DOMESTICATION OF THE PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA: THE NIGERIAN RELIGIO-CULTURAL PERSPECTIVE

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DECLARATION

I, Esther Iyanuoluwa Gambe, do hereby declare that this PhD thesis entitled:

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It is being submitted for the degree of Philosophy at the University of Cape Town. It has not been submitted before for any degree or examination in any other University.

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ABSTRACT

The Nigerian woman continues to be marginalised both in the private and public spheres despite the nation's ratification of several international and regional instruments on the protection of the rights of women. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (the Maputo Protocol) is one of such instruments. Its domestication in Nigeria is faced with stiff impediments from religious beliefs and cultural practices of the people, women included. This research aims at investigating the religio-cultural practices inhibiting the spirit of the Protocol within the three main cultural groups (Hausa/Fulani, Igbo, and Yoruba) and the three main religious affiliations (African Traditional Religion, Christianity, and Islam) in Nigeria. The thesis concludes by proposing a feasible model that would enable the Protocol to be domesticated in Africa's most populous nation among whom are approximately 101.67 million women and girls. The thesis's argument is that, if properly harnessed, the Protocol can be an effective tool in the realisation of the rights of Nigerian women.

This thesis analyses the debate around the universalism and cultural relativism theories, and their effects on the status and rights of women in Nigeria. A review of the status of women during the pre-colonial era is also necessary to rebut the arguments advanced by cultural relativists. Empirically, and using a mix of qualitative and quantitative research methods, questionnaires and face-to-face interviews are conducted with randomly selected women and men from the three main cultural and religious groups under study.

The thesis is an emic study that is focused on the perceptions of both Nigerian women and men on the various religious beliefs and cultural norms and practices that negatively impede the rights of women in Nigeria as provided for in the Protocol. The analysis of both the questionnaires and interviews leads to the discovery of perceptions on key indices of the denial of women rights in Nigeria, such as female genital mutilation, widowhood rites and practices, child/forced marriage, and the denial of female inheritance. Furthermore, research findings reveal the ten common factors that propel discrimination against women within the three main religions and cultures in Nigeria: absence of top leadership positions for women; promotion of inequality between husband and wife in marriage; religious silence on cultural specifications on demeaning widows' rites and rituals; discriminatory devolution of property; practice of female genital mutilation/ female circumcision; culture of wife beating; forced sexual intercourse/marital rape; absence of women's right to divorce; and refusal to consider legal options when resolving cases of abuse and violence experienced by women in marriage. In order to develop a proposed model for the domestication of the Protocol within the national values and belief systems in Nigeria, seven key points that would permeate the entire social fabric of the nation, from legal framework and socio-cultural revolution to religious reorientation, are identified and analysed as normative.

The research contributes to the discourse on the challenges to the effective domestication of the Protocol within the African continent, Nigeria in particular. It proposes a model for the effective domestication of the Protocol in the face of the contending forces of culture and religion that hold the prima facie evidence of what constitutes the rights of the Nigerian woman. When set in motion, such domestication model will propel the legislative arm of government to review its laws, both at the national, state and local government levels, making them more adaptive to the spirit of the Protocol. More awareness will also be created among women rights activists and women and men at grassroots levels on the possibilities inherent in the Protocol. This would, in turn, propel a joint effort geared towards ensuring the effective protection of the rights of women in Nigeria.

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CHAPTER ONE

INTRODUCTION AND OUTLINE OF STUDY

I BACKGROUND

The Protocol to the African Charter on the Rights of Women in Africa also known as the Maputo Protocol (hereinafter referred to as the Protocol) was adopted by the African Union and came into force on 25 November 2005.[1] It was adopted principally to reinforce the provisions of the African Charter on Human and Peoples' Rights,[2] considered as lending insufficient protection to women in Africa. The Protocol addresses a broad range of human rights concerns of African women through creative, substantive and detailed language. It particularly addresses the phenomenon of women's rights by bringing to the fore specific cultural patterns and practices that have significantly hindered African women's rights and well-being in the past, such as early/forced marriage, female genital mutilation, and widowhood practices. The Protocol has been applauded as the first instrument that specifically addresses harmful traditional practices in Africa such as female genital mutilation/female circumcision (FGM/FC), widow inheritance and child marriage.[3] It has also been applauded for its attempt to promote and reinforce existing international human rights standards, and its provision for women's rights within a positive cultural context.[4]

The Protocol, however, continues to face stiff challenges to its implementation within Africa, especially in Nigeria. Although Nigeria ratified the Protocol on 16 December 2004, it has not domesticated it in its entirety.[5] In Nigeria, international and regional treaties and conventions do not automatically have the force of law after ratification. There is a constitutional requirement for every international treaty to be domesticated before it can have the force of law in Nigeria.[6] While aspects of the Protocol have been

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[1] African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, available at *https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa*, accessed 21-03-2019; Centre for Reproductive Rights *The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights*, available at *http://reproductiverights.org/wp-content/uploads/2018/08/pub_bp_africa.pdf accessed* 21-03-2019.

[2] African Charter on Human and Peoples' Rights, available at *https://www.achpr.org/legalinstruments/detail?id=49*, accessed 21-03-2019; Nsibirwa M S 'A brief analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women' (2001) 1 (1) *African Human Rights Law Journal* 40 at 41.

[3] Rosemary Semufumu Mukasa *The African Women's Protocol: Harnessing a Potential force for Positive change* (2008) at 4.

[4] Banderin M 'Recent developments in the African Regional Human Rights System' (2005) 5 (1) *Human Rights Law Review* 118;

[5] Shadow Report on Nigeria's Implementation of the Protocol to the African Charter on Human and Peoples Right on the Right of Women in Africa (2022) Alliances for Africa available at *https://alliancesforafrica.org/shadow-report-on-nigerias-implementation-of-the-protocol-to-the-african-charter-on-human-and-peoples-right-on-the-right-of-women-in-africa/* accessed 21-03-2019. Domestication is the act of making a legal instrument recognised and enforceable in a jurisdiction foreign to the one in which the instrument was originally issued or created. It is the process of including the provisions, standards and practices of an international law intro the national jurisprudence of a country.

[6] Section 12, 1999 Constitution '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'; Sandra Eke 'Nigeria: Non-domestication of Treaties In Nigeria As A Breach of International Obligations' (2020), available at *https://www.mondaq.com/nigeria/international-trade-investment/1013006/non-domestication-of-treaties-in-nigeria-as-a-breach-of-international-obligations-sandra-eke* accessed on 17 March 2021.

domesticated in a few laws in Nigeria, such as the Violence Against Persons (Prohibition) Act of 2015,[7] the Protocol faces challenges to its domestication. Arguments abound, an example being that the Protocol is an-over ambitious instrument 'meant for the total destruction of the Nigerian woman' due to some of its provisions that are perceived to negate the prevalent cultural values and systems in Nigeria.[8] The Protocol has been described as a 'Western' instrument that affords protections that negate the religious morals and cultural values upheld in Nigeria.[9] The Nigerian press has also described the Protocol as a vehicle to promote immoral sex education for children in Nigeria', and it argues that an adoption of the Protocol would cause a complete breakdown of the family, religious beliefs and societal systems.[10] Gender equality and the elimination of all forms of discrimination against women are fundamental values of the United Nations human rights system.[11] The Charter of the United Nations sets out that one of its goals is 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women'.[12] The Declaration and Programme of Action of the World Conference on Human Rights at Vienna emphasises the human rights of women and of the girl child as 'an inalienable, integral and indivisible part of the universal human rights'. It emphasises that the elimination of violence against women is a human rights obligation resting upon states. This was the first attempt to address the marginalisation of women's human rights from the mainstream of human rights, leading to the slogan that emerged from Vienna: 'women's rights are human rights'.[13]

In 1948, the Universal Declaration of Human Rights (UDHR)[14] was adopted. This represents the foundation of international human rights law and affirms the universal recognition that basic rights and fundamental freedoms are inherent in all human beings. The UDHR states in its preamble that the foundation of freedom, justice and peace in the world is based on the recognition of the inherent dignity and equal and inalienable rights of all members of the human family. The UDHR equally states that 'all human beings are born free and equal in dignity and rights'...[15] It also proclaims the equal entitlements of women and men to the rights contained in it, 'without distinction of any kind, such as … sex'.[16]

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[7] Violence Against Persons (Prohibition) Act 2015 (VAPP) (Nigeria), available at *https://www.refworld.org/docid/556d5eb14.html* accessed 29-01-24.

[8] Regina Akosa *Thisday Newspaper*, (15 July 2017) Director, Happy Home Foundation, Enugu State, Nigeria. See for example Article 6(f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname.

[9] Ibid

[10] Akosa op cit note 8.

[11] Women's Rights are Human Rights' (2014) United Nations Publication, available at *https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf*accessed 15-06-2021.

[12] Ibid. Charter on the United Nations and Statute of the International Court of Justice' available at *https://treaties.un.org/doc/publication/ctc/uncharter.pdf* accessed 25-04-2019.

[13] Mary Wandia, '*Civil society strategies for mainstreaming women's rights in the African Union', in* Christi van der Westhuizen (ed) *Gender instruments in Africa: Critical perspectives, future strategies* ed (2005), Institute for Global Dialogue, 48.

[14] 'Universal Declaration of Human Rights available at *https://www.un.org/en/about-us/universal-declaration-of-human-rights* accessed 21-03-2019.

[15] Article 1,' Universal Declaration of Human Rights' available *at https://www.un.org/en/about-us/universal-declaration-of-human-rights* accessed 21-03-2019. United Nations op cit note 12.

[16] Article 2 UDHR.

The debate about whether the concept of human rights (women's rights) is universal or culturally relative has, however, created more difficulties for the realisation of the international rights of women in Nigeria. While the universalists assert that human rights (women rights) are universal and should be construed without cultural overtones, cultural relativists argue that culture is supreme and should be protected.[17] Donnelly summarises the contemporary doctrine of the universalist approach and states 'all humans have rights by virtue of their humanity, and a person's right cannot be conditioned by gender or ethnic origin'.[18] The cultural relativists on the other hand strongly resist the universal language of human rights, stating that culture is supreme and human rights should not be promoted if its implementation might result in a change in a particular culture.[19] Cultural relativists, such as Mutua, argue that Nigerians have a human rights culture and philosophy which is different from that of the Western countries, and imposing a western concept of human rights constitutes an infringement on their right to culture.[20] Cultural relativists argue that the paradox in which Nigerian women exist today in respect of their rights, is as a result of the Western world's refusal to acknowledge and respect the African concept of human rights.[21]

Cultural relativists argue further that women in pre-colonial times in Nigeria were not subject to the various forms of discrimination that they now suffer but held positions that were complementary to that of men.[22] Chuku, for example, analyses the lives of Igbo women in Nigeria during the pre-colonial era and concludes that colonialism had a far-reaching effect on the economic activities of women and their socio-political roles. She argues that prior to colonization, gender roles were not rigidly masculinised and feminised. The flexibility of gender relations allowed women to play male roles and vice versa.[23] Oyewunmi equally argues that in pre-colonial Nigeria, Yoruba women could attain the position of economic leaders, and exercised marriage and property rights,[24] and that the elements of institutionalised male dominance now prevalent in Nigeria were due to 'Victorian ideology in which women were generally restricted from full participation in the public sphere'.[25] Also argued is that the colonial administration ushered in 'European

[17] Reza Afshari 'An Essay on Islamic Cultural Relativism in the Discourse of Human Right's' (1994) 16 *Human Rights Quarterly*, at 235-76. Christi van der Westhuizen *Gender instruments in Africa: Critical perspectives, future strategies* (2005) 77. Nussbaum C. Martha and Glover Jonathan eds *Women, Culture and Development: A Study of Human Capabilities* (1995) 407-426.
[18] Jack Donnelly 'Cultural Relativism and Universal Human Right's' (1984) 6 *Human Rights Quarterly* 400-419.
[19] Afshari op cit note 17.
[20] Lindholt L *Questioning Universality of Human Rights: The African Charter on Human and Peoples' Rights in Botswana, Malawi and Mozambique*" (1997) 7; M Mutua 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the language of duties' (1995) 35 *Virginia Journal of International Law*, 351-357.
[21] Okey Martin Ejidike 'Human Rights in the cultural traditions and social practice of the Igbo of South-Eastern Nigeria' (1999) *Journal of African Law*, 71.
[22] Olomojobi Y *Human Rights on Gender, Sex and the Law in Nigeria, Lagos* (2013) 217.
[23] Gloria Chuku *Igbo Women and Economic Transformation in South-eastern Nigeria* 1900-1960 (2005) African Studies (Routledge Firm), 7.
[24] Judith Hoch-Smith *Radical Yoruba Female Sexuality: The Witch and the Prostitute" In Women in Ritual and Symbolic Roles,* ed Judith Hoch-Smith et al (1978) 245.
[25] Okome M O 'Domestic, regional and international protection of Nigerian women against discrimination: Constraint and possibilities' (2002) 6(3) *African Urban Quarterly.*

patriarchy', which considered women as subordinate to men and held stereotyped perceptions of women's roles in the domestic and public domains.[26]

