, which the natives held sacrosanct from time immemorial.

A. The Girl Child

Most men prefer to have male children because this is seen as a sign of strength and means of perpetuating their names or posterity. The constant birth of female children is regarded as a curse and a family shame. Female children are therefore sometimes disdainfully rejected from birth. There is an unhidden preference for the welfare and training of male children at the expense of female children even when the latter are more promising. In the long run, this has a negative effect on the general development of women because of their lack of exposure and inability to contribute to matters, which even directly affect their gender particularly. Daughters are not regarded as permanent members of their father's family. They are usually denied succession rights to the estate of their family. Unmarried daughters who remain in their father's compound are not entitled to maintenance from the family wealth as a matter of legal obligation.

B. Child Marriage

In many traditional communities in Africa, early marriage is the norm. A female has no freedom of choice of a spouse in native marriage practices a father or any elderly representative of the family arranges marriage for girls. It is a taboo for her to express any negative feelings or objections. Early and forced marriages were practised under customary law. Since the customary and Sharia legal systems do not clearly specify a minimum age of betrothal (other than recognizing the attainment of puberty), child marriages continue unabated especially in the Muslim dominated communities of northern Nigeria. Among the Hausa-Fulani for example, young girls between the ages of 9—11 years are given out in early marriage, mostly to comparatively much elderly men, thereby exposing them to various health risks like obstetrics fistula (V.V.F.) which is a serious condition of vesico impairment as a result of having children at too early an age.¹⁴ Some traditional practices like female circumcision and dreaded

¹⁴ E. S. Olarinde, *op. cit.*

‘zurzur cut’ (a traditional practice involving making razor cuts in the upper and lower walls of the female genitals to allow free passage during intercourse, often leading to haemorrhage), also affect the health and general well-being of the child bride.

Under the Convention on the Rights of the Child (CRC) 1989, which Nigeria ratified in 1991, government is committed to ensure the overall protection of children and young persons aged under 18. Child marriage which substantially infringe on this protection is undoubtedly a violation of child rights. CRC has been domesticated in Nigeria. The Child Rights Act (CRA) was passed in 2003 to keep to international standards on the rights of the child and to give effect to government commitments under the CRC. However, since the CRA is a Federal statute, it has no direct effect until domesticated as state law. Many of the states where child marriage is prevalent, having raised strong objections on religious grounds, have chosen not to implement it. Nigeria operates a complicated Federal structure with civil, customary and Islamic marriage laws running on almost parallel lines. Customary marriage is preserved under Item 61 Second Schedule (Part 1) of the Constitution. Latest attempts to amend section 29 (4) of the Constitution so as to reconcile Nigerian law with international standards on minimum marriageable age of 18, were forestalled at the National Assembly.¹⁵

C. Women in Marriage

By marriage, a female is regarded uprooted from her father’s family and given out like a chattel to the family of the spouse. In the family of the spouse, since she was purchased with a dowry or received as a gift, she is assigned her domestic role of procreation of children and housekeeping. There are traditional institutions and inhibitions still depriving the woman of control over her body and her health. Some traditional practices are usually carried out on women during delivery, which may cause infection in mother and child such as the eating of certain delicacies or drinking of concoctions to aid the delivery or determine the sex of her baby.

Thus, customary law have not promoted gender equality but rather disparity between men and women. The recognition and treatment accorded to women as a class, under native law (substantive or procedural), has not been equal with that of men.

¹⁵ See Alexander Aplerku, *One Senator Kept Child Marriage Alive in Nigeria Last Month*, <http://www.vice.com/read/child-marriage-was-nearly-made-illegal-in-nigeria-last-month> (Last visited May 25, 2015).

D. Law of Succession

Customary succession law generally does not allow women to inherit landed property. In Hausa-Fulani customs, females cannot inherit real property. Also among the Igbo tribe, daughters have no right to inherit real property. Similar discrimination exists in Yoruba succession law. In *Ogunkoya v. Ogunkoya*,¹⁶ it was held that in the matter of the distribution of the estate of a deceased, wives are also regarded as chattels who are inheritable by other members of the family of the deceased under certain conditions.

