



## **Roles of the United Nations and International Legal Instruments in the Protection of Women's Rights**

Omozue Moses Ogorugba

**To cite this article:** Omozue Moses Ogorugba 'Roles of the United Nations and International Legal Instruments in the Protection of Women's Rights' (2020-2021) 16 *The Nigerian Juridical Review*, pp 79 – 102.

**To link to this article:** <https://doi.org/10.56284/tnjr.v16i1.14>

## ROLES OF THE UNITED NATIONS AND INTERNATIONAL LEGAL INSTRUMENTS IN THE PROTECTION OF WOMEN'S RIGHTS

Omozue Moses Ogorugba\*

### Abstract

*Discrimination and violence against women have become widespread and multi-faceted. Discrimination against women and girls are observable in many spheres of life including social, cultural, economic, health, education, in representation in public life and in determination of nationality. Women and girls suffer violence than their male counterparts at home as well as during armed conflicts, internal or international. In keeping with preamble of the Charter of the United Nations (UN) 1945 to 'reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women...' the organisation has over the years put in place measures to tackle the issues of discrimination and violence against women in order to protect the rights of women. Notable among such measures is the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the establishment of a committee of experts to monitor the implementation of the Convention in the members States. The aim of this article is to discuss the role of the UN in the elimination of discrimination and violence against women. It will also appraise relevant international instruments designed to protect the rights of women globally and at regional levels. The study adopts the doctrinal research method by with legal instruments and case law as the primary sources of data, and textbooks, journal articles and the Internet as the secondary sources of data.*

**Keywords:** Discrimination against women, Violence against women, Rights of Women, United Nations, Convention on the Elimination of All Forms of Discrimination against Women

### 1. Introduction

Discrimination and violence against women impinge on the human rights of women. Systematic discrimination against women is noticeable in the treatment of women and girls in social, economic and family circles.<sup>1</sup> Women are often discriminated against in a manner that is incompatible with international instruments and constitutional provisions. Unfortunately, such practices are condoned as normal in patriarchal societies such as Nigeria. These undermine and promote the violation of women's rights. Certain harmful traditional practices that amount to gender-based violence such as female genital

---

\* LLM, Lecturer, Department of Public Law, Delta State University; Email: omozuemoes@gmail.com .

<sup>1</sup> JN Ezeilo, 'Women, Law and Human Rights: Global and National Perspectives (Abuja: Acena Publishers, 2011) xii.

mutilation, early and forced marriages, widowhood practices, denial of inheritance and property rights of women and girls are still prevalent.<sup>2</sup>

Historically, it has been acknowledged that while the struggle for the protection of women at country levels dates back to the 17<sup>th</sup> century, the history of global women's rights movement is intrinsically tied to the development of modern human rights which in itself took root from the formation of the United Nations (UN).<sup>3</sup> However, prior to the formation of the UN, agitations for equal rights between men and women had manifested in the struggle for enfranchisement<sup>4</sup> and the recognition of women's legal personality.<sup>5</sup> The preamble to the UN Charter states that one of its purposes is, 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations at large ...'<sup>6</sup> The General Assembly of the UN has passed several resolutions for the protection of vulnerable human beings including women. In the protection of women, it adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 18 December 1979.<sup>7</sup> CEDAW has played a vital role in the protection of women through its committee. This article discusses the role of the UN in the protection of women particularly through CEDAW and other international legal instruments protecting the rights of women. It is divided into five main sections. Section one, which is this introduction, is followed by the second which briefly discusses the concept of women's rights as a derivative of human rights. This section identifies some of the rights that are peculiar to women and can be classified as 'women's rights'. The third section deals with the role of the UN in protecting women through the protection of their rights. This part of the paper highlights the key provisions of CEDAW and the work of the CEDAW committee in the protection of women. The fourth and penultimate section identifies and briefly discusses regional frameworks that protect women's rights. The fifth and last section is the conclusion which also contains the recommendations of the article.

## 2. The Concepts of Human Rights and Women's Right

A fundamental starting point in discussing protection of women is the question whether there are rights that are peculiar to women distinct from the generally recognised human rights? Meanwhile, there is no unanimity as to the precise meaning and scope of the term 'human rights'. Human rights have been described as the rights that inhere in human beings on account of their

---

<sup>2</sup> Ibid 2.

<sup>3</sup> Ibid 20.

<sup>4</sup> The right to vote and be voted for.

<sup>5</sup> The struggle for the recognition of women as *femme sole* resulted in the enactment of legislation such as the English Married Women's Property Act of 1881.

<sup>6</sup> Charter of the United Nations 1945, Preamble, para 2.

<sup>7</sup> UNGA Res 34/180 of 18 December 1979 (1249 UNTS 13), entered into force on 3 September 1981.

humanity.<sup>8</sup> It has also been asserted to consist of demands or claims that individuals or groups make on one another, their communities or States which are recognised as essential to human nature. These demands or claims consist of certain moral principles that set out certain standards of human behaviour that are regularly protected under national and international law to which a person is entitled simply because he or she is a human being<sup>9</sup> and thus differ from appeals to benevolence and charity. It is something that pertains to all men at all times of which no one may be deprived without a great affront to justice.<sup>10</sup>

Human rights may be said to derive from moral and natural rights. They are the moral principles that set out certain standards of human behaviour, and are regularly protected as legal rights in national and international law, as inalienable rights to which a person is inherently entitled simply because he or she is a human being.<sup>11</sup> Human rights derive from the dignity of the human person and are directed towards providing a minimum standard of decent living worthy of a human being. In recognition of the importance of human rights and to ensure their global applicability, the UN has put in place a number of standard-setting instruments in the form of covenants, conventions, declarations, guidelines, principles and protocols which prescribe standards to secure, maintain and enforce such rights. Notable among these include the Universal Declaration of Human Rights (UDHR), 1948<sup>12</sup>; the International Covenant on Civil and Political Rights (ICCPR),<sup>13</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>14</sup> both of 1966. Collectively, these are known as the International Bill of Rights. A number of regional instruments have also been put in place to foster human rights. Prominent among these are the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; the American Convention of Human Rights, 1970 and the African Charter of Human and Peoples Right, 1981 (ACHPR).

Human rights have been classified in a variety of ways. They may be classified into personal rights, political and moral rights, procedural rights,

---

<sup>8</sup> J Donnelly *Universal Human Rights: In Theory and Practice* (2003) 7. See also H O Agarwal *International Law and Human Rights* (2010) 731 and A Fagan 'Human Rights' *The Internet Encyclopaedia of Philosophy* <<http://www.iep.utm.edu/h/humrts.htm>> accessed 18 February 2022.