Nigeria has the largest population in Africa,[27] and the seventh largest in the world, and comprises several cultural, ethnic and religious groups.[28] The three main cultural groups in Nigeria are Hausa/Fulani in the northern region, the Igbos in the southeast region and the Yoruba in the southwest region. The three main religions practised within each of these regions are African Traditional Religion, Christianity and Islam. Nigeria arguably seems to be an advanced nation due to its prompt ratification of several international and regional instruments on the protection of the rights of women.[29] However, in practice, Nigerian women continue to be marginalised in both the private and public spheres owing to religious and traditional beliefs and systems which have grown over time to become the way of life.[30]

According to Udoh et al culture and religion determine societal beliefs, norms and attitudes towards women in Nigeria despite the provisions of civil laws and international treaties.[31] Abdulla equally opines that religious doctrines and cultural norms are two forces that bear an overwhelming influence on human rights generally.[32] Providing similar arguments as Abdulla, Udoh et al assert that culture and religion have enabled, and constantly fuel daily discriminations against women in Nigeria, and are compelling determinants of societal beliefs, norms and attitudes towards women despite the provisions of civil laws and international treaties.[33]

While some scholars argue that patriarchal systems and institutions are the underlying causes of the denial and discrimination that women experience with respect to their rights,[34] others opine more specifically that religion, customs and traditions are fundamental factors in the violation of women's rights.[35] Walby describes patriarchy as a system of social structures and practices in which men dominate,

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[26] Igbelina-Igbokwe N 'Contextualizing Gender-Based Violence within Patriarchy in Nigeria' (2013) 632 available at *http://pambazuka.org/en/category/features/87597* accessed 24-04-2020.
[27] *Nigeria People* CIA World Factbook 2018.
[28] Ibid.
[29] Treaties ratified by Nigeria include *The Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights 1966, International Covenant on Civil and Political Rights 1966, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, African Charter on Human and People's Rights 1981, Protocol to the African Charter on the Rights of Women in Africa 2005.*
[30] Julia Otibhor Omokhodion 'Globalization, Gender Equity and Local Identity in Nigeria' (2006*) Athens Centre of Ekistics* Vol 73 No 436/441, Globalization and Local identity, (January – December 2006) 277-281, available at *https://www.jstor.org/stable/43623744* accessed 24-04-2-020.
[31] Oluwakemi D Udoh, Sheriff F Folarin and Victor A Isumonah '*The influence of religion and culture on women's rights to property in Nigeria'* (2020) Vol 7 Issue 1 Cogent Arts and Humanities available at *https://www.tandfonline.com/doi/full/10.1080/23311983.2020.1750244*. accessed 06-01-2021.
[32] M Abdulla 'Culture, religion and freedom of religion or belief' (2018*) The Review of Faith and International Affairs* 16(4) 102-115, available at *https://www.tandfonline.com/doi/full/10.1080/15570274.2018.1535033* accessed 13-04-2020.
[33] Obioha E *'Inheritance rights, access to property and deepening poverty situation among women in Igboland, Southeast Nigeria'* (2013) (Paper presentation) A sub-regional conference on gender and poverty organised by centre for gender and social policy, Ile Ife, Nigeria: Obafemi Awolowo University; Udoh et al op cit note 31.
[34] Akinola A 'Women, culture and Africa's land reform Agenda' Frontiers in Psychology 9, 22-34 available at *https://doi.org/10.3389/fpsyg.2018.02234* accessed 03-03-2021.
[35] Udoh et al, op cit note 31.

oppress and exploit women.[36] Men are regarded as the authority within the traditional family, clan or ethnic group, and possessions are passed on from father to son and descent is reckoned in the male line.[37]

In Nigeria, women are perceived to be culturally accorded a subordinate status to men due to the patriarchal structures in place.[38] For example, women are not allowed to make decisions at home because the men are the heads of the family and should make all the decisions. Not only are women barred from making decisions at home and at the community level, they are also denied a voice within the home.[39] In Nigeria also, women do not have reproductive rights because it is culturally acceptable for men to decide the reproductive agenda of the family.[40] Aina argues that gender roles and relations in Nigeria are distinct, and are informed by the dynamics of patriarchy which casts women in a subordinate role to men.[41] She describes the Nigerian society as patriarchal in nature, 'with a structure of social relations which enables men to dominate women'.[42] She argues that the patriarchal nature of Nigerian societies completely negates the intents and purposes of the protections provided under international human rights treaties.[43] Makama also argues that the traditional Nigerian society is patriarchal in nature and permits men to dominate women in every sphere, while placing men in superior positions to women.[44] In Makama's view, the patriarchal nature of traditional Nigerian society continues to negatively impact the lives and rights of women in Nigeria.[45]

Culture has also been described as playing a pivotal role with a strong influence on gender perceptions and roles in Nigeria. An-Naim provides a clear description of the powerful role of culture when he states that 'culture is a powerful source and determinant in the perceptions and communal view of people, and is a major determinant of the consciousness and experiences of the community'.[46] Ibhawoh, in expressing a similar view as An-Naim, posits that 'culture has a very strong effect on human behaviour, and is a determinant of what people consider as acceptable or otherwise'.[47] The Cultural Policy of Nigeria, which is the official document regulating the administration of cultural matters in Nigeria, also lends

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[36] Sylvia Walby *Theorizing Patriarchy* (1990) 24.
[37] Sefinatu Aliyu Dogo 'The Nigerian Patriarchy: When and How' 2(5) (Sept-Oct 2014) *Cultural and Religious Studies*, 263-264.
[38] Jegede A.S *Understanding Informed Consent for participation in Internal health research, Developing World Bioethics* (2009) 9(2): 81-87; E Okemin and G. Adekola 'Violence against Women in Ikwerre ethnic nationality of Nigeria: Challenges for gender equity and development', *CSC Canada, Studies in Sociology Science* (2012) 3(2): 6-12.
[39] Ibid.
[40] Emmanuel Olorunfemi Jaiyeola & Adegbenga Isaac Aladegbola 'Patriarchy and colonization: The "Brooder House" for gender inequality in Nigeria' 10 (2020) *Journal of Research on Women and Gender* at 7.
[41] Olabisi I Aina 'Women, culture and society' in Amadu Sesay and Adetanwa Odebiyi (eds) *Nigerian Women in Society and Development.* (1998); Okome op cit note 25; O A Akintan 'Powerful and powerless: Women in religion and culture in the traditional Ijebu society' (2013) 3 (22) *Journal of Social Science.*
[42] Ibid.
[43] Ibid.
[44] Godiya Allanana Makama (ed) 'Patriarchy and gender inequality in Nigeria: The way forward' (2013) 9 (17) European *Scientific Journal* 9(17) (June 2013) at 116.
[45] Ibid.'
[46] Abdullahi Ahmed An-Naim *Human Rights in Cross-Cultural Perspectives* (1992) 27.
[47] Bonny Ibhawoh *Between Culture and Constitution - The Cultural legitimacy of Human Rights in Nigeria* (1999).

credence to the fact that culture represents the totality of the way of life of a given society.[48] The policy defines culture as:

> The totality of the way of life evolved by a people in their attempt to meet the challenges in their environment which gives order and meaning to their social, political, economic, aesthetic and religious norms and modes of organization, thus distinguishing a people from their neighbour.[49]

Several cultural practices exist in Nigeria regardless of their harmful effects on the life, health and well-being of girls and women, and despite the many attempts made for their eradication. The cultural practices, which form the crux of this thesis, include early/forced marriage, female genital mutilation, widowhood practices and rites, and denial of female inheritance. Cultural justifications are given for their continued practice, and in most cases, women are the major promoters of these practices.[50] Abara argues that all discriminations against women in Nigeria tend to seek justification in cultural beliefs and practices,[51] and women remain voiceless because customs and traditions are highly revered and seen as 'sacred' among the various cultural/ethnic groups in Nigeria.

Another source of discrimination against women in Nigeria is arguably found within the practice of religion. According to Raday:

> Culture, religion and gender are foundational social constructs operating at the basis of social psychology and organization. Culture is a microconcept which subsumes religion as an aspect of culture. Culture and religion are sources of the gender construct. Therefore, religion is derived from culture, and gender is, in turn, derived from both culture and religion.[52]

Raday argues that religion is an integral part of culture, and is also an instrument used in defence of patriarchy and differential treatment between men and women.[53] In Sibani's view, the organisational structures of religious institutions in Nigeria, as well as the doctrines in religious books, have had a very strong influence on the level of regard accorded to women.[54] For example, within most religions in Nigeria, women are considered as inferior to men, and cannot exercise equal rights with men within their religious circles. Women are taught to remain submissive to men generally and are usually not allowed to assume positions of leadership as men while the men continue to exercise control over the women. Essien and

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[48] Cultural Policy for Nigeria, 1988, available at *https://en.unesco.org/creativity/sites/creativity/files/qpr/nigeria_cultural_policy.pdf* , accessed 15-04-2019.

[49] Elvis Evbaruovbokhanre Asia *Evaluating the Provisions of Cultural Policy of Nigeria in the Protection, Preservation and Promotion of Nigerian Culture*, available at *https://www.academia.edu/37981768/EVALUATING_THE_PROVISIONS_OF_CULTURAL_POLICY_OF_NIGERIA_IN_THE_PROTECTION_PRESERVATION_AND_PROMOTION_OF_NIGERIAN_CULTURE_Importance_of_culture_and_imperatives_of_cultural_policy*, accessed 12-08-2020.

[50] Leon Usigbe 'Nigerian women say "no" to gender-based violence' available at *https://www.un.org/africarenewal/news/nigerian-women-say-%E2%80%98no%E2%80%99-gender-based-violence accessed 23-6-2020.*

[51] Julie Chinwe Abara *'Inequality and Discrimination in Nigeria; Tradition and Religion as Negative Factors Affecting Gender* Paper presented at the Federation of International Human Rights Museums 8th – 10th October 2012, 3.

[52] Frances Raday 'Culture, religion and gender' (1 October 2003) *International Journal of Constitutional Law* Vol 1 Issue 4, 665, available at *http://arabic.musawah.org/sites/default/files/Culture%2C%20Religion%20and%20Gender.pdf*, accessed 15-05-2021.

[53] Ibid at 667.

[54] Sibani C M 'Gender inequality and its challenge to women development in Nigeria: The religious approach' (2017) *Unizik Journal of Arts and Humanities* at 18.

Ukpong, in their research on gender and religion in Akwa Ibom State in the Southern region of Nigeria, also argue that patriarchy has a foundation embedded in religion.[55]

The Christian religion particularly has been described as a religion that has played a pivotal role in the subsistence of inequality against women in Nigeria.[56] According to Comfort, the subordination of women is taught with the story of Creation serving as a base, where a woman was made out of the man's rib and therefore made for man's advantage.[57] Makama equally argues that Islamic law gives central place to paternalistic interpretation of women's appropriate roles and socio-political arrangement of the society, and places many restrictions on the rights of women.[58] In the same vein, the African Traditional Religion practitioners have been shown to be guided by the dictates of patriarchal patterns, customs and belief systems handed to them by their forefathers and traditional healing mentors: the bulk of which discriminate against women.[59] All religions in Nigeria have therefore been found to subjugate women, and contribute to discrimination against women.[60]

CONTEXT OF NIGERIA

Nigeria is a country located on the western coast of Africa with approximately 200 million people in an area of 920,000 km.^{2} Nigeria has the largest population in Africa[61] and seventh largest in the world.[62] It is a Federal Republic comprising 36 states and a Federal Capital Territory, Abuja. The states are grouped into six geopolitical zones: the North Central (NC), North East (NE), North West (NW), South West (SW), South East (SE) and South South (SS).

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[55] Essien A M and Ukpong D P 'Patriarchy and Gender Inequality: The Persistence of Religious and Cultural Prejudice in Contemporary Akwa Ibom State, Nigeria' (2012*) 2(4) International Journal of Social Science and Humanity* 286-290.
[56] Comfort Ashu Eneke *The Cultural Emancipation of a Woman from a Christian Perspective* (The African Example) (2000) 27.
[57] Ibid.
[58] Makama op cit note 44 at115.
[59] Douglas R Thomas *African Traditional Religion in the Modern World* (2015) 154.
[60] Hauwa Mahdi 'The Position of Women in Islam' in Women and Family in Nigeria 55-59 in Mojbol Olfnk Okome'Domestic, Regional, and International Protection of Nigerian Women against Discrimination: Constraints and Possibilities' (2002) *African Studies Quarterly* 6(3); Kukah, Mathew Hassan 'Women, the Family and Christianity: Old Testament, New Testament and Contemporary Concepts' in *Women and Family in Nigeria* (ed) *Proceedings of the Second Annual Women in Nigeria Conference Dakar*: Codesria (1985) 66-72.
[61]The World Factbook, 2018.
[62]Nigeria People, CIA World Factbook, 2018.

