



An Assessment of the Effectiveness of Human Rights Mechanisms in the Protection of Women Against Gender-Based Violence In Nigeria

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ABSTRACT

Gender based violence has attracted a lot of attention across the globe. The international community through the United Nations has put in place general international human rights law as well as several gender specific legislations to deal with issues relating to women. This paper acknowledges that human rights of women, to a large extent, are protected in various domestic, regional and international instruments. Their application, however particularly in Nigeria remains a subject of ongoing debate considering the high incidence instead of a reduction of gender-based violence in the society. In this paper, a cursory examination of how the international human rights laws for the protection of gender based violence has fared shall be examined by exploring the strategies, modes and shortfalls adopted by human rights mechanism. The paper will also espouse how effectively Nigeria has applied these international human rights mechanism to her local justice system in the protection and actualization of women's rights against gender based violence. In conclusion, will be suggested possible areas of reforms and more effective mechanisms to combating gender based violence in Nigeria.

Keywords: Gender-Based Violence, human rights, women, human trafficking

1. INTRODUCTION

The United Nations has been recognized as the principal body engaged in human rights discourse and has played a very significant role in the development, protection and actualization of women's rights. The charter United Nations, in establishing the obligation to promote and encourage respect for human rights and fundamental freedoms, presumed that human rights of all human beings would be enjoyed and protected on universal basis.¹ However incidences of violations persist in most societies particularly in societies that promote unequal treatment of citizens especially women. The abuse, maltreatment and violation of women have been recognized as a global problem,² not limited to Nigeria only.

Rao,³ in acknowledging that equality and freedom have evaded women in the history of mankind, observed that the difference or distance in culture does not really affect how women are treated because of the common prevalence in most societies which is the contempt of women. This attitude not only undermined the universality of the concept of human rights but made it more of a mirage. In most of the developed countries, their legal system, to a large extent, have succeeded in reducing human rights violations in the countries ranking high in the protection of the rights of citizens. The attainment of the protection and realization of the rights of citizens in such jurisdictions is traceable to an increased level of awareness of rights by the citizens, high literacy level, low poverty level, respect

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¹ Article 56 enjoins all member states to take joint and separate action in cooperation with the United Nations for the achievement of this purpose

² Rourke, J. *International Politics on The World Stage* (New York: McGraw Hill, 2010) 493.

³ Rao, M. *Law Relating to Women and Children*, (Hackney: Eastern Book Company, 2010).

for the rule of law and the reduced reliance on superstitious beliefs. Can this be said of a developing nation like Nigeria? The question is whether international rights can be uniform and universal bearing in mind the difference in culture, history, and socio-political development of most countries. In reality can there be universality of human rights when most communities have peculiar customs and traditions which they have held on to tenaciously to the detriment of global best practices? This trend is a far cry from the view expressed by Cicero when he observed that rights inherent in every human being are:

For universal application, unchanging and everlasting... it is a sin to try to alter this law nor is allowable to try to repeal any peace of act and it is impossible to absolutist entirely. We cannot be free from its obligations by senate or people and there will not be different laws at Rome or at Athens or different laws now and in the future but one eternal and unchangeable law will be valid for all nations and for all times.⁴

Gewirth strengthens this argument by insisting that any society demonstrating a commitment to human rights must accept or invariably have accepted certain principles enabling the regime of human rights to succeed. In Gewirth's view, the universality of human rights establishes a relationship between persons in a society or community committed to human rights that is more embracing than that established by mere citizenship rights.⁵ The view expressed by Cicero and Gewirth is a just and laudable position except that, women seem to be consistently left out in the scheme of things being perpetually reminded of their gender inequalities regardless of advocacy for women's rights.⁶

2. Development of Gender-Based Violence

Violence against women is one of the most unanswered problems that arise from power imbalance between men and women and it is not limited to any particular society. Since the beginning of the 1990s, violence against women has gained global attention. Gender-based violence is now recognized as a serious violation of global importance which poses a threat to human development as well as international peace and security.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) did not explicitly mention violence against women but the Committee in its general recommendation No 19(1992) on violence against women, asserted that violence against women is violence directed against a woman that affects her disproportionately.