<sup>9</sup> M Sepúlveda and others, *Human Rights Reference Handbook*, (3<sup>rd</sup> rev ed, Cuidad Colon, Costa Rica: University of Peace, 2004) 3.

<sup>10</sup> HO.Agarwal, *International Law and Human Rights* (Allahabad: Central Law Publishing, 2010) 731.

<sup>11</sup> Sepúlveda (n 9) 3.

<sup>12</sup> UNGA Res 217 A(III) (adopted 10 December 1948).

<sup>13</sup> GA Res 2200A (XXI) 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967) (adopted on 16 December 1966 and entered into force on 3 January 1976).

<sup>14</sup> GA Res 2200A (XXI), 993 UNTS 3/[1976] ATS 5/6 ILM 360 (1967) (adopted 16 December 1966, entered into force 23 March 1976).

proprietary rights and equality rights. Personal rights include the rights to life, to dignity of human person, personal liberty and freedom of movement. Political and moral rights include the rights to freedom of expression, conscience and religion. Proprietary rights include rights to property and privacy. Procedural or due process rights include the rights to fair hearing and equality rights include the right to freedom from discrimination.<sup>15</sup> Jurisprudential justification for human rights is anchored on three generally acceptable principles, namely equality, justice and solidarity.<sup>16</sup> Equality or equal treatment of all recognises that each rational, competent person is a free agent, autonomous and self-directing in the pursuit of his/her good. The idea is that regardless of socio-economic and other socially constructed distinctions, each individual deserves equal treatment and respect for the dignity of his or her person. The importance of equality to human rights is indelibly etched in virtually all human rights instruments.<sup>17</sup> Equality is closely related to justice. Equality guarantees of human rights instruments aim to achieve justice. According to Rawls, justice presupposes that 'each person has an equal right to a fully adequate scheme of equal basic rights and liberties...'<sup>18</sup> Terms that have been used to explicate justice include 'fair', 'equitable' and 'according each person what is due or owed to that person'.<sup>19</sup>

This justice and equality perceptions which underlies human rights formulations have resulted in the construction of the universality of human rights. However, most feminist scholars and activities favour cultural relativism

---

<sup>15</sup> CM Peter, *Human Rights in Africa - A Comparative Study of the African Human and Peoples' Rights Charter and the New Tanzanian Bill of Rights* (New York: Greenwood Press: 1990) 53.

<sup>16</sup> Some commentators break these principles into four: (a) equality and non-discrimination (b) participation (c) transparency and access to information and (d) accountability. See M Sepúlveda *Note of the UN Independent Expert on the Question of Human Rights and Extreme Poverty* (2011) 49 cited in W van Ginneken 'Social Protection and the Millennium Development Goals: Towards a Human Rights-based Approach' International Conference: 'Social Protection for Social Justice' Institute of Development Studies, UK 13–15 April 2011 <<https://www.ids.ac.uk/files/dmfile/VanGinneken2011HumanrightsbasedapproachtoMDGsCSPconferencedraft.pdf>> accessed 16 April 2022.

<sup>17</sup> For instance, aside from using the first paragraph of the UDHR to proclaim equal and inalienable rights of all human beings as the foundation of human rights, the international community accentuated the indispensability of equality to human wellbeing by employing the word 'equal' or 'equality' at least fifteen other places in the instrument. Similarly, the ICCPR and the ICESCR use the term 'equal' or 'equality' twelve and nine times respectively, and to the same effect.

<sup>18</sup> J Rawls 'Justice as Fairness: Political not Metaphysical' (1985) 14 (3) *Philosophy and Public Affairs* 227.

<sup>19</sup> TL Beauchamp and J Childress *Principles of Biomedical Ethics* (5 edn New York: Oxford University Press, 2001) 226.

in the construction of human rights.<sup>20</sup> The universality versus relativism discourse on human rights is hinged on individual versus collective rights. To the universalists ‘fundamental rights and freedoms are universal, that is, belong to each and every human being, no matter what he or she is like.’<sup>21</sup> However, cultural relativists posit that human rights are culture specific, and notions of human rights based on Western conceptions may not be acceptable in other cultures, such as Africa, because as cultures are different so are their metaphysical basis different.<sup>22</sup> Whilst the universalist principle of human rights appears to favour equal rights for both men and women, it seems that gender differences have not been taken into account. Thus, Bunch asserts that the dominant definitions of human rights have tended to exclude much of women's experiences.<sup>23</sup> In order to address these experiences of women, certain rights that are peculiar to women have been identified as species of human rights.

The National Human Rights Commission (NHRC) states that ‘women’s rights are human rights’ and ‘are fundamental human rights that were enshrined by the UN for every human being on the planet.’<sup>24</sup> These rights include the right to live free from violence, slavery, discrimination, to be educated, to own property, to political participation, health, dignity and to earn fair and equal wage. As NHRC observes, women are entitled to all these rights; yet almost everywhere around the world, women and girls are still denied of these rights simply because of their gender.<sup>25</sup> According to the Commission, the underlying factors responsible for women’s rights infringement is inherent discrimination between male and female genders which results in women not enjoying equality with men in the society.<sup>26</sup> This inequality is evidence in unequal access of women and girls to education, harmful traditional practices, inadequate access to economic resources, unequal access to political participation, sex and gender based violence (SGBV) - various forms of violence experienced specifically by women and girls, amongst others. Consequently, many international, regional and national human rights framework contain provisions for promotion and protection of women’s rights. Key principles in the instruments include non-

---

<sup>20</sup> See for example: C Bunch, ‘Transforming Human Rights from a Feminist Perspective’ in J Peters and A Wolper (eds) *Women’s Rights, Human Rights – International Feminist Perspectives* (New York: Routledge, 1975) 13.

<sup>21</sup> R Hanski and M Suksi (eds), *An Introduction to the International Protection of Human Rights: A Textbook* (2<sup>nd</sup> rev edn (Turku: Åbo Akademi University Institute for Human Rights, 1999) 5.

<sup>22</sup> See RA Wilson, *Human Rights, Culture and Context – Anthropological Perspectives* (London: Pluto Press, 1997) 4.

<sup>23</sup> Bunch (n 20).

<sup>24</sup> National Human Rights Commission ‘The Rights of Women and Gender Related Matters’ <<https://www.nigeriarights.gov.ng/focus-areas/women-and-gender-matters.html>> accessed 16 April 2022.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

discrimination, equality of rights, individual autonomy and non-violence. The next two sections discuss some of these frameworks/instruments.