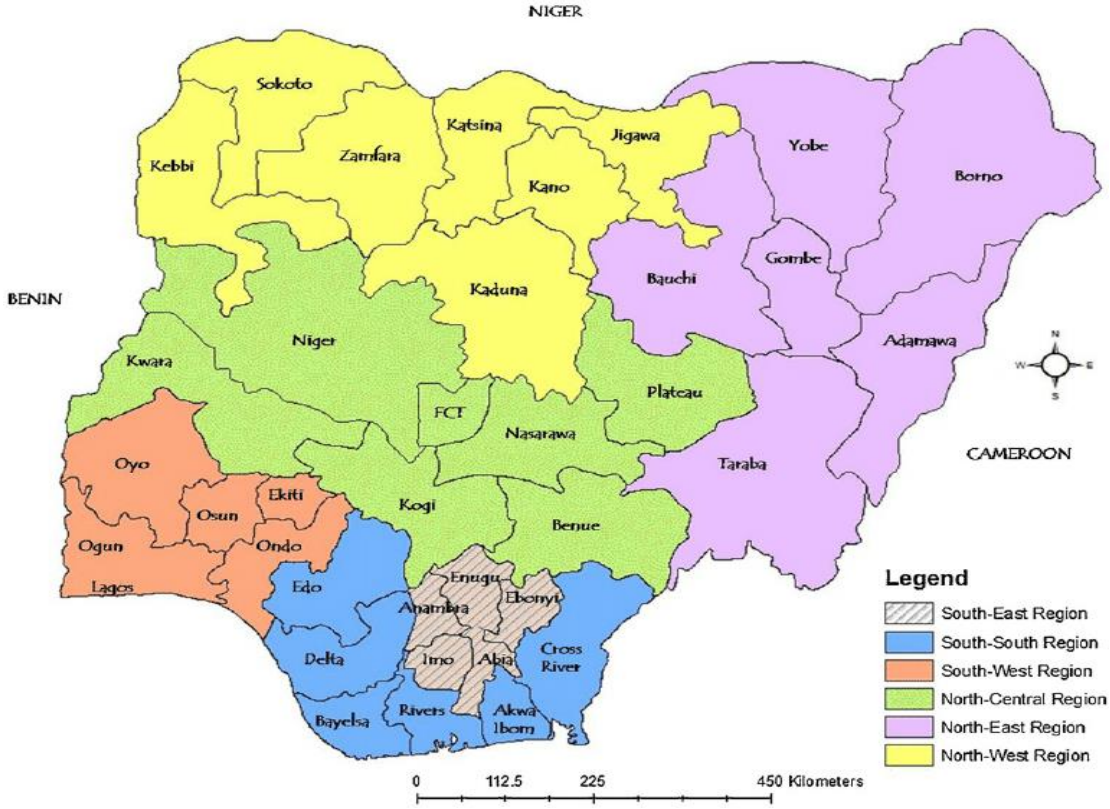

Figure 1: Geo-political map of Nigeria

The creation of these six geo-political zones was not entirely based on geographic location but rather on the similarity of ethnic groups or with their common political history. These zones have in them over 500 ethnic groups who speak more than 521 languages, with the Hausa/Fulanis, Yorubas and Igbos being the major cultural groups.[63] The zones are divided according to the economic, political, and ethnic preferences of Nigeria. The Hausa/Fulanis are found in the North-East and North-West, the Yorubas in the South-West, while the Igbos is found in the South-East of Nigeria.[64] The three major religions practised within these regions are African Traditional Religion, Christianity, and Islam. The Hausa/Fulanis are predominantly Muslims,[65] the Yoruba consist of both Muslims and Christians, while the Igbos are predominantly Christians. The followers of the African Traditional Religion are made of people from within the three main cultural groups.[66]

The Hausa/Fulanis are the biggest ethnic group in Nigeria with an estimated population of about 67 million, therefore making up approximately 30 per cent of the population.[67] The Hausa culture is homogenised and is also recognised for practicing Islam as its main religion. Since the Fulani War,[68] the

[63] Jason Mandryk, 'Operation World' *www.operationworld.org/country/nigr/owtext.html accessed 05-08-2020.*
[64] Ibid.
[65] Abara op cit note 51.
[66] Abara op cit note 51.
[67] Collins Nwabunike, Eric Y. Tenkorang, 'Domestic and Marital Violence Among Three Ethnic Groups in Nigeria' (24 July 2015*) https://doi-org.ezproxy.uct.ac.za/10.1177/088620515596147*.
[68] 18-4-1808.

Fulanis have been intertwined with the Hausa of Nigeria, largely due to intermarriage and the Fulani's living among the Hausa population. The Fulani adopted Islam early and are recognised for their excellence as Islamic clerics.[69]

The Yorubas make up the second largest ethnic group, constituting approximately 21 per cent of the population of Nigeria, making them the second biggest ethnic group in the country.[70] The Yorubas practise Christianity and Islam, while many of them still uphold traditional aspects of their ancestors' religious practices and beliefs.[71]

The Igbos make up approximately 19 per cent of the population, with most of them practicing Christianity.[72]In the past Igbos followed their traditional beliefs, but after colonisation the majority (more than 90 per cent) converted to Christianity, with a large number embracing the Catholic faith.[73]

For political reasons, no question as to religious affiliation has been included in any census since 1963. However, according to the United States' State Department, it is estimated that Muslims outnumber Christians in Nigeria, comprising approximately half of the country's population, while Christians make up 40 per cent, with the remainder following either their traditional indigenous religion or do not practise any religion.[74]

Women make up about 49 per cent of the Nigerian population[75] and play vital roles as mothers, managers, and community developers/organisers. Their contribution to the social and economic development of Nigeria is more than half of that of men by virtue of their dual roles in both the productive and reproductive spheres.[76]

II STATEMENT OF THE RESEARCH PROBLEM

The patriarchal nature of the Nigerian society, which enables men to dominate women in every sphere,[77] and the male-dominated religious systems (evident within the African Traditional Religion, Christianity and Islam) which places men in a superior position to women, negatively impact on the lives and rights of women in Nigeria.[78] Numerous cases of women's right violations such as child/forced marriage, demeaning widow rites and rituals, female genital mutilation/female circumcision, denial of female inheritance of property, forced sexual intercourse and marital rape, absence of women's right to divorce, wife inheritance, and absence of recourse to justice occur daily in Nigeria. In most cases these women suffer in silence and

[69] *www.worldatlas.com/articles/largest-ethnic-groups-in-nigeria* accessed 05-08-2020.
[70] Nwabunike and Tenkorang, op cit note 67.
[71] *www.worldatlas.com/articles/largest-ethnic-groups-in-nigeria accessed 05-08-2020.*
[72] Nwabunike and Tenkorang, op cit note 67.
[73] Lize Okoh, 'A Guide to the Indigenous People of Nigeria' 4 October 2018 *www.theculturetrip.com/africa/nigeria/articles/a-guide-to-the-indegenous-people-of-n.igeria/* accessed 05-08-2020.
[74] Mandryk, op cit note 63.
[75]The 2006 official gazette.
[76]Makama, op cit note 44, 116.
[77] Makama, op cit note 44, 116.
[78] Ibid.

refuse to report these abuses due to the negative impact it may have on their marriage, family reputation and children.[79] Victims of discrimination and abuse maintain a tradition of silence for fear of being shamed by the various religious and cultural norms in the society.

Regrettably, women also play a key role in the perpetuation of some of the above violations against their fellow women, and women have arguably been acculturated into believing that rights-denying cultural acts validates their identity as members of their cultural and religious groups.[80] Unfortunately, it is only the extreme cases of women's right violation – which result in death or permanent disability – that earn media attention and police arrests.[81] Critical cases such as early/forced marriage, female genital mutilation, wife battery, marital rape, are neither reported nor highlighted in the media and not taken seriously by the police.[82]

Religion also remains a force for rights denial of the Nigerian women.[83] The various religious groups join to subjugate women, and through their "sacred" practices encourage discrimination against women.[84] Evidence of these discriminations can be seen, for example, within African Traditional Religion which states that property ownership in a family is the reserved right of only men, and polygamy is allowed only for men.[85] Within the Christian religion, women are regarded as subordinate to men, and bear the burden of remaining in submission to their husbands despite cases of ill treatment and abuse at home.[86] In Islam, men are regarded as superior to women,[87] while male children are preferred to females.[88] Within the practice of African Traditional Religion also, women are not allowed to exercise equal rights with men.[89]

The Nigerian legal system is also generally unfavourable to women, due to the several laws that leave women in more vulnerable positions and expose them to several forms of discrimination and violence. For example, section 55(1)(d) of the Penal Code operative within the northern states of Nigeria provides that the chastisement of a wife by her husband is not a crime, provided the subsisting native law and custom

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[79] Okonkwo CO *Zero Tolerance to Violence against Women: The Way Forward Cry for Justice* (2003).
[80] Usigbe op cit note 50.
[81] Salaam T *A Brief Analysis on the Situation of Women in Nigeria Today* SM (2003) in Makama op cit note 444 p. 125.
[82]Sylvia Chika Ifemeje 'Legalization of marital rape in Nigeria: a gross violation of women's health and reproductive rights' 33(1) (Mar 2011) *Journal of Social Welfare and Family Law* 39-46.
[83] Leke Oke 'Women and Religion in Nigeria: a Reassessment' 1(3) (December 2014) *International Journal of Humanities and Cultural Studies*, p 7.
[84] Mahdi op cit note 60; Kukah Mathew Hassan '*Women, the Family and Christianity: Old Testament and Contemporary Concept's* in Women and Family in Nigeria: (ed) Proceedings of the Second Annual Women in Nigeria Conference Dakar: Codesria, (1985) 66-72.
[85] Polygamy within the Nigerian context is described as when a man marries more than one woman. Douglas R. Thomas *African Traditional Religion in the Modern World* (2015), 154; Leo Igwe 'Women's Rights in Traditional African Practices and Islam' (Feb 5, 2012) Institute for Ethics and Emerging Technologies, available at *https://ieet.org/index.php/IEET2/more/igew20120203* accessed 08-09-2019.
[86] Sibani C M 'The Politics of gender and power in Nigeria: The Christian analysis' 1(1) (2013) *Journal of Theology, Religion and Cultural Studies* 28-44.
[87] Sura 4: 34 'Men are in charge of women because Allah hath made one to excel the other.'
[88] Sura 43:15 'yet when a new-born girl is announced to one of them his countenance darkens and he is filled with gloom; Igwe op cit note 85.
[89] Igwe op cit note 85.

permit it, and it does not cause her grievous hurt.[90] This provision arguably gives room for wife battering. The Penal Code also provides that forced sexual intercourse by a man with his own wife is not rape.[91] The Criminal Code on the other hand considers assault on a woman to be a misdemeanour while that on a man is a felony.[92] The Nigerian Criminal Code also expressly legalises marital rape.[93] Furthermore, other laws in Nigeria which have attempted to address issues of gender-based violence and discriminations are only enforceable in a few states of the federation due to the religious restrictions in some states. For example, the Violence Against Persons (Prohibition) Act 2015,[94] was particularly drafted to reproduce the provisions contained in the Protocol, but the Act is only enforceable within the Federal Capital Territory, Abuja.

Evidently, the cultural dogmas and social belief systems prevalent in Nigeria have arguably to a large extent influenced, the intents and purposes of the laws that have been promulgated, especially with respect to the rights of women. Consequently, laws that were supposedly enacted to protect the rights of women in Nigeria now act as tools to facilitate several forms of discriminations against them.[95] As will be argued in subsequent chapters, most of these laws were drafted with patriarchal undertones and preference given to the male gender, and therefore the laws are unable to provide adequate protection for the Nigerian woman. There has also been continued effort by government to increase female representation at the legislative arm of government; however, no significant success has been registered in this regard. It is against this backdrop that there is an urgent need for the Protocol, as a final arbiter for women's rights due to how it comprehensively addresses the rights of women specifically within the African cultural milieu.