The adoption of this general recommendation was a critical precursor to the recognition of the issue at the Vienna World Conference in 1993. The agenda for the conference did not originally mention women or any gender aspect of human rights, it was brought to the fore during the conference by the women's right movement, leading to the recognition that the elimination of violence against women in public and private life as a human rights obligation. Through organizing the Global Tribunal on Women's Human Rights during the Vienna conference, with women from all over the world speaking out about their experiences of violence, drew global attention to the seriousness of occurring violations of women.

Subsequently, the General Assembly adopted the Declaration on the Elimination of violence against Women in December, 1990. The Declaration calls on states to condemn violence against women and work towards its eradication. The Commission on Human Rights appointed a Special Rapporteur on violence against women in 1994, which through her research has significantly developed concepts and legal frameworks pertaining to gender-based violence and women's rights in general.⁷ The fourth world conference on women reaffirmed the conclusions of the Vienna World Conference, listing violence against women as one of the critical areas of concern

⁴ Weston B. Human Rights Questions in Claude, R. and Weston B. *Human Rights in the World Community: issues and Action* (Philadelphia: University of Pennsylvania Press, 2006) 13.

⁵ Gewirth A., *The Community of Rights*, (Chicago: University of Chicago Press, 1996) 27

⁶ Lambert, C. Gender inequality <<https://www.psychology.today.com/us/experts/carol-lambert-msw>> accessed June 10, 2019.

⁷ UN, 25 years of the United Nations Special Rapporteur on Violence against Women (Geneva: United Nation, 2001) 10 and 24 – 28.

3. International Approach to Gender-Based Violence

To effectively assess the impact of international human rights laws in combating gender-based violence, the approach adopted by Joan Fitzpatrick⁸ is apt. She identifies three theoretical challenges that must be confronted and resolved to move effective strategies on violence against women forward. They include

- (1) Considering when an equality paradigm is useful and when it is counterproductive in addressing the various forms of violence against women;
- (2) Overcoming the state centered tradition of international law with revised notions of state responsibility and confronting the public/private distinction as a barrier to effective international action against gender based violence; and
- (3) Determining whether these problems are best addressed by elaborating international legal standards with formal systems of supervision or by promoting co-operation amongst governments through giving visibility to these issues as common problems of crime control and or social policy.

These strategies will in no small measure ameliorate the problems faced by violated women as it creates a broader platform and a new voice to the issues relating to women particularly gender based violence.

The United Nations since 1945, has played a very vital role and taken positive steps towards the advancement of human rights. These include:

- (i) The promotion of human rights through education, information, training of all levels of social organizations.
- (ii) Formulation and definition of international norms of behaviour regarding human rights
- (iii) The implementation of human rights through the design and creation of appropriate institution and procedure.

The main task of the United Nations is to increase knowledge about public support of international human rights system. Implementation of the national laws appears to be the major challenges due to dependence on the political will of nations to implement based on their own constitutional system. International human rights laws give each state the freewill to make its own constitutional arrangements for the exercise of its treaty-making power.⁹ It is the national legal system which determines the force of law which will be given to a treaty within that legal system. This is the first hurdle international human rights law faces at the national level. Although, various human rights treaties contain implementation procedures for realizing rights guaranteed and for monitoring and evaluating performance by states bound by the treaty, the problem that cannot be wished aside is how to translate international human rights to local justice. Whilst it is true that no country is technically bound by international human rights instruments until she has acceded to such instrument, it is pertinent to state that no state can escape scrutiny in terms of adherence to international human rights norms. To this extent, under international human rights law, human rights are promoted by assessing the performances of governments.

4. The United Nations Charter bodies Relating to Gender-Based Violence

The United Nations has a number of institutions with a broad mandate to promote women's right and to monitor the compliance of the UN member states with the women's right obligation under the charter. These bodies include the following:

4.1 The Commission on the Status of Women (CSW)

This is a global intergovernmental body dedicated to the promotion of gender equality and the empowerment of women. The CSW is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards for gender equality and the empowerment of women. It takes the leading role in monitoring and reviewing the progress and problems in implementing the Beijing Declaration and Platform for Action, and for mainstreaming a gender perspective in the UN activities.