### 3. The UN and Protection of Women's Rights

#### 3.1 The International Bill of Rights

The International Bill of Rights comprises of UDHR,<sup>27</sup> ICCPR<sup>28</sup> and ICESCR.<sup>29</sup> These instruments and their accompanying protocols<sup>30</sup> form the tripod on which fundamental rights stand globally. Many of the provisions of these instruments possess the important characters of generality, consistency, long duration and a sense of obligation on States, which confers on them the status of customary international law, binding on all States and not only members of the United Nations.<sup>31</sup> The UDHR provides that all human beings are born free and equal in dignity and rights,<sup>32</sup> and contains an authoritative listing of human rights, including various provisions affirming gender equality and non-discrimination. According to article 1:

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR attempts to secure the protection of civil and political rights, recognizes the inherent dignity of each individual and undertakes to promote conditions within States to allow the enjoyment of civil and political rights. Member States to the Covenant are obligated to protect and preserve basic human rights and to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy for their violation.

---

<sup>27</sup> Note 13.

<sup>28</sup> Note 14.

<sup>29</sup> Note 15.

<sup>30</sup> These are the optional protocols to the ICCPR and the ICESCR which were adopted in 1966 and 2008, respectively.

<sup>31</sup> Customary international law refers to 'conduct, or the conscious abstention from certain conduct, of states that becomes in some measure a part of international law' P Alston and HJ Steiner *International Human Rights in Context: Law, Politics, Morals: Text and Materials* (2<sup>nd</sup> edn New York: Oxford University Press, 2000) 28. The character of the State practice that can develop into a customary rule of international law include concordant practice by a number of states relating to a particular situation, continuation of that practice over a considerable period of time, a conception that the practice is required by or consistent with international law, and general acquiescence in that practice by other States; see art 38(1) of the Statute of the International Court of Justice (ICJ) and M Hudson *Working Paper on Article 24 of the Statute of the ICJ* UN Doc A/CN.4/16 (1950) 5.

<sup>32</sup> Ibid art 1.

The core themes of ICCPR are contained in articles 2 and 3 and are essentially based on the notion of non-discrimination. Article 2 ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of States parties to the Covenant while article 3 ensures the equal right of both men and women to the enjoyment of all civil and political rights set out therein, which include rights to freedom from torture,<sup>33</sup> liberty and security of the person,<sup>34</sup> movement, equality before the courts and tribunals and recognition as a person before the law;<sup>35</sup> and political participation.<sup>36</sup> ICESCR provides the legal framework for the protection and preservation of most basic economic, social and cultural rights. These include rights relating to work in just and favourable conditions;<sup>37</sup> social and family protection including marriage only by consent;<sup>38</sup> adequate standard of living, highest attainable standards of physical and mental health;<sup>39</sup> education;<sup>40</sup> and the enjoyment of the benefits of cultural freedom and scientific progress.<sup>41</sup> Most of the rights contained in the ICESCR are relevant in tackling discrimination and violence against women and girls (VAWG), given that the provisions are laced with the requirement of equal treatment equal to men and women.

### ***3.2 Convention on the Elimination of all forms of Discrimination against Women***

A milestone in the attempt to establish universal standards on rights of women was reached with the UN Declaration on the Elimination of All Forms of Discrimination against Women, 1967.<sup>42</sup> This paved the way for the subsequent adoption of CEDAW, which is one of the most widely ratified human rights treaties under the UN system.<sup>43</sup> CEDAW re-asserts many of the fundamental rights provisions of the International Bill of Rights with emphasis on the rights of women. Article one (1) provides for some rights and kicked against sex discrimination in the following words:

...any discrimination, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment

---

<sup>33</sup> ICCPR art 7.

<sup>34</sup> Ibid art 9.

<sup>35</sup> Ibid arts 12, 14 and 16.

<sup>36</sup> Ibid art 18.

<sup>37</sup> ICESCR arts 6 – 8.

<sup>38</sup> Ibid arts 9 and 10.

<sup>39</sup> Ibid arts 11 and 12.

<sup>40</sup> Ibid arts 13 and 14.

<sup>41</sup> Ibid art 15.

<sup>42</sup> UN General Res 2263 (XXII) of 7 November 1967.

<sup>43</sup> As at the end of 2021 CEDAW has 189 State parties, 2 signatories and only six States with no action; see UN Office of the Human Rights Commissioner ‘Status and Ratification Interactive Board - Convention on the Elimination of All Forms of Discrimination against Women’ <<https://indicators.ohchr.org/>> accessed 9 March 2022.



or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political economic, social, cultural, civil or any other field.

According to the preamble to the Convention, State parties should acknowledge the fact that extensive discrimination against women continue to exist. The preamble also acknowledges the detrimental effect that discrimination has on the development of nations, thereby linking gender equality with development.<sup>44</sup>

Among the international human rights treaties, CEDAW takes an important place in bringing the female gender into the focus of human rights concerns. Its spirit is rooted in the goals of the United Nations which is to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women. The treaty spells out the meaning of equality and how it can be achieved. In so doing, CEDAW establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights. In the preamble to CEDAW, the State parties acknowledge the fact that extensive discrimination<sup>45</sup> against women continues to exist, and that the society is fond of denying women participation in political and economic activities.

CEDAW is a landmark treaty and the most important normative instrument that aims to achieve equal rights for women everywhere in the world. The Nigerian government became a State party to this important Convention when it ratified it in 1985 without reservations, signed the Optional Protocol in 2000 and ratified it in 2004. CEDAW is an international standard-setting document that establishes the universality of the principles of equality between men and women and makes provision for measures to be taken by States parties to ensure equality of rights for women throughout the world. It provides for the adoption at the national level, of legislation prohibiting discrimination against women.<sup>46</sup> The framework of the obligations under CEDAW is constructed on three main principles: the obligation to respect (equality in laws and policies); the obligation to protect (non-discrimination – direct and indirect) and the obligation fulfil (to uphold equality and eliminate gender discrimination in the entire sphere of the social, political and economic life).<sup>47</sup> The rights listed in CEDAW cover many aspects of women's lives, and relate to participation in

---

<sup>44</sup>J Rehman., *International Human Rights Law* (2<sup>nd</sup> edn England: Pearson Education Limited, 2010) 520.

<sup>45</sup> What constitutes 'discrimination' in the Convention was clearly defined; see CEDAW art 1.

<sup>46</sup> The National Coalition on Affirmative Action for Women 'About Us' <<http://aacoalition.org/about>> accessed 4 April 2021.