Unlike Nigerian laws which are susceptible to the age-long patriarchal and cultural prescriptions prevalent in Nigeria, the Protocol outlines the basic rights of African women devoid of patriarchal or cultural undertones or preference and transcends cultural boundaries.[96] This is evident in the way in which the Protocol speaks clearly on issues of particular concern to African women. More importantly, the Protocol expands the protection of women's rights to include the private sphere.[97] However, as is outlined in subsequent chapters, the current legal framework in Nigeria — the cultural and religious influence on the

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[90] Penal Code, Cap 3-1 *Laws of the Federation* 2004.
[91] Section 282 Penal Code, Cap 3-1 *Laws of the Federation* 2004.
[92] Section 351 "Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment for one year" and 353 "Any person who unlawfully and indecently assaults any male person is guilty of a felony and is liable to imprisonment for three years." *Criminal Code Act Cap C38 LFN 2004*.
[93] Oby Nwankwo 'Effectiveness of Legislation Enacted to Address Violence against Women in Nigeria', 30th May 2008, *https://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_Oby%20Nwankwo_.pdf* accessed 12-03-2021. See Section 357 Criminal Code Chapter 77 Laws of the Federation of Nigeria, https://www.wipo.int/edocs/lexdocs/laws/en/ng/ng025en.pdf accessed 12-03-2021.
[94] *Violence Against Persons (Prohibition) Act 2015*https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104156/126946/F-1224509384/NGA104156.pdf accessed 12-05-2019.
[95] Examples of such laws include s. 55(1)(d) of the Penal code which promotes wife battery, and the Criminal code which legitimizes marital rape.
[96] Dejo Olowo 'A Critique of the Rhetoric, Ambivalence, and Promise in the Protocol to the African Charter in Human and People's Rights on the Rights of Women in Africa' (2006) *Human Rights Review*, at. 85.
[97] Article 2 of the Protocol.

perceived rights of women in Nigeria — continues to impede on the effective domestication of the Protocol in Nigeria.

The Protocol face several challenges to its domestication in Nigeria, and the Nigerian woman cannot benefit from its provisions. Therefore, there is need for a model that would enable the Protocol to be domesticated and thereby ease its application within the Nigerian cultural and religious systems. This is the core of the thesis. The thesis does not suggest a review of the provisions of the Protocol but states that the Protocol provides adequate protections for women in Nigeria. However, the religio-cultural practices that challenge the rights of women in Nigeria as discussed in Chapter Five will continue to hinder the realisation of the rights of women as contained in the Protocol if not addressed and changed. The thesis consequently proposes a legal model that will propel a change to the prevalent religio-cultural hindrances to the effective realisation of the Protocol in Nigeria as seen in Chapter Six, further to which the Protocol can be effectively domesticated and applicable in Nigeria. The analysis of the religio-cultural hindrances to the Protocol is discussed in Chapter Five, while the proposed legal model to address the religio-cultural challenges is found in Chapter Six.

(a) Research Questions

This research seeks to go beyond just affirming the existence of the religio-cultural challenges to the Protocol in Nigeria, by investigating the cultural practices and religious belief systems that negate the spirit of the Protocol within the three main cultural groups and religions in the country. The thesis argues that the Protocol contains provisions that deal explicitly and comprehensively with the cultural and religious practices and bottlenecks that infringe on the rights of women in Nigeria.

The thesis canvasses and argues that because Nigeria is a patriarchal country, its systems are deeply rooted in the dictates of culture. Local laws purporting to promote the rights of women are still shaded with patriarchal undertones and continue to classify women as second-class citizens. This makes the local laws inadequate as a tool for the protection and promotion of the rights of women. The Protocol on the other hand was drafted without the cultural undertones prevalent in Africa and can be used as an effective tool for the promotion of women's rights within Nigerian culture through the domestication of its provisions as would be proposed in Chapter Six of this thesis.

The thesis acknowledges and argues in subsequent chapters that even though the Protocol contains some provisions that can be termed 'over ambitious' in the light of the rigid cultural/religious terrain prevalent in Nigeria, if properly harnessed, the Protocol will be an effective tool for the realisation of the rights of the Nigerian woman. The central argument of the research is that a feasible domestication model is required to ensure the implementation and enforcement of the Protocol in Nigeria while protecting competing religio-cultural identities.

The main research question is therefore: To what extent has religion and culture impeded the implementation of the Protocol in Nigeria, and what possible domestication model is feasible to domesticate the Protocol within the Nigerian context?

Sub-questions that emanate from the main research question are:

1. What protections are afforded women within the international, regional and Nigerian legal framework?
2. What were the status and place of women in historical Nigerian society, and to what extent have religious beliefs and practices, and cultural values and systems hindered the promotion of women's rights in Nigeria as entrenched in the Protocol?
3. What protections are afforded women within the Protocol and how does the Protocol address discriminatory practices including child/forced marriage, female genital mutilation, widowhood practices and rites, female inheritance, forced sexual intercourse and marital rape, absence of women's right to divorce, wife inheritance, and absence of recourse to justice that occur daily in Nigeria.
4. What are the perceived religio-cultural factors in Nigeria hindering the rights of women as enshrined in the Protocol?

5. What model is feasible for the domestication of the Protocol in Nigeria?

The central argument of the research is that a feasible domestication model is required to ensure the implementation and enforcement of the Protocol in Nigeria while protecting competing religio-cultural identities.

III AIM AND OBJECTIVES

The main objective of the thesis is to identify and understand how culture and religion impede the effective domestication and enforcement of the Protocol in Nigeria, and to propose a feasible model that would enable the Protocol to be domesticated in Nigeria.

The specific objectives of the research are to:

- Analyse the concept of human rights and the protection afforded women within the international, regional and Nigerian domestic legal framework.
- Study and evaluate the status of women in pre-colonial times and evaluate the extent to which the various religious beliefs and practices, and cultural values and systems, have contributed to discrimination against the rights of women in Nigeria.
- Understand the general intent of the Protocol and analyse the protections it provides women against specific cultural and religious practices including child/forced marriage, female genital mutilation/female circumcision, widows' rites and practices, and female inheritance, forced sexual intercourse and marital rape, absence of women's right to divorce, wife inheritance, and the absence

of recourse to justice. Critically analyse the current legal framework for the rights of women in Nigeria.

- Analyse the perceptions of women and men about the religious and cultural factors that negate the rights of women as entrenched in the Protocol.
- Analyse the existing religious and cultural value systems in relation to the rights of women in Nigeria and proffer a feasible model for the domestication of the Protocol in Nigeria.

IV RESEARCH METHODOLOGY

This thesis makes use of the desk-based and doctrinal method of study, and quantitative and qualitative case study research methods of investigation. The study is conducted within Nigeria's Lagos State metropolis, Kebbi State, Enugu State, and Oyo State.

The desk-based and doctrinal aspect of the study involved an analysis of the Protocol to establish the protections afforded women, together with an analysis and synthesis of relevant literature. Available literature, scholarly journal, articles, books, case law, international and regional instruments, and legislation were examined in order to establish the status of women's rights in Nigeria, as evidenced within the three main cultural groups (Hausa/Fulani, Igbo and Yoruba) and within the three main religions in Nigeria (African Traditional Religion, Christianity and Islam).

Quantitative data was gathered from 554 respondents comprising women and men from the three main cultural groups (Hausa/Fulani, Igbo and Yoruba), and the three main religious groups (African Traditional Religion, Christianity, and Islam) in Nigeria.

The qualitative case study utilised semi-structured interviews (face-to-face) and self-administered questionnaires to elicit the views of women and men, and the views of religious leaders about the status and rights of women in Nigeria, and the challenges arising from culture and religion for the realisation of the rights of women in Nigeria.[98]

V SIGNIFICANCE OF STUDY

This thesis aims to contribute to the ongoing debate on the status and application of the Protocol within the African cultural context. Although Nigeria is a party to many international and regional conventions, many of the conventions have not been domesticated, neither have they been tested in the Nigerian courts of law.[99] There is equally no significant use of the Protocol within the Nigerian courts. Local laws that should promote and protect the rights of women are drafted with patriarchal and cultural undertones, thereby reinforcing long existing gender discriminations.

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[98] Data is presented in chapter 5.

[99] Foluke O Dada 'The Justiceability and Enforceability of Women's Rights in Nigeria' *Global Journal of Human-Social Science (E)* (2014) Volume XIV Issue v Version 1.

The Protocol certainly could have been the key to a new dawn for Nigerian women, but the sad thing is that the reality seems a far cry due to prevalent religio-cultural factors and legal systems prevalent in Nigeria.[100] Though ratified by Nigeria, the Protocol remains a scholarly contribution without any form of legal enforceability because it is not yet domesticated. Despite the provisions of the Protocol recognising and guaranteeing the rights and obligations of the Nigerian government, Nigerian women rank lower than men in all indices of development, and this condition is worsened by the dictates of culture and religion. The provisions of the Protocol that recognise and guarantee women's human rights within a positive cultural context in Nigeria promise a future for women if the government were to fulfil its Protocol-based obligations.[101] An all-inclusive domestication process is therefore proposed in this thesis to address the prevalent religio-cultural hindrances.

VI LIMITATIONS

There are innumerable denominations within the Christian religion in Nigeria, and diverse views and sects of Islamic followership both in the northern and southern parts of the nation. African traditional religion equally has their own range of sectarian adherents within the various cultural groups of the country's 200 million inhabitants. Within the three main cultural groups of this research are also clusters of sub-groups with cultural beliefs and practices of different colouration.

A comprehensive research coverage that goes beyond the three main cultural and religious groups to investigate the minor religious and cultural groups in Nigeria might possibly yield more of perception diversity on the religious and cultural factors hindering the rights of women in Nigeria. However, this has not invalidated the observations and conclusions made in this research.

Also, the focus of the research is primarily urban, among the target cultural and religious groups within Lagos metropolis (in Lagos State), the urbanites of Kebbi (in Kebbi state of northern Nigeria) in Enugu (the Igbo cultural group of southeast Nigeria), and Ibadan (the indigenous capital of Oyo state and southwest Nigeria). The field research was conducted and completed during the Covid-19 pandemic[102] and the limitation of the focus was primarily due to the movement restriction experienced during this period. Similar research conducted within the six geo-political regions of Nigeria[103] and within both the urban and rural areas, would allow for a rural-urban comparison of the perceptions on the various religious and cultural factors that hinder the rights of women in Nigeria, thereby making the ensuing model an urban-rural fit.

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[100] Omoyemen Odigie-Emmanuel 'Assessing women's rights in Nigeria' (2010) available at *https://fpif.org/assessing_womens_rights_in_nigeria/* accessed 12-03-2021.
[101] Article 17 of the Protocol.
[102] July 2021 – September 2021.
[103] North Central (also known as Middle Belt), North East, North West, South East, South South (also known as Niger Delta regions) and South West.

VII SYNOPSIS OF CHAPTERS

The general background to the promulgation of the Protocol is set out in Chapter One, and the concept of human rights and gender equality within Africa, and the complex religio-cultural conditions in Nigeria regarding the rights of women, are offered. The chapter identifies the research questions, aims and objectives, methods used in the research, significance of the study, limitations of the study and division of chapters.

Chapter Two gives a detailed account of the research design, the methodology, and procedure followed in the conduct of this thesis.

Chapter Three provides a detailed review of the international framework of human rights and the concept of human rights in Africa. The chapter also analyses Nigeria's regional and domestic legal obligations, and particularly analyses how the prevalent laws respond to the religious and cultural context and discriminations suffered by women in Nigeria. The chapter discusses concepts such as human rights of women, universalism, and cultural relativism. A detailed review of literature on the universalism and cultural relativism theories is provided. It also reviews a synthesis of the literature that debates whether the concept of human rights (women's rights) is universal or culturally relative, and how this debate compounds the challenges faced by women in Africa, including Nigeria. The thesis argues that the extremist positions of both the universalist and cultural relativist theorists will only continue to promote the discriminations already suffered by the Nigerian woman. The chapter proceeds to critically analyse the provisions of the Protocol with particular emphasis on how the Protocol has been able to address the religious and cultural practices that impede the rights of women in Nigeria. While the chapter establishes that the Protocol is yet to be fully domesticated in Nigeria, hence its unenforceability within the Nigerian courts, a call is made for the domestication of the Protocol and for the legislative arm of government to consider the consequent domestication of the Protocol as proposed in Chapter Six of this thesis. The chapter concludes by making a case for the Protocol as an instrument that reasonably attempts to achieve a balance between the extremist views of universalism and cultural relativism, while providing better protection for the rights of women in Nigeria.

Chapter Four provides an analysis of the status and rights of women in Nigeria, with particular reference to the position of women during the pre-colonial, colonial and post-colonial eras in Nigeria. This analysis is important to refute the claims by cultural relativists that a human rights culture existed in Nigeria prior to colonisation and that the discriminations now suffered by women in Nigeria was as a result of colonial influence. The chapter argues that women in Nigeria had suffered a series of discriminations from time immemorial as a result of the dictates of religion and culture. The chapter discusses the status of women within the three main cultural groups in Nigeria (Hausa/Fulani, Igbo and Yoruba), and within the three main religions (African Traditional Religion, Christianity, and Islam), and the prevalent cultural

practices and religious belief systems that negate the spirit of the Protocol. The thesis focuses on the practices of child/forced marriage, female genital mutilation, widows' rites and rituals, denial of female rights to inheritance, forced sexual intercourse and marital rape, absence of women's right to divorce, wife inheritance, and absence of recourse to justice.