⁸ Fitzpatrick, J. The use of International Human Rights in Cook, R. *Human Rights of Women, of Women, National and International Perspectives*. (Philadelphia: University of Pennsylvania Press, 1994) 533.

⁹ Leary, V. A. *International Labour Conventions, and National law: The Effectiveness of the Automatic Incorporation of Treaties in National Legal Systems* (Netherlands: Springs, 1982) 10.

During the CSW two-week session, representatives of UN member states, civil society organizations and UN entities gather at the UN headquarters to discuss progress and gaps in the implementation of the Beijing Declaration and Platform for Action, the key global policy document on gender equality, as well as emerging issues that affect gender equality and women empowerment. Member states agree on further actions to accelerate progress and promote women's enjoyment of their rights in political, economic and social fields. The recommendations of CSW is forwarded to the Economic and Social Council for follow up.

4.1.1 The Human Rights Council

It is an independent expert body appointed to oversee state party's implementation of International Covenant on Civil and Political Rights and its Optional Protocols. The Human Rights Council by her general comments addresses the issues of gender-based violence in relation to International Covenant on Civil and Political Rights' provisions and the equality of rights between men and women. The Human Rights Council expressed their concerns that women everywhere are still subject to significant disadvantage as a result of discriminatory laws and practices and therefore equality had not been' achieved in any country in the world not even in Nigeria.

4.1.2 Special Rapporteur on Violence against Women

This commission strongly condemned all acts of violence against women and girls, and in this regard in accordance with the Declaration of the Elimination of Violence against Women, for the Elimination of all forms of gender based violation in the family, within the community and where it is perpetrated or condoned by the state. It emphasized that it is the duty of the Governments to refrain from engaging in violence against women and exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women and take appropriate and effective actions concerning acts of violence against women, whether those acts are perpetrated by the state, by private persons or by armed groups or warring factions and to provide access to just and effective remedies; including medical assistance to victims. It also affirmed that violence against women constitutes a violation of human rights and fundamental freedoms of women and that violence against women impairs or nullifies their enjoyment of those rights and freedoms. In the discharge of its mandate, the special rapporteur also transmits urgent appeals and communications to states regarding alleged cases of violence against women.¹⁰

4.1.3 Working Group on Discrimination against Women in Law and Practice

The establishment of the working group is a milestone in the long road towards women's equality with men. Over the years many constitutional and legal reforms to integrate women's humans' right fully into domestic laws have occurred but still remains insufficient progress. Discrimination against women still persists in both public and private spheres. It transcends national, cultural, and religious boundaries and is often filled by patriarchal stereotyping and power imbalance which are mirrored in the laws, policies and practice.

In the last report, which was presented at the 38th session of the Human Rights Council, it was revealed that no country in the world has successfully eliminated discrimination against women, gender based violence or achieved full gender equality. Women's right must be urgently advanced as they are crucial for securing the universality of human rights. It was recognized that progress was been made in closing gender gap in education and women's participation in labour force, as well as the recognition of women's sexual and reproductive rights.

However, women still faced structural disadvantages in economic and social spheres and remain underrepresented in all branches or levels of government.¹¹ They are daily exposed to various forms of gender based violence due to failure of most state parties lack of political will to fully implement gender specific legislations at the national level.

4.1.4 Special Rapporteur on Trafficking in Persons Especially Women and Children

The Special Rapporteur focuses on the human rights aspect of trafficking in person and takes action on violations committed against trafficked persons and on situations where there has been a failure to protect their human rights. The Special Rapporteur may contact the government concerned to invite comment on the allegation, seek clarification, remind government of its international obligation, or

¹⁰ OHCHR Special Rapporteur on violence against women <https://www.ohchr.org> accessed 4th June 2019.

¹¹ Meet the working group on the issue of discrimination against women in law and practice, <https://genderchampions.com> accessed 15 June 2019.

request information on the steps the government is taking to redress the situation. They also undertake country visits to study situations in the place and formulate recommendations to prevent and combat trafficking in special countries or regions and submit reports to the UN Human Rights Council and the General Assembly.¹²

5. Human Rights Treaty Bodies for the Advancement of Women's Rights

The core human rights treaties form the corner stone of all efforts to promote and protect human rights at the international and national levels. The increased ratification of these treaties provides a firm ground for human rights protection. All human rights treaties are applicable to women's rights and committees or expert of bodies are set up to monitor the implementation of the treaties in member states. This paper will discuss some of them that are relevant to women's rights, especially on gender based violence.