<sup>47</sup> UN Sustainable Development Goals Knowledge Platform 'Committee on the Elimination of Discrimination against Women (CEDAW)' <<https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=108&menu=3170>> accessed 26 March 2022.

political, social and cultural life,<sup>48</sup> health,<sup>49</sup> education,<sup>50</sup> employment,<sup>51</sup> housing,<sup>52</sup> marriage,<sup>53</sup> family relations<sup>54</sup> and equality before the law.<sup>55</sup> What follows is a discussion of the implementation of CEDAW at the international level and in Nigeria.

### *3.2.1 Committee on the Elimination of Discrimination against Women*

Article 17 of CEDAW establishes the Committee on the Elimination of Discrimination against Women (the Committee), a body of independent experts that monitors implementation of the Convention. The Committee consists of 23 experts on women's rights from around the world. State parties to the treaty are obliged to submit regular reports on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention. During its sessions the Committee considers the report of each State party and addresses its concerns and recommendations to the State party in the form of concluding observations. Furthermore, under the Optional Protocol CEDAW,<sup>56</sup> the Committee is mandated to receive communications from individuals or groups of individuals within the jurisdiction of a State party, claiming to be victims of a violation of any of the rights in the Convention by that State party. On the receipt of such a communication, the Committee initiate inquiries into situations of grave or systematic violations of women's rights.<sup>57</sup> The Committee also formulates general recommendations and suggestions based on the examination of reports and information received from the States parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.<sup>58</sup>

Historically CEDAW Committee secretariat, unlike other treaty-based committees, was not provided by the office of the High Commissioner of Human Rights. However, as of 1 January 2009 all responsibility for servicing CEDAW has been shifted to the office of the High Commissioner for Human

---

<sup>48</sup> CEDAW arts 3, 5, 7, 8 and 13.

<sup>49</sup> Ibid arts 12 and 14.

<sup>50</sup> Ibid art 10.

<sup>51</sup> Ibid art 11.

<sup>52</sup> Ibid art 14(h).

<sup>53</sup> Ibid art 16.

<sup>54</sup> Ibid art 16.

<sup>55</sup> Ibid art 2

<sup>56</sup> Adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, entered into force, 22 December 2000.

<sup>57</sup> Optional Protocol to CEDAW, arts 1 and 2. These procedures are optional and are only available where the State concerned has accepted them by ratifying the Optional Protocol.

<sup>58</sup> CEDAW art 21.

Rights.<sup>59</sup> Like the Human Rights Committee and the Economic, Social, and Cultural Rights Committee, expenses of the CEDAW Committee are borne from the UN budget. Prior to 1994 the CEDAW Committee used to meet in New York and Vienna although New York sessions were much more publicized. Since its 13<sup>th</sup> session in 1994, the committee's sessions have mostly been held in New York. However, as noted above, in January 2008 the secretariat of CEDAW moved to Geneva, which has allowed a greater number of sessions to be held in Geneva.

CEDAW's overall structure and composition resembles the Human Rights Committee, although the membership of the committee is predominantly female. The committee also has the largest membership of any of the UN treaties. The members of CEDAW Committee are drawn from a range of professions. Members are nominated by States but serve in their personal capacity and not as government representatives. Until recently the Committee has not had a judicial or quasi-judicial function. Its sole task previously was reviewing the state reports, but this has changed significantly since the Optional Protocol came into force. The committee's main task was one of implementing the Convention, an exercise, thus far, conducted within the framework of reporting procedures.<sup>60</sup> The Optional Protocol to the convention authorising communications from individuals or groups of individuals, as well as an enquiry procedure was adopted by the UN General Assembly on 6 October 1999 and came into force on 22 December 2000.<sup>61</sup> The present reporting procedure as provided in the Convention has proved less than satisfactory. Reports are often delayed, out-dated and inadequate, with most state parties placing emphasis upon the legislative mechanisms relating to gender equality.

The report is the State party's first opportunity to present to the committee the extent to which its laws and practices comply with the convention which it has ratified. The report should:

- (a) establish the constitutional legal and administrative framework for the implementation of the convention;
- (b) explain the legal and practical measures adopted to give effect to the provisions of the convention;
- (c) demonstrate the progress made in ensuring enjoyment of the provisions of the convention by the people within the state party and subject to its jurisdiction.<sup>62</sup>

---

<sup>59</sup>J Rehman., *International Human Rights Law* (2<sup>nd</sup> edn., England: Pearson Education Limited, 2010) 537.

<sup>60</sup> CEDAW, art 29.

<sup>61</sup> GA Res 54/4.

<sup>62</sup> Rehman (n 59) 538 – 539. -

### *3.2.2 Social and Cultural Patterns to Eliminate Practices Based on Ideas of Inferiority*

The Office of the UN High Commissioner for Human Rights, commonly known as the Office of the High Commissioner for Human Rights (OHCHR) or the UN Human Rights Office, is a department of the Secretariat of the United Nations that works to promote and protect the human rights that are guaranteed under international law. The UN also uses this office to eliminate practice based on ideas of inferiority of women, because societal patterns have frequently led to ideas of inferiority of women. One of the principal objectives of CEDAW is to change perceptions and traditional (usually negative) image of women in many cultures and traditions, and in this regard article 5(a) represents a significant commitment in the following words:

To modify the social and cultural patterns of conduct of men and women...in the elimination of the prejudice and other customary practice which are based on the ideas of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

CEDAW committee in its general recommendation observes that some traditions are representing stereotyped roles to perpetuate practice of violence or coercion, forced marriages and female circumcision.<sup>63</sup> Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in sub-ordinate roles and reduced the low level of political participation, education and to their work opportunities. These attitudes also contribute to propagation of pornography, the depiction and other commercial exploitation of women as sexual objects, rather than as individuals.<sup>64</sup>

Pursuant to articles 4 and 5 of UNDHR which state that no one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. article 6 of CEDAW considers the important issue of female sexual slavery and the suppression of trafficking in women. In condemning such activities, it requires State parties to take all appropriate steps to end trafficking in women and exploitation and prostitution of women.

---

<sup>63</sup> UNDOC HRI/Gen/1/Rev.

<sup>64</sup> Ibid para 12.

### 3.2.3 Women Representation in Public Life and Issue of Nationality

In many countries, women have had inadequate opportunities in social participation, especially in striving for political rights and power in the government and different institutions.<sup>65</sup> This historical tendency still persists, although women are increasingly being elected to be heads of state and government.<sup>66</sup> Women may face several challenges that affect their ability to participate in political life and become political leaders. Several countries are exploring measures that may increase women's participation in government at all levels, from the local to the national. The number of women leaders around the world has grown, but they still represent a small group. At the executive level of government, women become prime ministers more often than they become presidents. Part of the differences in these roads to power is that prime ministers are elected by political party members themselves while presidents are elected by the public. As of October 2019, the global participation rate of women in national-level parliaments was 24.5%.<sup>67</sup> In 2013, women accounted for eight per cent of all national leaders and two per cent of all presidential posts. Furthermore, 75% of all female prime ministers and presidents have taken office in the past two decades. Since 1960 to 2015, 108 women have become national leaders in 70 countries, with more being prime ministers than presidents.