Chapter Five provides detailed analyses of questionnaires and interviews conducted with select women and men within the Lagos metropolis, Kebbi State, Enugu State and Oyo State of Nigeria. Stakeholders interviewed include women, men, religious leaders, traditional leaders, whose responses inform the analysis in this chapter. The chapter identifies from respondents the common grid factors that constitute discrimination against women within the three main religions and cultural groups in Nigeria. The analysis provides the insider perspective of the women and men living within the three main cultural groups and religions under study.

Chapter Six proposes a model for the domestication of the Protocol in Nigeria, comprising seven key features that would address the existing religio-cultural hindrances to its effective realisation in Nigeria. The chapter proposes a domestication model that responds to the existing legal, cultural and religious challenges prevalent in Nigeria that hinder the domestication of the Protocol in Nigeria.

Chapter Seven provides recommendations for further research and the general conclusions of the thesis.

CHAPTER TWO

RESEARCH DESIGN, METHODS AND PROCEDURE

I INTRODUCTION

When conducting research, it is important to keep in mind the purpose of the research.[1] It then becomes mandatory for the researcher to decide on the most appropriate design to connect the research questions to the data from the field. This is the essence of a research design. The chapter outlines the strategy used in this research, conceptual framework, who or what will be studied, and the tools and procedures used both for collecting and analysing the empirical materials.[2]

II METHODOLOGY

The study is a qualitative research study that used the case studies approach as the mode of inquiry.[3] Quantitative data was equally gathered from respondents to determine the prevalence rate of the religious and culturally influenced discriminations against women in Nigeria. The 'concurrent procedures' strategy of the mixed method approach was adopted for collecting and converging both quantitative and qualitative 'forms of data at the same time', and then integrating the information to analyse the data, interpret the overall results and report the findings.[4]

(a) Theoretical Framework for Qualitative Research

Qualitative research is a means that seeks to dig deeply into a phenomenon under study by collecting numerous forms of data and examining them from different perspectives to 'construct a rich and meaningful picture of a complex, multifaceted situation'.[5] Qualitative research methods are designed in a manner that helps reveal the behaviours and perception of a target audience with reference to a particular topic.[6]

There are different variations of qualitative research methods, including field research, in-depth interviews, focus groups, ethnographic research, respondent observation, and case study research. All the variations have two things in common: they all centre on phenomena that take place in natural settings, which is in the actual world; and they require the detailed study of those phenomena in all their intricacies.[7]

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[1] Patton M Q *Qualitative research and evaluation methods* (2002) 214.
[2] Punch K *Developing effective research proposals* (2006) 2 ed., 48.
[3] Kvale S and Brinkmann S *Interviews: learning the craft of qualitative research interviewing'* (2009) 1,2.
[4] Creswell J W *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (2003) 16.
[5] Leedy P D and Ormrod J E *Practical research: Planning and design* (2003) 133.
[6] Kvale op cit note 3.
[7] Atoyebi L A Human *Rights Education and Values of the Girl-child: A Kenyan case study* (unpublished PhD thesis, North West University Potchefstroom, South Africa, 2011) 135.

The results of qualitative methods are more descriptive, and the inferences can be drawn quite easily from the data that are obtained. Such an approach helps to define social realities away from the experience of the researcher by focusing on the researched.[8]

However, the qualitative research method faces the risk of being subjective or biased, which could be because of the researcher's personal experience and preference on the subject matter.[9] Qualitative researchers overcome this risk by using structured interviews and questionnaires that adequately present the perceptions of the researched. Furthermore, the researcher's sense of observation is supplemented with possible mechanical devices like audio or tape recorders and the use of cameras.[10] In this thesis, interviews were voice recorded and transcribed in the exact words of the respondents to limit the researcher's bias while reporting.

The most important aspect of qualitative research is interpretation, and it emphasises understanding rather than explanation. In this respect, the researcher tries to understand and interpret the phenomenon through the respondents' eyes. Data is interpreted by giving them meaning and making them understandable. Neuman says that the respondents' point of view in the study is central when the researcher interprets the data.[11]

According to Kirk and Miller, research activities using the qualitative research approach are performed in a four-way sequence that are always present and completed in sequential order, with each phase depending on the other in only one sequence or way.[12] The four phases are invention (research design), discovery (data collection), interpretation (analysis), and explanation (documentation). The phases are undergirded by the all-important duty of fieldwork where the designed research data must be collected before it is analysed and documented.[13]

Close-ended quantitative data collection tools and open-ended qualitative data collection tools were designed before entering the field. Questionnaires were developed for women and men from the three main cultural groups in Nigeria (Hausa/Fulani, Igbo and Yoruba), and the three main religions (African Traditional Religion, Christianity and Islam).[14] Select women and men from the three main cultural groups and religious groups were interviewed, with religious leaders from the three main religions.

Data collected from all the above-mentioned steps was analysed under Case Findings, Analysis and Interpretations in Chapter Five. This formed the foundation for the proposed domestication model and research conclusions in chapters six and seven. The use of semi-structured questionnaires and a voice

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[8] Atoyebi P O *From Stagnation to Revitalization: A Study of Select Turnaround Churches in the Urban Context of Nairobi, Kenya* (unpublished PhD thesis, North West University Potchefstroom, South Africa , 2010) 12.
[9] Vyhmeister N J *Quality Research Papers: For Students of Religion and Ttheology* (2001) Grand Rapids, Michigan: Zondervan 14.
[10] Chadwic.B A, H L Bahr & S L Albrecht *Social Research Methods* (1984) Englewood Cliffs, NJ: Prentice-Hall, Inc 206.
[11] Neuman W L *Social Research Methods: Qualitative and Quantitative Approaches* at 148.
[12] Kirk J and Miller M L *Reliability and Validity in Qualitative Research* (1986) 59.
[13] Ibid.
[14] See Appendix A.

recorder in the interviews sufficiently guaranteed the reliability of the data collected for the research within the framework of qualitative research designed in this chapter.

(b) Role of the Researcher and Gaining Entry to the Setting

The role of the researcher is crucial to the research, and the researcher must suspend any preconceived notions or personal experiences that could unduly influence her during data collection and data analysis for objectivity. The researcher's role must be played in such a way that the data to be collected would reflect the experiences, perspectives, opinions, and thoughts of the respondents as accurately as possible.[15] A general site-based procedure for locating and recruiting research subjects was adopted. This procedure for identifying and recruiting includes setting boundaries to the sample, generating a list of sites, and identifying a gatekeeper for each site.[16] The boundaries set for this research, as earlier stated, consisted of participants living within the states' metropolises of Lagos, Kebbi, Enugu, and Oyo states of Nigeria, core areas for the different ethnic groups of Hausa/Fulani, Igbo and Yoruba.

For researchers who are entering into a field of research, Walford insists on the need for an adequate justification for the choice of the site, especially for qualitative, phenomenological study.[17] This is because entry is a phenomenon that could pose human problems just like the problem of the level of restrictions on access to women within the patriarchal societies of Nigeria.[18] While some settings are open and visible with a free flow of information, others could be restrictive to outsiders, and conducting research in them would demand a covert approach.[19] Each of the sites used in this research had relatively overt access, though permission from cleric leaders, estate managers and traditional leaders was a sine qua non for conducting the research.

In order to gain entry into the religious houses and residential estates, an introductory letter was written to the religious clerics in charge and estate managers, explaining the aims and objectives of the research and the benefits to Nigerian women generally. Upon gaining the requisite approval, willing respondents were approached. Each respondent was informed of the general purpose of the research, and the possible benefits as well as the disadvantages that the research could bring.[20]

The perspective of Islamic and African Traditional Religious leaders and Islamic men was indirectly obtained with the help of a recruited male colleague who also cumulatively served as a research assistant. The male research assistant was necessary because of the various restrictions on entry to the Traditional and Islamic places of worship, and to respondents generally. The male research assistant was responsible for collecting data from Traditionalists and Islamic leaders and was able to gain entry into areas where entry was restricted to women, such as religious houses, and the Hausa/Fulani cultural clusters. Traditional

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[15] Atoyebi op cit note 8, 144.
[16] Thomas A Arcury and Sara A. Quandt 'Participant Recruitment for Qualitative Research: A Site-Based Approach to Community Research in Complex Societies' *Human Organization*, Vol. 58, No. 2 (Summer 1999) pp. 127-130.
[17] Walford W *Doing qualitative educational research: a personal guide to the research process* (2001) 14.
[18] Jorgensen D L *Participant observation: a methodology for human studies* (1989) 45-47.
[19] Atoyebi op cit note 8, 144.
[20] Kvale and Brinkmann op cit note 3.

religious leaders were not easily accessible at the time of data collection. However, their perspective was obtained from the various traditional worshipers made up of women and men.

A female research assistant was also recruited, and she helped in collecting data from the women living within the secluded Hausa/Fulani cultural clusters/communities. The female research assistant helped with the interviews to the Hausa/Fulani language and back to English. The female perspectives from the Islamic and African Traditional religion were obtained from randomly selected respondents based on their residential locations, marketplaces, and work domicile. According to Charles Kraft, 'what water is to the fish is what culture is to human beings. As the fish cannot survive without water, so can no human being survive without culture'.[21] Consequently, data obtained from women and men within the cultural clusters/communities were sufficiently representative of their religious perspectives.

As cautioned by Leedy and Ormrod, all preconceived notions or personal experiences that could cause undue influence during the collection and analysis of the data were suspended.[22] Data was collected accurately to reflect the perspectives, opinions, and thoughts of the participants as much as possible. This was done through the adoption of the role of interviewer, listening very closely to minute details from interviewees and taking notes throughout or tape recording where applicable. The questionnaires and interviews were thereafter transcribed, analysed and interpreted in Chapter Five of the thesis.

(c) Case Study: The Qualitative Dimension

(i) Definition of Case Study

A case study is a research design that attempts to describe the totality of a notion within its context.[23] It is an in-depth study of a particular research problem. It has been described as an effective methodology to investigate and understand complex issues in real-world settings.[24] The design approach permits the learning of much of the phenomenon under study by examining a few examples that are highly representative of the population under study. The in-depth analysis provides a deeper and better understanding of the problem under research.[25] This design allowed me to have a deeper understanding of the phenomenon of women's rights in Nigeria, by examining a few examples that were highly representative of the population under study.[26]

Case studies allow a lot of detail to be collected that would not normally be easily obtained by other research designs. Data collected is normally richer and of greater depth. However, case studies are criticised since data collected cannot necessarily be generalised to the wider population because of the limited number of people involved in the survey. Though case studies help to generalise research findings and lead to further

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[21] Charles H. Kraft, 'Culture, Worldview and Contextualisation' *https://www.perspectivesonmission.com/resources/Session07_Kraft_CultureWorldviewContextualization.pdf* Child Marriage in the Islamic World, *http://97.74.65.51/readArticle.aspx?ARTID+36336.*

[22] Leedy and Ormrod op cit note 5, 139.

[23] Kombo D and Tromp DLA *Proposal and thesis writing: an introduction* (2006) Nairobi: Paulines Publications Africa, 72.

[24] Ibid.

[25] Atoyebi op cit note 8, 12.

[26] Helena Harrison et al 'Case Study Research: Foundations and Methodological Orientation's *Forum: Qualitative Social Research,* 18(1) (Jan 2019); Art. 19.

research via generated hypothesis, it is vulnerable to subjectivity. It is limited by its occupation with small numbers, which may lend credence to complete generalisation. It could also be subjective to an emotionally dramatic event or the personal involvement of the researcher.[27]

The case study design was, however, selected for this research for many reasons. One major reason is the nature of the case study itself. Huysamen identifies three aspects of case studies that are relevant to this research.[28] The first is the possibility of determining or demarcating the boundaries of case studies. In this research, that boundary is set as women and men living within the States' metropolis of Lagos, Kebbi, Enugu, and Oyo States of Nigeria; and they practise the three main religions in Nigeria: African Traditional Religion, Christianity and Islam.

The second relevant aspect of a case study is the fact that data collected is not limited to a description of what was observed; it is used also to carry out inductive search for recurring patterns and consistent regularities.[29] This is noted in Chapter Six of this thesis. Thirdly, the findings of case studies can always be substantiated away from the personal bias of the researcher through the use of voice-recorded conversations, semi-structured interviews and other publications.