5.1 Committee on the Economic, Social and Cultural Rights

The Committee on the Economic, Social and Cultural Rights monitors the implementation of the International Covenant of Economic, Social and Cultural Rights by its member states. All member states are obliged to submit regular reports to the Committee (initially within two years of accepting the covenant and thereafter every five year meeting. The committee considers each recommendation to the state in form of concluding observations. The committee has the competence to receive and consider communications from individuals who allege that the rights under the covenant have been violated. Under certain circumstances the committee undertakes inquires on grave violations of the covenant, and also considers inter-state complaints.

5.1.1 Human Rights Committee

This is a body of independent experts that monitor implementation of the International Covenant on Civil and Political Rights by state parties. All states are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee examines each report and addresses its concerns and makes recommendations to the state party in form of concluding observations. The Covenant also provides for the committee to consider interstate complaints.

5.1.2 Committee against Torture (CAT)

The committee oversees the implementation of the Convention against torture and other cruel, inhuman or degrading treatment. It recommends that state parties should identify issues that violate the convention, like rape, domestic violence, female genital mutilation, and trafficking and take responsibility to prevent and protect the victims.

5.1.3 Committee on the Elimination of Discrimination against Women (CEDAW)

The CEDAW committee monitors CEDAW and countries that have become party to it like Nigeria. The state parties must submit reports to the Committee at least every four years. These reports detail the measures the government has taken to comply with its obligation under the Convention. On becoming a party to CEDAW, Nigeria committed itself to being a society that promotes policies, laws, organizations, structures and attitudes that ensure that women are given same rights as men. Parties to CEDAW therefore have an obligation under CEDAW to take positive steps to eliminate all forms of violence against women. The CEDAW Committee asks countries to provide information in their regular reports about legislation and other measures it uses to protect women from violence, as well as the support services available to women.

6. Judicial Organs of the United Nations for addressing Gender-Based Violence

The United Nations has also set up organs with judicial and quasi-judicial functions for the purpose of availing victims of the opportunity to seek redress when violated. They include the following:

(i) The International Court of Justice

The International Court of justice (ICJ) is the principal judicial organ of the United Nations. This was a court established by the UN Charter in 1945, although it began to function in April, 1946. It is located at The Hague in the Netherlands and settles disputes between Sovereign States, renders advisory opinions to the UN and specialized agencies and institutions. It is obvious that by the establishment of this court the only parties that can access the court for justice are States and UN

¹² Special Rapporteur on trafficking in persons <https://ijrcenter.org/un-special-procedures> accessed 1st June 2019.

specialized agencies and institutions. Individuals cannot access the ICJ court for justice no matter how meritorious and upright their reliefs appear to be. Consequently women cannot access justice via this medium.

(ii) The International Criminal Court

The International Criminal Court (ICC) is the court of last resort for the prosecution of genocide, war crimes, and crimes against humanity. Its founding treaty, the Rome Statute came into force in July 1, 2002. Although this court was basically established to try offences on war crimes, it is obvious that since the inception of the court, women especially those in Africa have not been able to access justice through this court even though it is as well obvious that gross violation of women's rights is the hallmark of war crime situations.

(iii) The United Nations Human Rights Committee

Article 28 of the United Nations Covenant on Civil and Political Rights (CCPR)¹³ established the Human Rights Committee as the organ for the implementation of the CCPR. Individuals can only take matters to the Human Rights Committee through the Optional Protocol which was adopted and opened for signature and ratification by the General Assembly on 16th December 1966 but came into force on 23rd March 1976.¹⁴ This was one of the exceptions to the long-standing conception of International Law of its being a law to govern relations between States alone. Here States were the subjects and their individuals the objects of International Law.

Consequently, these cumbersome processes that a communication must go through before consideration makes it difficult for an individual to access justice from this body especially the African woman, hence her rights are trampled upon without any hope of redress via this medium. Also at the regional level, Africa has responded to the need to protect her citizens.