The subjugation of widows under native law is quite instructive. Widows are discriminated against politically, socially, religiously and in all spheres of life. One rule of customary law which runs across all the traditional African societies is the inability of a widow, in intestate succession, to inherit landed property from her deceased husband's estate. It is remarkable to find such uniformity in the customary laws of so many people groups in Africa. The rule applies irrespective of the services the widow may have rendered to her deceased husband, or of her contributions, financial or otherwise to the accumulation of the intestate estate. A case in point is *Nizieaya v. Okagbue*.¹⁷ Ephraim died in 1909 survived by a wife, Mary, and a daughter. Mary took possession of his property consisting of a piece of land and a house. She collected rents and erected new buildings on the land. She paid all rates and received all the rents without accounting to anyone. Her efforts greatly enhanced the value of the property. On her death, Mary bequeathed this property to certain beneficiaries whose rights were challenged by a relation of Ephraim. In an action brought by the deceased's beneficiaries to confirm their rights, Reynolds J. was "of the opinion that his action must fail on the grounds that by native law and customs possession by a widow of land can never be adverse to the rights of her husband's family so as to enable her to acquire an absolute right to possession of it against the family. This being so, it follows that the plaintiffs would acquire no rights over the land through Mary". Though the decision has its merits, nevertheless, we respectfully submit that the judges in appropriate cases should apply the repugnancy principle to declare invalid any rule of customary law which solely aims at depriving a woman of her proprietary rights merely on the ground of her gender. In *Meribe v Egwu*,¹⁸ a rule of customary law which allows a barren woman to 'marry' another woman for

¹⁶ Unreported (West African Court of Appeal Decision).

¹⁷ Unreported (1951) Suit No. 29/59 Obollo District Court, Nsukka.

¹⁸ (1972) 10 CCHCJU.

her husband in order that she might have issues through her, was declared 'repugnant to natural justice, equity and good conscience'. As it is, following the *Niezianya v. Okagbue* principle, where a husband in his lifetime allots a farm, a house or some other form of landed property to his wife for her use and enjoyment, the widow does not thereby acquire inheritance rights in it. A contention that she did acquire such rights under Yoruba native law was rejected in no uncertain terms by the West African Court of Appeal in *Dosumu v Dosumu*:¹⁹

The native law and custom alleged here is, briefly, that property can be allotted and descend through a wife, if such native law and custom existed, it would-mean that on the death of the childless wife, not of the same family as her husband, property vested in her would pass away from the husband's family from whom the wife became entitled to it, to the wife's family.

Again, in *Eze v Okwo*,²⁰ a man was survived by three widows but no issue. Before his death, the deceased instructed his senior wife to administer his property and use the income thereof to maintain herself and the other wives, and to continue staying in his compound with the hope that they might have issues for him. The senior wife attempted to carry out the wishes of her husband but was challenged by his nephew, the plaintiff in this case. He claimed not only that he was the rightful administrator of his uncle's estate but also that the plaintiff should be expelled from her late husband's compound. It was held that a widow could neither inherit her husband's intestate state nor administer it. What is clear here is that under customary law a widow has no share in her husband's intestate estate. In *Oshilaja v Oshilaja*,²¹ Odesanya, J. observed that: the customary law that a widow cannot inherit her deceased husband's property has become so notorious by frequent proof in the courts that it has become judicially noticeable.

Similarly, Beckley, J. in *Sogunro-Davies v Sogunro-Davies*²² & Ors. opined that a wife was deprived of inheritance rights in her deceased husband's estate because: in an intestacy under native law and custom, the devolution of property follows the blood. Therefore a wife or widow not being of the blood, has no claim to any case.

Curiously, instances abound under native law where slaves or even strangers who performed the burial rites are allowed to inherit landed property. In *Suberu v Sunmonu*, Jibowu F. J. in rejecting the decision of the Lagos High Court on the inheritance rights of a widow had said:

¹⁹ (1929) 2 NLR 79 at 80

²⁰ (1957) 2 FSC. 31

²¹ Suit No. CA/L/46/88 at p. 8

²² Odje, P., *The Law of Succession in Southern Nigeria*, at 345

“... it is a well settled rule of native and custom of the Yoruba people that a wife could not inherit her husband’s property since she herself is, like a chattel, to be inherited by a relative of her husband”.