(ii) The Case Study Approach

According to Vyhmeister, the case study approach involves four parts: observation, analysis, interpretation, and action.[30] In observation, the researcher notes and writes down in simple sentences all that has been said and done in relation to the case being observed. At this stage 'what a person said should be recorded, and how the researcher thinks the person felt'. Observable facts and activities are written into the case, and all related details are included in the report, including the general location of the case.[31]

In case study design, analysing the 'events, interactions, and reactions of the person or persons involved in the case' follows the documented observation stage. In analysis, the research does not place value judgments on observations, but simply understands it as such and describes the factors responsible for people's manner of thinking and acting within the context of their environment, cultural values, and theological perceptions.[32]

The third part of case study design is interpretation. Action planning is the fourth activity involved in a case study. Actions already taken on the case are evaluated and relevant strategies for responding to the case in the future are presented. This is where a newly proposed model comes into play. It suggests what should be done and reasons for the suggested strategy. Vyhmeister opines that 'the strategy planned must be realistic, contextual, and appropriate to the local situation. Furthermore, it must be correct in the light of principles derived from the research of the interpretation section'.[33]

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[27] Vymeister, op cit note 9, 143.
[28] Huysamen G.K. *Methodology for the social and behavioral sciences* (1994), 169.
[29] Vymeister op cit note 9, 145-149.
[30] Ibid.
[31] Vymeister op cit note 9, 146.
[32] Vymeister op cit note 9, at 47, 148.
[33] Vymeister op cit note 9, at149.

III RESEARCH PROCEDURE

(a) Data Collection

Theory and method influence researchers in the control of data collection for a study. Theories decide the type of research information needed 'by defining the phenomena and hypotheses of interest, while methods establish the way the necessary information will be obtained 'by defining appropriate data-collecting procedures'.[34] A prominent method of collecting data in qualitative case study research like this is fieldwork, which allows for behaviours to be observed in natural settings so that a realist theory could be construed, using workable and fitting ideas.[35]

Data collection for this research involved the use of self-administered questionnaires and personal interviews. The instruments were designed to elicit information from the research target in their cultural and religious groups within Lagos metropolis, and from the urbanites of Kebbi (in Kebbi State of northern Nigeria), Enugu (in the heartland of Igbo people group of south east Nigeria), and Ibadan (the indigenous capital of Oyo State and the Yoruba south west Nigeria). The questionnaires contained both open-ended and close-ended questions.[36] The qualitative questionnaire part was open-ended, allowing for expression and additional information pertinent to the participants, while the quantitative aspects of the questionnaire were close-ended, allowing for specific data on the prevalence level of the discriminatory practices against women in Nigeria, and the extent to which religion and culture impede the implementation of the rights of women in Nigeria.[37]

(b) Population of Study

The entire group or population that a researcher wishes to study is called a 'universe', while 'a more clearly identified portion or sample of the universe of possible respondents or units' is the population of study for a research study.[38] The total population for this study consisted of 554 participants made up of 413 women and 141 men, from the three main cultural groups in Nigeria (Hausa/Fulani, Igbo and Yoruba), and members of the three main religions in Nigeria (African Traditional Religion, Christianity, and Islam). The number of women is larger than men because women are the core research subjects of this research, and their lived experiences are central to this research.

However, because Nigeria is a patriarchal country, research on women's rights cannot be exhaustive without 'hearing the voices of the men'. Consequently, a smaller population of men was sampled to allow for viable conclusions and workable recommendations for change.

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[34] Brewer J and Hunter A *Foundations of multimethod research: synthesizing styles* (2006) Thousand Oaks: SAGE Publications 59.
[35] Ibid.
[36] See Appendix A.
[37] See Appendix A, B and C for copies of the questionnaires and interviews.
[38] Chadwick et al op cit note 10 at 53.

(c) Sampling the Population

According to Nieuwenhuis, qualitative research is generally based on non-probability and purposeful sampling rather than probability or random sampling approaches.[39] Moreover, a phenomenological study, such as this research, calls for exclusively lengthy interviews with a carefully selected sample of participants by the phenomenological researcher.[40] Sogaard insists that 'every person in the total population must have a known chance of being selected for the sample' in order to achieve precision.[41] In other words, the sample must be 'chosen in a representative way',[42] which when carefully and accurately done, could increase 'the feasibility, cost-effectiveness, accuracy and manageability' of the study.[43]

To achieve accuracy and effectiveness in this research, purposeful sampling was employed in the selected cultural and religious communities, and quota sampling was adopted in the administration of questionnaires. Purposeful sampling selects a small sample for an in-depth study. The researcher made a prior assessment of the population of the study based on peculiar characteristics and decided whom the sample should include.[44] A random sampling method was also adopted in selecting research subjects. Random sampling is a procedure for sampling from a population in which the selection of a sample unit is based on chance, and every element of the population has a known, non-zero probability of being selected. Therefore, the women and men living within the States' metropolises of Lagos, Kebbi, Enugu and Ibadan, and identified within their various religious affiliations, had an equal opportunity of being selected. The goal of this sampling method is to obtain a sample of people that is representative of the larger population.

(d) People Interviewed

People generally interact through conversation. During such conversations, feelings, experiences, attitudes, and deep-seated worldviews of individuals on subject of interest to both interlocutors are revealed by one posing a question and another responding with answers. This type of conversation is the subject of research interviews, and it helps in the construction of knowledge through the interchange of views between the interviewer and the interviewee engaged in sharing ideas.[45] This type of human interaction produces knowledge which is highly profitable for phenomenological studies. In conducting this research, the topic was introduced, questions were posed, and the respondents were allowed to do the talking. All conversations were recorded.

Semi-structured interviews (face-to-face) were conducted with the purpose of obtaining descriptions of the life world of the interviewee in order to interpret the meaning of the described phenomena.[46] A semi-structured interview is defined as an interview with the purpose of obtaining descriptions of the life world of

[39] Nieuwenhuis J *Growing human rights and values in education* (2007).
[40] Leedy op cite note 22 at139.
[41] Sogaard V *Research in church and mission* (1996) 112.
[42] Scheyvens R and Storey D (ed) (2003) *Development Fieldwork: a practical guide* 42.
[43] De Vos et al *Research at grass roots for the social science and human service professions* 3 ed (2005) 204.
[44] Scheyvens op cit note 42 p 4.
[45] Kvale and Brinkmann op cit note 3, p 2.
[46] Kvale and Brinkmann op cit note 3, p 3.

the interviewee in order to interpret the meaning of the described phenomena.[47] It is mostly used by field researchers for the purpose of flexibility regarding the how, who, and where the interview is conducted.[48]

For this research, a total of 50 general interview guides were developed for select women and men,[49] and 20 interview guides for religious leaders.[50] In view of the health restrictions caused by the Covid-19 pandemic, the number of interviews was moderately representative for sampling purposes. All interviews were audio recorded with the prior consent of the interviewees, and respondents were given time to read the consent form. Thereafter respondents' agreement/disagreement to participate in the interview was obtained. For respondents that could not understand the English language, the consent form was read to them in their respective languages through the interpreters and research assistants.

i. Interview of religious leaders comprising Christian pastors, Islamic imams and Traditional African Religion leaders.

This group of respondents are the custodians and interpreters of the religious laws that prescribe the acceptable practices and roles of the sexes within their various religions. Their views were therefore critical in understanding what informs the perceptions of their various adherents.[51] Particularly, the interviews explored the possibilities of positions of leadership available for women within the various religions. Questions were asked on whether women can occupy the same position of authority as men, and what the rights and responsibilities of wives and husbands are in marriage and family life. Perceptions were obtained on what constitutes the different religious beliefs on child marriage, female genital mutilation, widowhood rites/rituals, female inheritance of property, as well as recourse to justice where there is abuse within the marriage.[52]

ii. Interview of select women and men

The interview questions sought to find respondents' perceptions on the rights available to women within their various religious groups, and what constraints or challenges women experience within the various religions. Views were sought on how religion handles cases of violence and abuse in marriage, and available options to women in abusive marriages.[53] The interviews helped to build a narrative of how religious laws and belief systems influence discriminations against women in Nigeria.

A balanced view/perspective of the three main religions and cultures was received, and the researcher evaluated the number of research subjects to be moderately representative for sampling purposes in view of the prevailing difficulties caused by the Covid-19 pandemic. Details of how interviews were conducted within the context of the pandemic are discussed below.

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[47] Ibid.
[48] Carol A Bailey *A guide to qualitative field research* 2 ed (2007) 100.
[49] Appendix B.
[50] Appendix C.
[51] Respondents 502 – 503, 318-320, 392 – 394.
[52] See Interview questions 5 to 11 in Appendix C.
[53] See Interview questions B1-B7 in Appendix B.

(e) Questionnaire Administered

The questionnaire as a research method is a scientific apparatus that is used in data collection due to its quality of being efficient in time and cost.[54] Unlike the interview method of data collection, questionnaires permit a voluminous size of data to be collected from respondents; it makes significant data quantification possible. Such a large amount of information collected allows a more efficient analysis of data in the identification of the underlying patterns in the object of study, in this case, the perceived factors of religion and culture that are impeding the domestication in Nigeria of the Protocol to the African Charter on the Rights of Women in Africa (the Protocol).

Like interviews, questionnaires may have different forms and cover a variety of issues. Oftentimes, questionnaires might consist of open-ended or closed-ended items or might combine both.[55] Whatever form a researcher opts for, the focal point of questionnaire is measurement. This calls for consideration of easy comprehension in designing questionnaires to permit gaining huge and adequate responses from large groups of respondents.[56] Besides being comprehensible, questionnaire design is expected to make standardisation easy so that data could be 'amenable to various kinds of mathematical manipulation'.[57]

As earlier reported, 554 questionnaires were personally designed and administered to 413 women and 141 men living within the metropolises of Lagos, Kebbi, Enugu, and Ibadan in Nigeria. The respondents were equally representative of the three main tribes in Nigeria (Hausa/Fulani, Igbo and Yoruba), and the three main religions in Nigeria (African Traditional Religion, Christianity and Islam).[58] The variation in number, as earlier mentioned, was due to the need to obtain more responses from the women who constitute the main research subjects.

(f) Ethical Considerations

According to the Webster Dictionary, ethics is 'conforming to the standards of conduct of a given profession or it deals with the issue of morality or matters of right and wrong.' In qualitative research, ethics starts from obtaining permission for access to research objects, as well as consent and protection of fundamental human rights of participants.[59] In the case-study method, the names of individuals involved in the case are usually changed to protect their privacy. This is to ensure that no one is hurt or embarrassed by the research contents in the case study analysis.[60]

In administering the questionnaires for this research, the names of respondents were not collected, nor were identifying details of their exact religious affiliations mentioned. Composite characters were created to enable proper description for purposes of analysis. The interviewees were given the option of not mentioning their names during the interviews to keep the information anonymous. In each stage of the study,

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[54] Pryor M, J Dunne and P Yates *Becoming a researcher: a research companion for the social sciences* (2005) 41.
[55] Tashakkori A and Teddlie C Mixed *methodology: Combining qualitative and quantitative approaches* (1998) 103.
[56] Atoyebi op cit note 3, p 141.
[57] Dunne et al op cit note 54, p 43.
[58] See Appendix A.
[59] Punch op cit note 2 at 56.
[60] Vyhmeister op cit note 9 at 146.

the informants could describe which questions they felt comfortable to answer. They were neither forced to participate nor given any financial reward for their participation. Interviewees were generally identified as Respondents for ease of analysis and reporting.

Furthermore, in describing the research context and analysing the data, composite characters and thematic presentations were used to describe the perceptions on the religious and cultural discriminations against women. This was done to safeguard confidentiality, while at the same time ensuring merit in the research product.[61] Other ethical considerations highlighted by Babbie[62] and observed in the process of this research include:

- Ensuring that respondents know what they are getting themselves involved in, especially where the findings may be published.
- Making use of volunteers only without exercising any power over them in any way.
- Giving fair treatment to all respondents along with consideration, respect, and honesty.
- Ensuring that no harm or risk is caused to cultural and property values of participants.
- Adhering to confidentiality in data dissemination.
- Acknowledging all assistance provided.
- Acknowledging all sources used by means of complete references and bibliography.
- Presenting the research findings without distortion.

(g) Covid-19 Precautionary Measures

The research was conducted during the Covid-19 pandemic, and this necessitated that precautionary and safety measures were undertaken. At all times, a safe distance of at least two metres was maintained with research subjects. Face cloth mask was worn at all times and research subjects were required to wear a face mask before participation. Hands of respondents were properly sanitised before the questionnaires were handed out to them, and the sanitising process repeated on completion of participation. Alcohol-based sanitisers were provided for respondents who did not possess one.

A non-contact infrared thermometer was purchased, and temperature checks conducted for all research subjects before the commencement of personal interviews. All surfaces such as tables and chairs were sanitised and decontaminated before and after use. Consent of respondents was sought before temperature checks were done, and in the event where a respondent's temperature exceeded the acceptable limit of 37.4^{o} Celsius, or where a participant presented a condition of fever or dry cough, or other symptoms of Covid-19, participation was immediately discontinued. Where a respondent refused to consent to a temperature check or wear a face mask, participation was immediately discontinued.