7. Regional Approach to Gender-Based Violence

At the regional level, Africa as a continent also to address the problem of discrimination and violence against women. In Okogbule's view, the Charter recognized the peculiar African historical and cultural values and the inclusion of these values within the human rights corpus. The Charter therefore makes provision relating to groups rights or the rights of people, indivisibility of human rights and the inclusion of duties of citizens to their states and communities. The African Charter is therefore novel and unique in this respect.¹⁵

Africa took a great stride in the actualization and protection of women's rights by adopting the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2003 which is aimed at ensuring that the rights of women are protected, promoted and realized¹⁶ in order to enable them enjoy full benefits of all their rights and attain gender equality in the continent. The Protocol gives a clear meaning of what discrimination against women entails stating their rights and remedies¹⁷ for violations of the right recognized under the Protocol. It prohibits all forms of violence against women and enjoins state parties to take effective and appropriate measures to protect women from violence as well as to establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women and mapping out adequate resources for that purpose. The Protocol also prohibits and condemns all forms of harmful practices which negatively affect the human rights of women. It enjoins state parties to take necessary legislative and other measures to eliminate such practices.

The protocol sets a new dawn for all African women but the sad reality is that patriarchy, cultural sentiments and male chauvinism have played a negative role in the actualization of these rights for woman in Africa generally. The Protocol appears to be more of rhetorics rather than a pragmatic step towards guaranteeing women's rights.

¹³ General Assembly Resolution 2200 (xxii) of 16 December, 1966.

¹⁴ UN.G.A Resolution, 2200 (XX!) of 16th December 1976.

¹⁵ Okogbule, N. S. *Localizing Human Rights in a Global World: The Challenges for Africa*. RSU Inaugural Lecture Series No. 54 of 26th April 2017, 40.

¹⁶ Articles 1 - 29

¹⁷ Article 8 and 25

7.1 The African Commission on Human and Peoples' Rights

The African Union in fulfillment of the obligation imposed by the United Nations adopted the African charter which provided for fundamental freedom of human person as well as the dignity of human person and the protection of human rights within the African Union. To achieve this, the African Union established the African commission on Human and peoples' rights in Sept 1987 in Addis Ababa.¹⁸ Its mandate was set out in pursuant to Article 45 of African Charter on Human and Peoples' rights which provides that the commission must ensure the protection of human rights including the rights of women within the African Union; this by extension was to ensure the protection of women against gender-based violence.

In addition to international human rights standards, regional human rights treaties also contain, crucial provisions aimed at promoting and protecting women's human rights.¹⁹ Furthermore, the charter specifically mentions the obligations of African stated to "ensure the elimination of every discrimination against women and also ensure the protection of rights of the women and the nations".²⁰

Article 26 of the African Charter gives States Parties to the Charter the duty to guarantee the independence of the courts and to allow the establishment and improvement of appropriate national institutions entrusted "with the promotion and protection of the rights and freedoms guaranteed in the Charter. Article 30 establishes the African Commission on Human and Peoples' Rights, to promote human and peoples' rights and ensure their protection in Africa. Although Nigeria is a signatory to this Charter,²¹ it is obvious that individuals and mostly women in Nigeria and Africa as a whole pass through a major hurdle if this mechanism must be utilized as a means of accessing justice. This is basically because, the Commission entertains only communications relating to human and peoples' rights that meet the recommended criteria.

The optional protocol to the African charter on Human and Peoples' Rights²² also reinforces and proscribes all forms of discrimination against women. The punishment of offenders has been of great concern particularly in Africa where there appears to be a lack of political will to bring perpetrators to justice. Nonetheless, the Supreme Court of Nigeria has, more often than not, in a plethora of cases stood strongly in defence of women against all forms of violence and discriminations.

7.2 The African Court on Human and Peoples' Rights

It is a regional Court that rules on African Union States' compliance with the African Charter on Human and Peoples' Rights, located in Anisha, Tanzania. The Court was set up to complement the protective mandate of the African Commission on Human and Peoples' Rights.

Access to the Court is open to the following: the State party which has lodged a complaint to the Commission; the State party against which the complaint has been lodged at the Commission; the State party whose citizen is a victim of Human Rights violation; African Intergovernmental Organizations; a State party who has an interest in a case; relevant Non Governmental Organizations (NGOs) with Observer Status before the Commission and individuals. The Jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant Human Rights instrument ratified by the States concerned.