Individual female executives usually have high levels of education and may have close relationships with politically prominent or upper-class families. The general status of women in a country does not predict if a woman will reach an executive position since, paradoxically, female executives have routinely ascended to power in countries where women's social standing are acknowledged.<sup>68</sup> Women have long struggled in more developed countries to become president or prime minister. Israel elected its first female prime minister in 1969 but has not done so again. The United States of America, on the other hand, has had no female president. Meanwhile, the proportion of women in national parliaments around the world is growing, but they are still underrepresented. As of 1 April 2019, the global average of women in National Assemblies is 24.3%. At the same time, large differences exist between countries; for example, Sri Lanka has quite low female participation rates in parliament compared with Rwanda, Cuba, and Bolivia, where female

---

<sup>65</sup> RO Bamidele 'Gender Equality and the United Nations: Implementation of CEDAW in Nigeria and South Africa' Master of Arts Thesis in International Relations, Eastern Mediterranean University, Faculty of Business and Economics, Dept of International Relations (2013) 51 – 77 <<http://i-rep.emu.edu.tr:8080/xmlui/handle/11129/1345>> accessed 23 April 2021.

<sup>66</sup>Ibid.

<sup>67</sup> J Farida 'Introduction' *Shattered, Cracked, or Family Intact? Women and the Executive Glass Ceiling Worldwide* (Oxford: Oxford University Press 2016) 1-2, 55.

<sup>68</sup>Ibid.

representation rates are the highest. Three of the top ten countries in 2019 were in Latin America (Bolivia, Cuba, and Mexico), and the Americas have seen the greatest aggregate change over the past 20 years.<sup>69</sup>

CEDAW deals with the elimination of discrimination against women in the political and public life of states.<sup>70</sup> It attempts to ensure that women have a right to vote and have a right to be elected to office with participatory rights in policy formulation at all the governmental levels. It also attempts to ensure that women are able to participate in the activities of non-governmental organisations. Women are not legally banned from standing for election or being appointed to public offices in most countries. CEDAW further provides that State parties are under an obligation to take all appropriate measures to ensure that women have the opportunity to represent their government at all international levels.<sup>71</sup> On the issue of nationality women have equal rights in acquiring, changing and retaining nationality. State parties are required to ensure 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 husband.'<sup>72</sup>

### *3.2.4 Women Rights to Education, Employment and Health*

Women frequently suffer from inequality of opportunities in education, vocational and professional training. CEDAW attempts to eradicate such discrimination and inequality. The governments of the State parties to the Convention are required to adopt appropriate legislative and other measures to end discrimination against women.<sup>73</sup> Girls and women have a right to education, just as boys and men do. Girls and women should have access to career guidance and professional training at all levels; to studies and schools; to examinations, teaching staff, school buildings, and equipment; and opportunities to get scholarships and grants, the same as boys and men. Girls and women have the right to take part in sports and physical education, and to get specific information to ensure the health and well-being of families. Governments should make sure girls do not drop out of school. They should also help girls and women who have left school early to return and complete their education.<sup>74</sup>

Article 11 deals with elimination of discrimination at the workplace and in the field of employment. It recognizes the right to work as an inalienable right of all human beings and women have a right to work just like men. They should be able to join a profession of their choice. Women must have the same chances to find work, get equal pay, promotions and training and have access to healthy

---

<sup>69</sup>Ibid.

<sup>70</sup> CEDAW art 7.

<sup>71</sup>Ibid art 8.

<sup>72</sup>Ibid art 9.

<sup>73</sup> Ibid art 18.

<sup>74</sup> Ibid art 10.

and safe working conditions. Women should not be discriminated against because they are married, pregnant, just had a child or are looking after children. Women should get the same assistance from the government for retirement, unemployment, sickness, and old age.

World Health Organisation (WHO), an organ of the UN , promotes and supports traditional practices which enhance health; ,for example, breast-feeding, and discourages those which are harmful, particularly to the health of women and girls. Among the latter, female genital mutilation which presents the most dramatic risk of ill health, affecting some 75 million women and girls in Africa alone. The organization also discourages nutritional taboos which prevent pregnant and lactating women from eating essential foods. WHO works closely with all concerned national authorities, and particularly with non-governmental organizations, on these issues. In 1993, the forty-sixth World Health Assembly adopted a resolution on maternal and child health and family planning.<sup>75</sup> Among other things, the resolution expressed concern about the continuing inequities affecting women in general and the persistence of harmful traditional practices such as child marriages, and dietary limitations during pregnancy. It urged member States to continue to monitor and evaluate the effectiveness of their efforts to achieve the goal of health for all, in particular in eliminating traditional practices affecting the health of women, children and adolescents. In 1994, the Forty-Seventh World Health Assembly adopted resolution dealing specifically with harmful traditional practices,<sup>76</sup> in which it urged all member States to:

- (i) assess the extent to which harmful traditional practices affecting the health of women and children constitute a social and public health problem in any local community or subgroup;
- (ii) establish national policies and programmes that will effectively, and with legal instruments, abolish female genital mutilation, childbearing before biological and social maturity, and other harmful practices affecting the health of women and children; and
- (iii) collaborate with national non-governmental groups active in this field, draw upon their experience and expertise and, where such groups do not exist, encourage their establishment.

In the same resolution, the Assembly requested the Director-General of WHO to strengthen technical support to member States in implementing the above measures; and to continue global and regional collaboration with non-governmental organizations, United Nations bodies, and other agencies and organizations concerned in order to establish national, regional and global strategies for the abolition of harmful traditional practices.

---

<sup>75</sup> WHA 46.18.

<sup>76</sup> WHA 47.10.