Daily temperature checks of the researcher and research assistants were conducted and recorded before embarking on a field trip. A daily record of temperatures taken was kept for ease of reference. A

[61] Sinding C, Gray R, and Nisker J *Ethical issues and issues of ethics* In Knowles, J. Gary and Cole, Ardra L. (ed.) *Handbook of the Arts in Qualitative Research: Perspectives, methodologies, examples and issues* (2008) 464, 465.
[62] E Babbie *The practice of social research* 10 ed (2004) 63-67.

designated diary was kept, where basic information about places visited, people interacted with, and their temperature data was recorded. A health and safety kit, comprising cloth face masks, sanitisers, liquid hand wash, water, and non-contact infrared thermometers, and an antiseptic sanitiser for cleaning and decontaminating surfaces, was carried along on each trip.

Interviews were conducted within well-ventilated room areas or offices provided by the research subjects, or within conducive restaurants or open spaces in churches or within community courtyards.

(h) Reliability, Viability and Objectivity

Reliability is both a moral and methodological concept. In qualitative research, it borders on the 'consistency and trustworthiness of research findings.'[63] This is a question of whether research findings would yield the same results if carried out by another researcher at other times.[64] Mugenda and Mugenda describe data reliability as the 'measure of the degree to which a research instrument yields consistent results or data after repeated trials.'[65]

However, data validation or verification 'is the degree to which results obtained from the analysis of the data actually represent the phenomenon under study'.[66] Qualitative research is therefore valid to the extent to which it results in the measurement it sets out to achieve.[67] Objectivity relates to morality. It is reliable and controlled knowledge that is free from personal bias and prejudice.[68] When research instruments are well-crafted and produce knowledge that is systematically cross-checked and verified, such instruments are judged objectively, being unbiased.[69] Objectivity could also mean 'letting the object speak', being faithful to the researched phenomenon by accurately presenting its real nature. It is to this extent that qualitative method truly reflects the real nature of the social objects investigated' and 'the qualitative research interview obtains a privileged position in producing objective knowledge of the social world'.[70]

Findings and conclusions reached from the interviews and questionnaires are reported as the perceptions of the select respondents and not what the researcher wished or thought.

(i) Data Analysis

Data analysis could be carried out by using different techniques that offer an effective way of presenting information when combined with appropriate graphs. Two of the main instruments of representing quantitative data (which are often employed in qualitative and mixed-method analyses too) are frequency distribution and cross-tabulation.[71] In frequency distribution, a single variable is distributed across categories to view diversities from the central tendency, with the number of times of occurrence of the variable in each

[63] Kvale et al Op cit note 3, g 245.
[64] Atoyebi, Op cit note 8, p 26.
[65] Mugenda O M and Mugenda A G 'Research Methods: Qualitative and Quantitative Approaches (2003) Nairobi: African Centre of Technology Studies 95.
[66] Ibid.
[67] Kvale et al Op cit note 3, p 245.
[68] Kvale et al Op cit note 3, p 242.
[69] Kvale et al Op cit note 3, p 242.
[70] Ibid.
[71] Scheyvens et al op cit note 42, p 44, 45.

category recorded and the data presented in graphs. On the other hand, cross-tabulation examines the 'relationship between two variables and is a continuation of the use of a frequency distribution.'[72]

Data analysis ensures that order, structure, and meaning are assigned to the collected mass of information from the field, specifically in qualitative research. This occurs through coding and analysis, which enables the researcher to make sense of the assembled data.[73] Such codes would consist of 'a word, abbreviation or phrase, which represents a link between raw data (field notes or interview transcripts) and the researcher's theoretical concept.'[74]

As earlier indicated, the instruments used in the thesis comprised both closed-and open-ended items. Data was therefore analysed both quantitatively and qualitatively. Each group of related questions was analysed together with the aim of answering the research question on the extent to which religion and culture have impeded the implementation of the Protocol in Nigeria and establishing what possible domestication model is feasible to domesticate the Protocol within the national values and belief systems of Nigeria. All 554 questionnaires handed out were returned, outing the percentage of returned questionnaires at 100 per cent.

On the interview instrument, all 50 respondents earlier mentioned were interviewed. The interviews were voice recorded. The interview response also reflected a 100 per cent participation rate. The interview helped to provide both qualitative and quantitative data.[75] It was aimed at obtaining additional information to substantiate or refute the responses reflected in the questionnaire. The relevant interview items were systematically organised and analysed and were coded according to categories; and the simple frequency counts and corresponding percentages were presented by use of tables. As earlier stated, more data was collected from women than men because women are critical to this research, and their perception of their status and rights, and recount of their lived experiences, was central to this research.

IV CONCLUSION

The chapter identifies and describes the methods and designs used in the collection, interpretation and reporting of the data in this thesis. The chapter outlines the importance of the qualitative and quantitative forms of data used for reporting the overall findings. The chapter notes the restrictions experienced while collecting data during the Covid 19 period, and the measures adopted in ensuring the safety of research participants and research assistants. The chapter describes how consents were obtained from research participants and the steps taken to ensure anonymity of research participants in reporting the data. Research boundaries are also identified in this chapter for the purpose of the thesis, and the number of research participants are deemed sufficiently representative for research purposes.

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[72] Scheyvens et al op cit note 42, p 44, 45.
[73] Mugenda et al, op cit note 65, p 203.
[74] Ibid p 205.
[75] Appendix B and C.

A comprehensive analysis of the religious and cultural beliefs and practices that impedes the effective implementation of the rights of women in Nigeria cannot be fully understood without providing a foundation on what the concept of human rights is. The next chapter discuss the international, regional and domestic legislations that provide for the rights of women, and the effects of these laws on the rights of women in Nigeria.

CHAPTER THREE

INTERNATIONAL HUMAN RIGHTS LAW, THE NIGERIAN LEGAL SYSTEM AND THE PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA

I INTRODUCTION

The chapter provides a definition of the concept of international human rights law, and the protection of the rights of women internationally. The chapter analyses the influence of the international protection of the rights of women within Africa and in Nigeria, which is the focus of this research. International, regional and Nigerian domestic laws on the rights of women are discussed so as to identify the levels of protection afforded women within the various jurisdictions and establish the effect of the differing cultures and religions on the rights of women. The chapter proceeds to analyse the theories of universalism and cultural relativism, which though an age long theoretical debate, remains arguably a major challenge to the effective implementation of the rights of women in Africa, and also in Nigeria.

The chapter also reviews the provisions of the Protocol to the African Charter on the Rights of Women in Africa (hereinafter referred to as 'the Protocol') with particular emphasis on how the Protocol addresses the extreme positions of the universalism and cultural relativism theories, and the cultural and religious practices prevalent in Africa/Nigeria that infringe on the rights of women. The chapter also critically analyses the legal framework for women's rights in Nigeria, with particular emphasis on the challenges with the prevalent domestic laws with particular emphasis on the 1999 Constitution, the Penal Code, the Violence Against Persons (Prohibition) Act, the Child Rights Act, the Marriage Act, and customary law.

The goal of the chapter is to proffer answers to research sub-question one: What protections are afforded women within the international, regional and Nigerian legal framework? It also answers research question three: What protections are afforded women in the Protocol and how does the Protocol address the practices of early/forced marriage, female genital mutilation, widowhood practices and rites, and female inheritance under Nigerian customary Law?

The chapter concludes with a critical review of how the Protocol has been able to grapple with the extremist positions of the universalist and cultural relativist theories. The chapter submits that the Protocol may arguably not be free from western undertones in the drafting of its provisions. However, the Protocol has, to a large extent and beyond any other prevalent international, regional and domestic law, been able to provide a level of balance between the extremist positions of the universalist and cultural relativists.

II INTERNATIONAL HUMAN RIGHTS LAW: BEDROCK OF WOMEN'S RIGHTS

Human rights are at the core of international law and international relations. They are inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being,[1] regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights are norms and freedoms that guarantee basic needs and protect all people from abuses.[2] They represent the basic values common to all cultures, which must be respected universally.

The foundations of contemporary discourse on women's rights and gender equality are identifiable in the 1945 Charter of the United Nations.[3] The Charter of the United Nations sets out as one of its goals, 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women'.[4] Article 1 of the Charter stipulates that one of the purposes of the United Nations is to 'promote respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion'. The Declaration and Programme of Action of the World Conference on Human Rights at Vienna also emphasised the human rights of women and of the girl child as 'an inalienable, integral and indivisible part of the universal human rights'. It emphasises that the elimination of violence against women is a human rights obligation resting upon states. As was earlier stated in Chapter One, this was the first attempt to address the marginalisation of women's human rights from mainstreaming human rights, leading to the slogan that emerged from Vienna: 'women's rights are human rights'.[5]

The Universal Declaration of Human Rights (UDHR) was adopted in 1948; it represents the foundation of international human rights law, and affirms the universal recognition that basic rights and fundamental freedoms are inherent to all human beings.[6] The UDHR states that human rights are inalienable and equally applicable to everyone, and that everyone is born free and equal in dignity and rights.[7] It also proclaims the equal entitlements of women and men to the rights contained in it, ' without distinction of any kind, such as … sex'. The Declaration was eventually adopted using the terms "all human beings" and "everyone" in order to leave no doubt that the UDHR was intended for everyone, men and women alike.[8]

Gender equality is a principal objective and foundational concept in the struggle to achieve women's human rights. The principle of equality in international human rights instruments is expressed in very general and open-textured terms.[9] Article 2 of the UDHR provides that every human being is entitled to all

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[1] Icelandic Human Rights Centre 'Human Rights Concepts, Ideas and Fora available at *https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights* accessed 18-07-2019.
[2] United Nations 'Peace, dignity and equality on a healthy planet available at *un.org/en/sections/issues-depth/human-rights/* p 2, June 19, 202 accessed18-07-2019.
[3] Women's Rights are Human Right's *United Nations, Human Rights, Office of the High Commissioner* (2014) p 3.
[4] Ibid.
[5] Mary Wandia *Civil society strategies for mainstreaming women's rights in the African Union in Gender instruments in Africa: Critical perspectives, future strategies*(ed) by Christi van der Westhuizen (2005), Institute for Global Dialogue 48.
[6] United Nations op cit note 2.
[7] United Nations op cit note 2.
[8] United Nations op cit note 2.
[9] Sandra Fredman and Beth Goldblatt '*Gender Equality and Human Rights'* (2015) *UN Discussion Paper.*

the rights and freedoms within the 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.[10]

After the adoption of the UDHR the Commission on Human Rights began drafting and adopted two human rights treaties, the International Covenant on Civil and Political Rights[11] and the International Covenant on Economic, Social and Cultural Rights.[12] Both covenants prohibit discrimination based on sex and guarantee the equal right of men and women to enjoy all the rights contained in them. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[13] is another key international agreement on women's human rights, adopted by the United Nations General Assembly in 1979. CEDAW focuses specifically on women, stating that discrimination against women shall mean 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.[14] CEDAW is often described as an international bill of rights for women. Its preamble and provisions are aimed at the elimination of all forms of gender discrimination and the promotion of gender equality.[15] It sets an agenda for national action to end discrimination and requires states parties to take 'all appropriate measures, including legislation, to ensure the full development and advancement of women' and guarantee their fundamental freedoms 'on a basis of equality with men'.

Since the 1980s, women around the world have come together in networks and coalitions to raise awareness about the problems of discrimination, inequality and violence. They use a human rights framework to fight for women's rights in the family, social, economic and political arenas.[16] An important outcome of these coalitions was the 1995 Beijing Fourth World Conference on Women, where the Beijing Declaration and Platform for Action was made. The Beijing Declaration and Platform for Action embodied the international community's commitment towards advancing and empowering women and removing obstacles in the public and private spheres that historically limited women's full enjoyment of their rights.[17] The CEDAW and the Beijing Declaration and Platform for Action can arguably be said to have signalled the successful mainstreaming of women's rights as human rights in contemporary times.