Unlike the African Commission, the African Court possesses the authority to issue a binding and enforceable decision on cases brought before it. Despite the welcoming nature of this Court in respect

¹⁸ Pretoria university 'A guide to the African Human Rights system <www.corteedx.org.cr> 12 May, 2019.

¹⁹ Regional human rights treaties also have oversight mechanisms to access compliance with their provisions by the states that have ratified them. These include the African Commission on Human and People's Rights... etc.

²⁰ Ibid, Article 18(3)

²¹ See the African Charter on Human and Peoples' Rights Ratification and Enforcement Act, Cap A9 Laws of the Federation of Nigeria, 2004,

²² Optional Protocol to the African Charter on Human and Peoples' Rights adopted in 2003 at Maputo, Mozambique.

of its jurisdiction to serve the populace in Africa, it is obvious that individuals find it most cumbersome to use its machinery of justice. Hence, the African woman can hardly access Justice via this means.

8. Challenges within the Nigerian Context

There is no gainsaying that there has been remarkable progress towards the protection of women against violence with international, regional and national laws incorporating structures and recommendations to enhance the full protection of women against gender-based violence with mechanisms for enhancing and enforcing these rights. One of the reasons why gender-based violence still exist is because international human rights operates within the narrow concept of international legal order. It has succeeded in opening up the discourse to acknowledge that there is gender disparity rather than assuming that all persons have equal rights. The problem is trying to tackle the issue of gender-based violence from a universal perspective. It is true that there are some issues that are peculiar to all women but differences also exist in terms of class, race, nationality and religion.²³ For the fact that human rights is premised on setting universal standards using legal rationality without taking into consideration local situations, it has become difficult to actualize the concepts of human rights at the national level particularly when the rights of citizens are sometimes violated by the State.

8.1 Culture

The debate between culture and human rights has created tension making reconciliation between them difficult, Sousa Santos notes:

The debate is an inherently false debate, whose polar concepts are both and equally detrimental to an emancipatory conception of human rights. All cultures are relative but cultural relativism as a philosophical posture is wrong. All cultures aspire to ultimate concerns and values, but cultural universalism as a philosophical posture is wrong.²⁴

African cultural or value system is regarded as problematic when needs to be modernized and salvaged to meet up with the northern values which are viewed to be more progressive. To this end, Bennett argues that African culture has not shared the prestige enjoyed by human rights.²⁵ African culture has been regarded as one of the structures permitting the subjugation of women and perpetuating all forms of violence against them. This assumption is predicated on the unequal power relations which has affected the assignment of positions of authority to men while women are given subordinate roles.²⁶ Culture is viewed as static and resistant to change, identifying it as one of the root causes of women's subjugation and abuse. Some protagonists have viewed culture as not necessarily an impediment to the enjoyment by women of their rights and suggest that the state acts on the discriminatory cultural practices by way of prohibition.²⁷ Allott posits that enforced change runs the risk of rejection,²⁸ which appears to be the major challenge faced by human rights norms in Nigeria. The traditionalists have called for a return to the old cultural ways of doing things and for the preservation of culture from external interference.

Culture is essential to claims of indigenous sovereignty and often used to resist human rights, arguing that human rights violate the fundamental cultural principles of a nation and therefore cannot be adopted. Butegwa observes that African women and men need to join others who actively wonder and

23 Cook, R. *Human Rights of Women: National and International Perspectives* Philadelphia (University of Pennsylvania Press 1994) p.64

24 Sousa Santos, B. "Towards a Multicultural Conception of Human Rights (1997) XXIV Sociological Del Diritto p. 27 at 41

25 Bennett, T. *Human Rights and African Customary Law* under the South African Constitution (Cape Town: Juta 1995) p.1.

26 Okogbule, N. S. and Okogbule, U. B., "Culture and Gender Based Violence in Africa: A Human Rights contextual Perspective" (2002) Vol. 17 *Journal of Jurisprudence and Contemporary Issues* p.217.

27 An'Naim Has presented a mythological model for the mediation of culture and human rights in a transformative process for both.