### *3.2.5 Social and Economic Rights of Women*

When the State fails to fulfil economic, social, and cultural rights, the burden is felt disproportionately on women. The lack of adequate housing, healthcare, work, and education also greatly increases women's vulnerability to violence, exploitation, and abuse. Economic, social, and cultural rights, therefore, are central to ensuring dignity and equality for women and must be a part of advocacy strategies to realize women's human rights. However, as women are highly diverse, experiences of inequality and discrimination can only be truly remedied through contextualized policies, practices, and remedies (that is, a substantive equality approach) aimed at realizing women's economic, social and cultural rights. According to UN, women are more likely than men to have low-paid, low-status and vulnerable jobs, with limited or no social protection or basic rights. Globally, women's wages are 17% lower than those of men. The right to work entitles female workers to have the opportunity to earn their living by the work. It is noted that worldwide, women make up 70% of the 1.2 billion people living in poverty.<sup>77</sup>

Article 13 of CEDAW represents important provisions related to economic and social rights. It emphasizes equality of rights, particularly the right to family benefits, the right to bank loans, mortgages, other forms of financial and recreational activities. It states that girls and women have the same rights as boys and men in all areas of economic and social life, like getting family benefits, getting bank loans, and taking part in sports and cultural life. Governments must do something about the problems of girls and women who live in rural areas and help them look after and contribute to their families and communities. Girls and women in rural areas must be supported to take part in and benefit from rural development, health care, loans, education, and proper living conditions, just like boys and men do. Women and girls in rural areas have a right to set up their own groups and associations.<sup>78</sup> Women often suffer from inequalities in obtaining benefits, loans and credit from governmental agencies, banks and building societies.

Article 14 of CEDAW makes specific positions relating to rural women whose works are often not acknowledged. The article is a detailed expression of the rights belonging to women in rural area and provides as follows:

- (a) States parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families including their work in the non-monetized sectors of the economy and shall take all appropriate measures to ensure the

---

<sup>77</sup> Relifweb, 'UNICEF Says Education for Women and Girls a Lifeline to Development,' 4 May 2011 <<https://relifweb.int/report/burkina-faso/unicef-says-education-women-and-girls-lifeline-development>> accessed 23 April 2021.

<sup>78</sup> CEDAW art 14.



application of the provisions of the present convention to women in rural areas.

- (b) States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and in particular, shall ensure to such women the right to;
  - (i) participate in the elaboration and implementation of developing planning at all levels;
  - (ii) have access to adequate health care facilities, including information, counselling, and services in family planning;
  - (iii) benefit directly from social security programmes;
  - (iv) obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter-alia, the benefit of all community and extension services, in order to increase their technical proficiency;
  - (v) organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
  - (vi) participate in all community activities;
  - (vii) have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; and
  - (viii) enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, and water supply, transport, and communication.

The provisions of the article 14 of CEDAW aim, among other things, to prevent gender discrimination in the payment of social securities and similar benefits. In *Broeks v Netherlands*,<sup>79</sup> Ms Broeks appealed to the Human Rights Committee under the first optional protocol claiming violations of article 26 of ICCPR and article 9 as well as articles 2 and 3 of ICESCR. Ms Broeks had been dismissed by her employer because of illness. At first, she received payments as unemployment benefits, but the Dutch government discontinued these since she was not the ‘breadwinner’ in her household as was required by the Netherlands Unemployment Benefits Act. The committee found violations of article 26 of ICCPR, because the statute was discriminatory in its treatment of women. Similarly, the Human Rights Committee has found that gender discrimination existed where a woman was not allowed to claim before domestic courts in relation to matters arising from matrimonial property.<sup>80</sup> The offending legislation in Peru had provided that when a woman is married only the husband is entitled to represent matrimonial property before courts, a provision which violated the terms of article 26 of ICCPR.

<sup>79</sup> (1970) UN Doc Supp No 40 (A/42/40) at 139.

<sup>80</sup> *Graciela Alo del Avelland v Peru, communication* (1988) UN Doc Supp No 40 (A/44/40) at 196.

### **3.3 Domestic Application of CEDAW in Nigeria**

Provisions on the domestication of treaties in Nigeria are enshrined in section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as follows:

- (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provisions of sub-section (2) of this section shall not be presented to the President for assent and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

The implementation of treaties affecting matters in the exclusive legislative list rests with the federal government. This means that only the National Assembly is empowered to domesticate treaties on matters on the exclusive list. In other words, a treaty affecting a matter in the exclusive legislative list will come into force in Nigeria with an enactment of the National Assembly. If the matter fell within the concurrent or residual list, the treaty also requires the approval of the majority of the State Houses of Assembly. As CEDAW is a treaty dealing with the rights of women, it falls within the category of treaties, which must attract ratification by a majority of all the Houses of Assembly in the Federation if it must become applicable throughout Nigeria.

At the state level, the branches of the National Coalition on Affirmative Action (NCAA) in the states, which are being coordinated by the Civil Resource Development and Documentation Centre (CIRDDOC) is working towards the domestication of CEDAW by at least 23 State Houses of Assembly, to satisfy the provisions of section 12 of the Constitution. The National Assembly is yet to enact legislation to domesticate CEDAW in Nigeria.<sup>81</sup>

### **3.4 Rights of Women during Armed Conflict**

From the contemporary legal perspective war atrocities have to be seen as mass violations of human rights. They affect all members of the society, regardless of their gender, age, skin colour, nationality or ethnic origin. Women, however, were and still are particularly vulnerable to all forms of such violations, in particular - becoming victims of various forms of violence. Women and girls are the frequent target of violence and sexual humiliation in times of distress, civil

---

<sup>81</sup> Ruth Oluyemi Bamidele 'Gender Equality and the United Nations: Implementation of CEDAW in Nigeria and South Africa' 51 -77 <[http://www.aacoalition.org/domestic\\_cedaw.htm](http://www.aacoalition.org/domestic_cedaw.htm)> accessed 4 May 2021.

war or internal and international armed conflicts.<sup>82</sup> The rape of women during armed conflict is an unfortunate, though regular occurrence; recent conflicts such as those in the former Yugoslavia and Rwanda graphically reflects the target rape of women from the opposing religious or ethnic group as a war tactic, as the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) in the Trial of Jean-Paul Akayesu, it was found that Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the bureau's communal premises, as well as elsewhere in the commune of Taba. The Chamber notes that much of the sexual violence took place in front of large numbers of people, and that all of it was against Tutsi women.<sup>83</sup>

The evolution of the protection and guarantee of the rights of women in armed conflicts became clearly noticeable after World War II. Initially, the legal position of women was defined through the prism of the general acts of international humanitarian law. Later on, international legal framework developed and, in course of time the need for special legal protection of women and their rights in the armed conflicts became very evident. Some of the international legal instruments that protect the rights of women during armed conflicts are as follows are discussed in the following paragraphs.