Thus, a marriage under customary law extends, for a woman, beyond the life of the husband. The death of her husband does not dissolve the marriage. She is inherited by her husband’s heir. For instance, the Court of Appeal, in the case of *Ogunkoya v Ogunkoya*²³ had said that:

The wives left are also regarded as chattel who are inheritable by other members of the family (in Yoruba sense) of the deceased under certain conditions.

In this case, a widow brought an action to claim the house left by her husband. At times, the right to inherit the widow by a next of kin falls on the widow’s first son. In some ethnic groups such as the Esan in Nigeria, the consent of the widow is not required. Among the Yoruba of Nigeria her consent is required. If she refuses to accept the new husband she may obtain divorce and repay the dowry. He must take steps to dissolve the marriage before she can free herself from the legal obligations to the deceased husband’s family.

It may be observed that this rule subsists in Nigerian communities because they are mostly patrilineal societies. Odje,²⁴ contends that the “true rationale of the rule would seem to lie in the practice of exogamy”. The wife and her husband must belong to different families. Okoro,²⁵ says that this practice removes women from their original families to the families of their husbands. The consequence is that daughters are not regarded as permanent members of their father’s family with the resultant denial of succession rights to their father’s property. As regards her husband’s family “the fact that she is not a blood descendant of her husband’s family deprives her of succession rights in that family”. For an unmarried daughter, her brother who becomes the heir or successor has only a moral and not a legal obligation to maintain them. Therefore, we can safely say that in the law of intestate succession in most native communities such as among the Igbo and the Bini, a woman has no place either as a daughter or as a widow. Where a widow is neither inherited nor has children to look after her, she falls back on her own father’s family. There, as a daughter she may not be able to enjoy her father’s property. In effect, a female inherits neither from her father nor her husband’s estate.

²³ Okoro, Customary Laws of Succession in Eastern Nigeria.

²⁴ Odje, P., *The Law of Succession in Southern Nigeria*, at 345.

²⁵ Okoro, Customary Laws of Succession in Eastern Nigeria, at 345.

CONCLUSION

On a macro level, there is abundant evidence that continued social disintegration, intolerance, marginalization, hunger, unemployment and poverty constitute serious threats to world peace. These problems are undermining the institutions of democracy, infrastructure and the economy. Poverty for instance cannot be addressed as purely economic feature. Its causes and effects are interwoven with very diverse issues of human rights, health, nutrition, cultural traditions, and environmental influences, political, social, historical and religious conditions, which combine together to create a common trend. It was rightly submitted that gender discrimination provides a common thread linking all these contributing factors. In traditional African society, discrimination against the female folk is institutionalised. Advancing gender equality by reversing the various cultural, social and economic handicaps that are inimical to women development is one way of unlocking the potentials of women and fast-tracking societal development.

We must admit that there have been some noticeable developments in the efforts to improve the lots of women in Nigeria given the enactment of laws like the Child Rights Act, which is a direct domestication of the UN Convention on the Rights of the Child. There is however a need for constitutional amendment to give its provisions full implementation. Constitutional review should aim at allowing automatic incorporation of international conventions and treaties on human rights into our basic law. There is also the need for judicial activism on behalf of Nigerian judges to outlaw customs that are manifestly 'repugnant to natural justice, equity and good conscience' (a phrase which must be expounded to keep customary law in line with global treaties). Gender imbalance in the law is a form of injustice. It may be appreciated that the main cause of the disregard for women rights is rooted largely in ignorance. It is firmly believed that the best panacea for this trend is proper education and appreciation of gender equality and uniqueness. With proper appreciation of the nature of womanhood, ancient prejudices affecting women rights will be discarded. Statute laws abrogating discriminating laws are the first necessary steps to ensuring gender balance. Although without first removing the constitutional inhibitions, this may be less drastic, slow or prove inadequate for radical and effective socio-cultural changes now required since it has been shown that it is difficult to change age-old cultural beliefs and traditional practices.

It is hereby suggested that it is high time that aggressively serious campaigns emphasizing the need of female education be mounted at all

levels. This will greatly enhance female participation in policy and decision-making processes and dissolve unfavourable taboos or inhibitions. As a complementary and follow-up to this, the Beijing Platform For Action should be simplified, translated into various languages spoken in Africa and distributed to the grassroots while making it part of the curricula of formal and informal education.