28 Allott, A. *Reforming the Law in Africa: Aims, Difficulties and Techniques* in Sanders, A. (ed) *Southern Africa in Need of Law Reform* (Durban: Butterworth 1981) p.228.

ask why it is only when women want to bring about change for their benefit do culture and custom become sacred and unchangeable.²⁹

An' Na'im argues that except international human rights have sufficient legitimacy within particular cultures and traditions, their implementation will be thwarted as such legitimacy is needed to improve the status of women through law.³⁰ For as Catherine Mackinnon notes, what women really need and are denied of is: a chance at productive lives of reasonable physical security self-expression, individuation and minimal respect and dignity.³¹ These are ideally what every human deserves and what international human rights law aim to achieve.

Culture has constituted one of the major barriers to protecting women from gender-based violence in Nigeria. The perception of gender is deeply rooted in the traditional African system, a system that has been greatly influenced by men as the custodians of the tradition.³² By virtue of the cultural practices across Nigeria, women are stereotyped to accept roles ascribed to them by society and condone male dominance, they dare not question their authority.³³

8.2 Religious Barriers

Most religious faithfuls believe that the woman is the weaker vessel and lesser partner to the husband. Amongst the Muslims, Islam encourages the husband to beat his wife where he feels that she is going against his will. Muslim women are taught to always obey and be submissive and not to question their husband's command and since the woman is taught to be subservant to the man, she accepts her battering as a normal practice within a marriage. Christianity also enjoins women to be submissive to their husbands and recognizes men as head of the home and representative of Christ in the church. Women are therefore obliged to under the supremacy of men whether in the home or region cycle. Beyond religion in the northern part of Nigeria the Penal Code allows for wife beating.³⁴

Women suffer various manifestations of discrimination, marginalization, disempowerment and at the same time oppression and suppression by the dictates of religion. This can readily be observed from the fact that in Northern Nigeria women were enfranchised only in 1976. However, in Eastern Nigeria, women's right to vote was granted in 1954, while in Western Nigeria women were enfranchised in 1958. This demonstrates a strong patriarchal system that operates in the North.

8.3 Lack of Effective Judicial and Enforcement Agencies

The agencies in charge of enforcing the legislation on gender equality and apprehending offenders are insufficient. Many victims of gender-based violence do not have access to justice. This could partly be attributable to the high cost of litigation in Nigeria and also the Nigeria justice system.

A judicial system that is so complex and unaccountable and treats issues affecting women with levity, have left women in pains even when they approach the courts. The law enforcement agents have not fared better, they are grossly insensitive to the plight of women who report cases of violence. They ridicule the victims and make them look like the violators. The victims are told it's a family matter and have no choice other than to return to the perpetrators and the violence continues.

8.4 Family Violence Exposure

Family violence is the mistreatment, bullying and molestation suffered by family members from those who are heads of the family or siblings against each other and it is as dangerous as violence on the street. Family violence could take any of these forms- spousal abuse, elder abuse, sibling's violence, child abuse which has led to death in some cases. The reason for family violence is predicated on the fact that most husbands think that when they beat their wives or threaten her with some violence that she becomes loyal and submissive to them thus enhancing the dastard act. Elder siblings also think that when they physically assault their younger ones they gain their respect thereby eventually becoming a norm which spreads to adulthood. Exposure to harsh physical discipline during childhood

²⁹ Butegwa, F. "Mediating Culture and Human Rights in Farrows of Land Rights for Women in Africa: A Framework for Community – Level Action, *Ibid* An'Naim, p.108

³⁰ Cook, R. *Human Rights of Women: National and International Perspectives Philadelphia* (University of Pennsylvania Press 1994) p. 9

³¹ Mackinnon, *ibid* p. 538

³² Armstrong, A. "Rethinking Culture and Tradition in South Africa: Research from WLSA in Stewart, A. *Gender, law and Social Justice: International perspectives* (London: Blackstone Press, 2000) p. 187

³³ Adebayo, and Kolawale, Domestic Violence and Death: Women as Endangered Gender 3(3) (2013) *American Journal of Sociological Research* 55.

³⁴ Section 55 of the Penal Code

and witnessing the father beating the mother during childhood is a predictor of victimization and perpetuation of violence against his wife in adulthood.