#### 3.4.1 The Geneva Conventions 1949

Establishment of Geneva Conventions has been seen as a great step forward for protection of women in situations of armed conflict. Article 12 of Geneva Convention I<sup>84</sup> creates the rule of equal treatment of women and men. At the same time however, it indicates that women should be treated with 'all consideration due to their sex'.<sup>85</sup> Geneva Convention III<sup>86</sup> relating to the treatment of prisoners of war, provides for equality of treatment for women and men and ensures treatment of women 'with all the regard due to their sex'.<sup>87</sup> Correspondingly Geneva Convention IV<sup>88</sup> provides that women shall be especially protected against any attack on their honour, in particular against

---

<sup>82</sup> Human Rights Watch, 'Seeking Justice, The Prosecution of Sexual Violence in the Congo War' [www.hrw.org/en/reports/2005/03/06/seeking-justice-o](http://www.hrw.org/en/reports/2005/03/06/seeking-justice-o) <last visited 15 March 2009>

<sup>83</sup> *Prosecution v Jean Paul Akayesu* Judgment decision 2 September 1998, Trial Chamber, Case No. (ICTR- 96-4-T)

<sup>84</sup> Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949.

<sup>85</sup> Ibid art 12.

<sup>86</sup> Convention on the Treatment of Prisoners of War 1949.

<sup>87</sup> Ibid arts 14, 88 and 97.

<sup>88</sup> Convention on the Protection of Civilian Persons in Time of War 1949.

rape, enforced prostitution, or any form of indecent assault.<sup>89</sup> It also contains specific provisions relating to pregnant women and maternity.<sup>90</sup>

The Geneva Conventions constituted a major shift in the legal position of women in warfare. Yet it has been observed that the protection of women's right provided in the Conventions is 'mostly based on the notions and ideal of respect for women, honour and family rights and women are seen in the treaties primarily as mothers and caregivers,'<sup>91</sup> which is indicative that acts of coercion against women and rape in particular, are considered by those treaties as harm to women's 'honour' in its social meaning, rather than women's dignity in the sense of essential feature of a human being.<sup>92</sup>

### 3.4.2 Other Relevant Statutes

Article 8 (2) of the Statute of the International Criminal Court (Rome Statute)<sup>93</sup> further highlights specific impact of armed conflict on women, by recognizing that committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined under article 7, 2 (f), enforced sterilization, or any other form of sexual violence constituting a grave breach of the Geneva Conventions amount to war crimes.

The Statute of International Criminal Tribunal for Yugoslavia (ICTY)<sup>94</sup> empowering the Tribunal to prosecute persons for committing crimes against humanity directly indicates to rape, "when committed in armed conflict, whether international or internal in character, and directed against any civilian population".<sup>95</sup> Correspondingly, Statute International Criminal Tribunal for Rwanda (ICTR)<sup>96</sup> while vesting the tribunal with power to prosecute crimes against humanity also refers to rapes. However, in order to accuse any person of those charges, the actions must constitute 'widespread or systematic attack

---

<sup>89</sup> Ibid art 27.

<sup>90</sup> Ibid arts 14, 16, 23, 27, 38, 50 and 76). See N Buchowska 'Violated or Protected. Women's Rights in Armed Conflicts After the Second World War' (2016) 2(2) *International Comparative Jurisprudence* 72 – 80.

<sup>91</sup> A Barrow 'UN Security Council Resolutions 1325 and 1820: Constructing Gender in Armed Conflict and International Humanitarian Law' (2010) 92(877) *IRRC* 221–234.

<sup>92</sup> KH Moodrick-Even and A Hagay-Frey 'Fall, Silence at the Nuremberg Trials: The International Military Tribunal at Nuremberg and Sexual Crimes against Women in the Holocaust' (2013) 35 *Women's Rights. Law Report*, 43–66.

<sup>93</sup> Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9.

<sup>94</sup> UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002)*, 25 May 1993 <<https://www.refworld.org/docid/3dda28414.html>> accessed 20 April 2022.

<sup>95</sup> Ibid art 5 (g).

<sup>96</sup> UN Security Council, *Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)*, 8 November 1994, <<https://www.refworld.org/docid/3ae6b3952c.html>> accessed 20 April 2022.

against any civilian population on national, political, ethnic, racial or religious grounds'.<sup>97</sup>

### 3.4.3 Specialised Regulations

In order to conduct a broader analysis of position and protection of women during armed conflicts, the acts adopted under the auspices of the UN, the Council of Europe and the European Union will be considered. As far as the UN legal framework is concerned it has to be underlined, that CEDAW neither has any direct reference to the violence against women nor to the women's rights during the wartime. Also it has no provisions suspending its applicability during war or armed conflict. Additionally, the CEDAW Committee has defined violence against women as a form of discrimination against women and one of the major breaches of women's rights.<sup>98</sup> Thus, the Committee has mentioned the situation of women in the armed conflicts, and the issues of violence against women in particular, in its Reports submitted on an exceptional basis and in its general recommendation<sup>99</sup> on women in conflict prevention, conflict and post-conflict situations. Since late 1960s the UN has drawn its attention specifically to the situation of women in armed conflict in its declarations, resolutions and action plans. In 1968, the International Conference on Human Rights in Teheran initiated discussion on the protection of women and children in emergency and armed conflicts. The Commission on the Status of Women has followed that with its own discussion during sessions held in 1970, 1972 and 1974. The result of those actions was the UN General Assembly Declaration on the Protection of Women and Children in Emergency and Armed Conflict, adopted in 1974.<sup>100</sup> Also the final document of the United Nations Fourth World Conference on Women held in Beijing in November 1995, that is, Platform for Action (1995) has referred to the issue of women in armed conflicts as one of the twelve crucial points of interest of the UN member States.

The ground-breaking Resolution 1325<sup>101</sup> has strongly underlined the need to reduce the use of gender-based violence in armed conflicts, explicitly requiring Member States to take all necessary action in this regard and urging them to stop impunity and to prosecute those who are responsible. This Resolution also obliged Secretary General to start the reporting procedure to the SC on the agenda, which resulted in 22 reports by now, with last report of 17 September 2015. It is very important that SC of UN has directly expressed the view that acts of sexual and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of

---

<sup>97</sup> Ibid art 3.

<sup>98</sup> CEDAW Committee General Recommendation No 19.

<sup>99</sup> Ibid No 30.

<sup>100</sup> UNGA A/RES/3318(XXIX), 14 December 1974.

<sup>101</sup> Security Council Resolution on Women and Peace and Security, 2000.

terrorism.<sup>102</sup> One of the importance of the instruments as discussed in the preceding paragraphs is that State-parties are obliged to follow the Convention, Statutes and resolution during armed conflict, State of emergency, within its jurisdiction, both in its own territory and in occupied territories.