8.5 Lack of Awareness

Most victims of Gender-Based Violence lack the knowledge and awareness that they have basic rights as human beings and that most violent acts they tolerate within the home or in the larger society constitute violations of their rights. The sheer ignorance of most women in particular rural women that they have rights provided for them in the laws of the country and protection against gender based violence explains the reason for the acceptance of whether treatment meted out to them by their male relatives, partners or spouses. The lack of awareness makes them embrace gender stereotyping and violence as against the constitutional provisions and international human rights laws that prohibit all forms of practices that violate, discriminate and subjugate women.

9. CONCLUSION

The paper queried whether gender-based violence was an international or rather a problem alien to the Nigerian society. It was discovered that despite the plethora of legal instruments at the international, regional and national levels on gender-based violence, it is common place to have gender-based violence in the Nigerian society. Some of the factors responsible for gender-based violence and how gender-based violence is perpetrated in Nigeria are identified. The effect of gender-based violence is fix not only on their victims but also on their victims, on State actors and non-state actors must take positive steps to curb these violations in Nigeria.

In Nigeria, there is no constitutional ground³⁵ for discrimination or violence against women. In the eyes of the law³⁶ all citizens be they male or female, are equal and should be treated equally. This constitutional provision appears to be at variance with reality because despite the plethora of legislations upholding equality, Nigerian women are discriminated and subjugated in their homes and within their communities.

Gender-based violence, is very pervasive and rampant in our society. It affects every community irrespective of age, class, colour, education or religion. The degree of violence may differ from community to community but there frequent abuse of women and girls sexually, physically, culturally and psychologically where they are raped, beaten, injured, disfigured and traumatized through all manners of behaviour that occur in the private or public sphere. Despite the existence of a plethora of instruments at the international, regional and national levels to curb gender-based violence there in our society various forms of gender-based violence caused by multi-faceted constraints ranging from the absence of an effective and efficient enforcement and implementation mechanism for international instruments, to the problem of reservations by countries. In Nigeria, we are also faced with the problem of cultural and religious biases that have continued to threaten the efficiency of laws against gender-based violence

In this paper, the effectiveness of human rights mechanisms in the protection of women against gender-based violence has been discussed. It was found that although the international human rights mechanisms provide an avenue for challenging, cultural practices that violate women, there are limitations which constitute impediments to the protection of women against gender-based violence. These limitations have contributed, in no small measure, to rendering the human rights mechanisms less effective against gender-based violence. For Nigeria to comply with the Human Rights Laws there must be a synergy between international laws and the people in Nigeria that the relevant laws are meant to protect. The resistance of these international laws however, has created a disconnect between the international and domestic laws thereby making it difficult to effectively use such mechanisms for the protection of women against gender-based violence.

³⁵ Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provided for the fundamental human rights of all her citizens.

³⁶ S 42(1) of the 1999 Constitution which contains explicit anti-discrimination provision.

10. RECOMMENDATIONS

The paper by way of recommendation proffers the following suggestion to ensure that gender based violence is eradicated and completely eliminated from our society. To this end, the following recommendations are made:

1. The most effective route to militating and combating gender-based violence in Nigeria is by publicizing the extant laws to all relevant authorities and custodians of culture informing them of the need to embrace these laws as a path which must be followed in order for any society to have sustainable development and relevance in international community.
2. Institutional strengthening and technical support for addressing various forms of gender violations and protections. As a follow up to this, human rights commission should be set up in all the states of the federation to address this issue.
3. National policy frameworks must be in conformity with international human rights instruments by applying the principles of equality, non-discrimination and introducing cultural reflections. There should be full implementation of National Gender policy by governments at all levels.
4. Human right commission should be set up in all states of the federation to address the issue of gender-based violence.
5. There is need for a national law, expressly prohibiting all forms of gender based violence including obnoxious cultural discriminatory practices and stipulating strict sanctions for violators, to act as a deterrent for others.
6. There is the need to establish an independent commission to deal specifically with gender matters, violations of women can be reported to the commission and with the aid of trauma experts the commission can handle issues of trauma, rehabilitation and reintegration into society of survivors.
7. There should be special courts to handle issues of gender based violence. This will improve the justice delivery system and enable women have easier and faster access to justice and also rebuild their confidence in the Nigerian justice system.