#### **4. Other International Instruments Governing Rights of Women**

Attempts to combat discrimination against women and to establish de jure and de facto equality have a substantial history. The norm of equality and non-discrimination, especially gender-based equality and non-discrimination represents the core of the modern human rights regime. The following paragraphs discuss some of other international legal instruments that have been put in place to combat discrimination against women. Aside the Universal Treaties governing rights of women, there are regional treaties and these are;

##### ***4.1 European Commission on Human Rights Treaty***

The European Convention on Human Rights (ECHR)<sup>103</sup> also provides for gender equality by virtue of article 1 of. Under ECHR State parties undertake to ‘secure to everyone’ the rights contained in the convention. According to article 14 ‘the enjoyment of the rights and freedoms shall be secured without discrimination on any ground such as sex....’

Protocol 12 of the treaty extends beyond the rights provided in the convention to any right set forth by law. . Article 1 of Protocol 12 provides as follows:

...the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin association with a national minority, property, birth or other status.

This extension is clearly to the benefit of disadvantaged groups, such as women who have suffered from various discriminatory norms and practices which are not covered by the rights set forth in ECHR itself.

##### ***4.2 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women***

The Inter-American Convention, on the Prevention, Punishment and Eradication of Violence against Women (*Convention of Belém do Pará*)<sup>104</sup> seeks to prohibit

<sup>102</sup>Resolution 2331 (2016) adopted by the Security Council at its 7847<sup>th</sup> meeting, on 20 December 2016.

<sup>103</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5 <<https://www.refworld.org/docid/3ae6b3b04.html>> accessed 20 April 2022.

<sup>104</sup> Organisation of American States (OAS), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, 9 June 1994 <<https://www.refworld.org/docid/3ae6b38b1c.html>> accessed 20 April 2022.

violence against women and pervades every sector of society regardless of class, race, or ethnic group, income, cultural, level of education, age or religion and strives at its every foundation. It prohibits physical, sexual, and psychological violence against women, which explicitly includes violence in the home.<sup>105</sup> The convention provides a number of rights including the right to life, liberty integrity, fair trial, association, religion, legal protection and freedom from torture.<sup>106</sup> It contains an undertaking on the part of States which includes doing more than merely investigating, prosecuting and punishing violence against women. Thus, there is an undertaking to modify social and cultural patterns of conduct of men and women and customs based on the inferiority of women and stereotyping of roles.<sup>107</sup>

#### ***4.3 The African Union (AU) Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa***

The AU Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)<sup>108</sup> was adopted at the Meeting of Ministers, Addis Ababa, Ethiopia on 28 March 2003, and the Assembly of the African Union at the second summit of the African Union in Maputo, Mozambique, 21 July 2003, and came into force on 26 November 2005. Article 2 (2) of the protocol States that:

State parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotype roles for women and men.

Unlike the Women's Convention, the Maputo Protocol contains provision dealing specifically with the rights to life, addition to other rights of women.<sup>109</sup> Article 4 of the Protocol mandates State parties to the Protocol to: enact and enforce laws to prohibit all forms of violence against women including unwanted forced sex whether the violence takes place in public or private:

- (a) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
- (b) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence.

<sup>105</sup> *Convention* of Belém do Pará art 2.

<sup>106</sup> *Ibid* art 4.

<sup>107</sup> *Ibid* art 8.

<sup>108</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003 <<https://www.refworld.org/docid/3f4b139d4.html>> accessed 20 April 2022.

<sup>109</sup> Maputo Protocol art 4.

- (c) actively promote peaceful education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women;
- (d) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- (e) establish mechanisms and accessible service for effective information, rehabilitation and reparation for victims of violence against women;
- (f) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- (g) prohibit all medical or scientific experiments on women, without their informed consent;
- (h) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- (i) ensure that, in those countries where the death penalty still exists, not to carryout death sentences on pregnant or nursing women; and
- (j) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and those women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

#### ***4.4 South Asian Association for Regional Co-operation (SAARC)***

Nations of the South Asia under the umbrella of SAARC<sup>110</sup> had worked together to promote and protect the rights of women and girls. In recognition of the need to ameliorate the condition of women in general and in these countries, the heads of State or governments of SAARC have ratified various international conventions and protocols including CEDAW.<sup>111</sup> To meet the challenge against discrimination against the girl child, members of the South Asian Association for Regional Cooperation (SAARC) collectively observed 1990 as the Year of the Girl Child and 1991–2000 as **the SAARC Decade of the Girl Child**.<sup>112</sup> ,

#### **5. Conclusion**

The United Nations during the new millennium established the United Nations Human Rights Council in 2006, various mechanisms were set up to publicise, promote and protect human rights across the globe by the United Nations. These exercises have highlighted human rights awareness with significant impact. The contemporary broad prescription against sex-based discrimination has its origin in the United Nations (UN) Charter and various ancillary expressions and commitments, dealing with problems which affect women adversely. CEDAW

<sup>110</sup> SAARC comprises of eight countries of South Asia, Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

<sup>111</sup> SAARC and UNIFEM, *Gender Initiatives in SAARC: A Primer* (2007) <<https://www3.nd.edu/~ggoertz/rei/reidevon.dtBase2/Files.noindex/pdf/5/Gender%20Initiatives%20in%20SAARC%20-%20A%20Primer.pdf>> accessed 20 April 2022.

<sup>112</sup> Ibid.



was adopted by UN General Assembly in 1979 and is often called a bill of human rights for women. In 1979, Nigeria signed the convention and in 1985 ratified it without reservations.

Other special regulations such as the UN General Assembly Declaration on the Protection of Women and Children in Emergency and Armed Conflict, adopted in 1974,<sup>113</sup> United Nations Fourth World Conference on Women<sup>114</sup> and so forth also protect the rights of women during armed conflict. It is noted that for the above instruments to be applicable in various states depends on the policy of the State concerned, for example in Nigeria there is need for domestication by enactment of a legislation in accordance with the provision of section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). From the foregoing, notwithstanding the ratification of international legal instruments for the protection of women by the Nigerian government, such instruments can only become applicable in the country where such laws or instruments have been enacted into law by the National Assembly. There is therefore, an urgent need for the National Assembly to enact legislation to domesticate CEDAW. This is the first recommendation of this article.

The second recommendation of this paper is that abolition of certain cultural norms and practices that stereotype women. To attain substantive gender equality and ensure that women in Nigeria enjoy the benefits of the protection provided by the normative international legal instruments there is need to address cultural norms and practices that stereotype women and girls, which will aid in abolishing stigma and violence. Thirdly, there is need to redress women's socioeconomic disadvantage, which inhibits their full participation in political and social activities. If these recommendations are implemented, much of the constraints that limit women's enjoyment of their rights as provided under international and regional human rights framework will be eliminated.

---

<sup>113</sup> Note 100 above.

<sup>114</sup> Held in Beijing, China in November 1995.