The African region also demonstrated commitment to promoting international human rights and gender equality and empowerment of women. Almost all countries in Africa, including Nigeria, have

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[10] UN General Assembly 1948. Fredman op cit note 9.
[11] United Nations Office of the High Commissioner for Human Rights (1966) International covenant on civil and political rights. *http://www2.ohchr.org/english/law/ccpr.htm* accessed 18-03-2021.
[12] Adopted 16 December 1966, entered into force 3 January 1976.
[13] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249.
[14] Article 1 UN General Assembly 1979.
[15] Robin N Haarr 'The Girl Child' Global Women's Issues: Women in the World Today extended version by Bureau of International Information Programs United States Department of State *available at https://opentextbc.ca/womenintheworld/chapter/chapter-12-rights-of-the-girl-child/* accessed 18-03-2021.
[16] Ibid.
[17] Haarr op cit note 15.

ratified the CEDAW,[18] and there are several regional human rights laws that have been passed.[19] Through regional offices, the United Nations (UN) implements programmes tailored to individual countries in close collaboration with State governments, the UN system and civil society.[20] The notion of gender equality and non-discrimination are also manifested in various human rights instruments within various regional arrangements around the world.[21] The three human rights regional regimes include the European, Inter-American, and African systems. These regional human rights systems, play an important role in the promotion and protection of the rights. The regional human rights systems allow international human rights norms and standards to be localised and reflect the human rights concerns of the region.[22] The African human rights system is the youngest of the three regional human rights systems and was created under the auspices of the African Union.[23]

III AFRICAN HUMAN RIGHTS SYSTEM & BACKGROUND TO THE PROTOCOL

The African human rights system has, since the 1980s, developed its own jurisprudence on the protection of human rights for Africans. The idea of drafting a document establishing a human rights protection mechanism in Africa was first conceived in the early 1960s. At the first Congress of African Jurists, held in Lagos, Nigeria, in 1961, the delegates adopted a declaration (referred to as the 'Law of Lagos') calling on African governments to adopt an African treaty on human rights with a court and a commission.[24] From November 28 to December 8, 1979, African experts met in Dakar, Senegal, to prepare the first draft of the proposed African Charter. It was stated that there was a need for an African charter on human rights which would be based on an African legal philosophy and responsive to African needs.[25] According to the experts that converged in Dakar, there were some problems that were unique to Africa, and therefore there was a need for a departure from regional models such as the European Convention for the Protection of Human

[18] Such as the *Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the Beijing Declaration and Platform for Action 1995.*

[19] Such as the *African Charter on Human and Peoples' Rights (Banjul Charter) 1981, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa (Maputo Protocol) 2003.*

[20] UN Women 'Africa' *https://www.unwomen.org/en/where-we-are/africa* accessed 18-03-2021.

[21] See Article 1, *American Convention on Human Rights, 1969; Article 14, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, as amended; and* Article 2, *African Charter on Human and People's Rights (the African Charter), 1981)* The African regional human rights system has not been left out. The African Charter on Human and People's Rights (African Charter), 1981, (The African Charter was adopted by the Assembly of Heads of State and Government of the OAU on 27 June 1981) which is the foremost human rights treaty in the African region, enunciates its commitment to the protection of the rights of women in Article 18(3). (See Frans Villjoen *Overview of the African Regional Human Rights System* in Human Rights Law in Africa 1998-1999 (Christof Heyns, ed., 1998)

[22] *https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/* accessed 18-04-2022.

[23] *https://ijrcenter.org/regional/african/* accessed 18-04-2022.

[24] *A Guide to the African Human Rights System* Celebrating 30 years since the entry into force of the African Charter on Human and Peoples' Rights (2016).

[25] Richard Gittleman 'The African Charter on Human and Peoples' Rights: A Legal Analysis' (1982) 22(4) *Virginia Journal of International Law* 668.

Rights and Fundamental Freedoms (European Convention)[26] and the American Convention on Human Rights (American Convention).[27]

The African Charter, also referred to as the 'Banjul Charter', was finally adopted by the Organisation of African Unity (OAU) Assembly on 28 June 1981, in Nairobi, Kenya.[28] After ratifications by an absolute majority of member states of the OAU, the Charter came into force on 21 October 1986, and by 1999 it had been ratified by all the member states of the OAU.[29] The African Commission has established itself firmly as the primary human rights body on the African continent. Through its progressive interpretation of the Charter, the Commission has given guidance to states about their obligations under the Charter, and its provisions have inspired domestic legislation.[30] The Charter is an integral part of national law by virtue of the constitutional system in place in many African countries, while some countries like Nigeria have explicitly made the Charter part of domestic law through domesticating the legislation.

Though the African Charter was the primary treaty providing a framework for human rights in Africa, its provisions on women's rights were largely seen as ineffective and inadequate.[31] The African Charter was deemed inadequate primarily due to its great emphasis on cultural rights, without addressing the discriminations women suffer from the dictates of that culture.[32] The African Charter recognises and affirms women's rights only in three provisions. First, Article 18(3) requires states parties to 'ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman'.[33] Second, Article 2 provides that the rights and freedoms enshrined in the African Charter shall be enjoyed by all, irrespective of race, ethnic group, colour, sex, language, national and social origin, economic status, birth or other status.[34] Third, Article 3 states that every individual shall be equal before the law and shall be entitled to equal protection of the law.[35]

Although the above provisions could be said to afford some protection for women, other provisions of the Charter, such as Article 17(2) and (3) arguably cause hardship for women. While Article 17(2) provides the freedom to participate in the cultural life of ones' community, Article 17(3) provides that the state has a duty to promote and protect the morals and traditional values of every community. The duty of states as provided for by Article 17(3) arguably cause hardship for women because the traditional values of most African cultures dictate the subsistence of several cultural practices that discriminate against women,

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[26] *European Convention for the Protection of Human Rights and Fundamental Freedoms* Nov, 4, 1950, 213 U.N.T.S. 221, 1953 Gr. Brit. T.S. No. 71 (Cmd. 8969) (entered into force Sept. 3, 1953).
[27] *American Convention on Human Rights* Nov. 22, O.A.S.T.S. No. 36 at 1, O.A.S. Doc. OEA/ser. L/V/II.23 doc. 21 rev. 6 (entered into force July 8, 1978), reprinted in 9 I.L.M, 99 (1970) hereinafter cited as American Convention.
[28] *https://www.corteidh.or.cr/tablas/31712.pdf* Accessed 12-05-2020.
[29] Ibid.
[30] *A Guide to the African Human Rights System* Celebrating 30 years since the entry into force of the African Charter on Human and Peoples' Rights (2016) at 8.
[31] Wandia op cit note 5.
[32] Ibid.
[33] *African (Banjul) Charter on Human and Peoples' Rights* June 27, 1981, O.A.U. Doc, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, art. 18(3) (1982) (entered into force Oct. 21, 1986).
[34] Art. 2 African Charter.
[35] Art 3 African Charter.

and which are harmful to their life, health and well-being. These hardships will be addressed in details in subsequent chapters, Therefore, providing for freedom to participate in cultural life, without imposing limits as to when culture infringes on the rights, welfare, health and life of women, is one of the demerits of the African Charter[36] Most African societies are patriarchal and the discriminations suffered by women in Africa are mostly on account of culture and traditional values. Allowing the state to enforce traditional values without limits will ultimately lead to more discriminations against women, because the state and its institutions are arguably the defenders of the age-long cultural norms and patriarchal structures. Consequently, where there is no clear distinction between the promotion of the rights of women and the protection of traditional values, the enforcers of the law and the various institutions continue to promote the same patriarchal structures that discriminate against women.[37] Furthermore, placing the protection of women from traditional practices under the purview of only the state as provided for in Article 17(3) of the Charter is insufficient, as several cases of discriminatory practices take place at the grassroots level, with the state being oblivious to them.

Further, Article 27(1) provides that 'every individual shall have duties towards his family and society'.[38] This provision reinforces the burden placed on women; for example, where women are forced to comply with traditional rites and customs that are burdensome, such as widowhood rites and wife inheritance, discussed in greater detail in chapters four and five. In addition, explicit provisions guaranteeing the right of consent to marriage and equality of spouses during and after marriage are absent in the African Charter. As will be argued in Chapter Five, the consent of most young girls is never sought within most Nigerian cultures, and girls are often forced into these marriages. Similarly, and as would be argued in Chapter Four, where parties do not enjoy equal rights in marriage, cases of domestic violence and intimate partner violence are bound to occur.

The African Charter moreover emphasises traditional African values and traditions without addressing concerns about the many customary practices which are harmful to women, such as female genital mutilation, widows' rites and rituals, forced marriage, and wife inheritance.[39] As earlier noted, the only specific reference to women's rights and freedom from discrimination in the Charter is contained in a clause that poses an obligation on states to assist the family in upholding the recognised morals and traditional values of each community.[40] This provision further reinforces the continued challenge posed by culture to guaranteeing the rights of women in Africa.[41]

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[36] Article 17(2) and (3) of the African Charter states that 'every individual may freely take part in the cultural life of his community' and that 'the promotion and protection of morals and traditional values shall be the duty of the state'.
[37] Centre for Reproductive Rights, op cit note 1.
[38] Article 27(1) African Charter.
[39] Wandia op cite 5 at 48.
[40] Article 18(2) African Charter.
[41] Oloka-Onyango J 'Human Rights and Sustainable Development in Contemporary Africa: A New Dawn or Retreating Horizons?' 6 *BUFF. HUM. RTS. L. REV*. 39, 66 (2000) 62

In response to the various challenges to the protection afforded women by the African Charter, non-governmental organisations (NGOs) such as the Women in Law and Development in Africa (WiLDAF) and the African Centre for Democracy and Human Rights Studies (ACDHRS) lobbied for a legally binding gender instrument to provide an alternative and stronger platform for women's rights in Africa.[42] Some civil society groups, scholars and activists, equally felt that the African Charter was grossly inadequate in dealing with the myriad problems confronting the African woman in her everyday life.[43] The first draft of the Protocol was the outcome of the collaboration of those civil society groups with the African Commission.[44] These processes continued until the Twenty-Sixth Session of the African Commission in April 1997 in Kigali, Rwanda, where the African Commission adopted the Draft African Women's Protocol and forwarded it to the OAU Secretariat for onward transmission to member states for scrutiny and comments.[45]

After the much-protracted debates and negotiations by governmental experts were concluded, the Draft Protocol moved to its final phase of being presented for adoption by the Assembly of Heads of States and Governments of the African Union (AU).[46] With the formal adoption in July 2003, at Maputo, Mozambique, the African Women's Protocol (also known as the Maputo Protocol) was declared open for ratification by member states of the AU.[47] Several debates, nonetheless, continued to take place within the African region on the expression of the notion of rights. While the Western notion of rights is expressed as individualistic, the African notion of rights is argued to be premised on the concept of group rights and duties.[48]

(a) Concept of Human Rights in Africa

According to Mojekwu, the African concept of human rights was fundamentally based on ascribed status.[49] Unlike the Western concept of human rights which emphasises individual rights, the African concept emphasises rights based on the community.[50] By extension, every bearer of rights has the attendant duty to protect the rights of others. The African concept of human rights therefore advocates for rights which are intertwined with duties.[51]

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[42] Muthoni Wanyeki L'OAU Original Protocol on Women's Rights' *AMANITARE VOICES*, London, Nov. 2002 (Magazine), at 5-6, See also Lisa Kois 'Article 18 of the African Charter on Human and People's Rights: A Progressive Approach to Women's Right' (1996) 3 *EAST AFR. J. PEACE and HUM. RTS.* 95.

[43] Ibid.

[44] See Final Communiqué of the 25th Ordinary Session of the African Commission on Human and People's Rights, Bujumbura, Burundi, 26 April-5 May 1999, OAU Doc. OS(XXV)/III/Rev. 1, para. 12, available at *http://www1.umn.edu/humanrts/africa/achpr25f.html* accessed 30-06-2020.

[45] Women in Law and Development in Africa (WiLDAF), the African Charter on Human and People's Rights and the Additional Protocol in Women's Rights, *http://site.mweb.co.zw/wildaf/news5.html* accessed 30-06-2020.

[46] Amnesty International (AI), Press Release, African Union: An Opportunity to Strengthen the Promotion and Protection of Women's Rights (AI, London, AI Index: AFR 01/001/2003), available at *http://www.web.amnesty.org/library/print/ENGAFR010012003* accessed 30-06-2020.

[47] Under art. 29(1) 'the African Women's Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.'

[48] Mbondenyi Morris Kiwinda *International Human Rights and their Enforcement in Africa* (2011) 66.

[49] Mojekwu C *International human rights: The African perspective* in J Nelso and V Green (eds) International human rights: Contemporary issues (1980) 91.

[50] Kiwinda op cit note 48.

[51] Ibid at 72.

Deng distinguishes between the African and universal conception of rights. He explains that whereas the African conception of rights derived authority from notions of customs, tradition and social pressure, the universal conception of rights derived its authority from international human rights law and western philosophy. [52] Expressing similar views as Deng, Makau posits that the difference between the African and Western conception of human rights is found not in the substantive or moral content of human rights, but in its source of enforcement.[53] Makau describes the pre-colonial societies as those in which culture played a critical role in protecting the human rights of people, and violations of these rights always attracted sanctions from the community.[54] He observed that many challenge the existence of an African concept of human rights because of the existing variance in the expression and enforcement of the rights between the cultures of Africa and the West.[55]

Mbiti equally provides a distinction between the African and Western conception of human rights. While in African philosophy the individual's fate is tied to and determined by his family and community, in Western philosophy one becomes a person simply by being born and by being a human being.[56] In Africa, 'personhood is an earned attribute and a social process; which includes loyalty to the group, collective sense of identity, fairness and justice'.[57] The individual therefore has a duty to his community, kinship members, relatives and household (and the duty increases with the closeness in relationship). This is often the foundation of a rights claim and the realisation of rights.[58]

Critics have, however, dismissed the African conception of rights on various grounds. Shadiya, for example, argues that the duties included in African human rights instruments are claw back clauses that are intended to justify human rights violations.[59] Expressing a similar view, Howard argues that rights are unique entitlements whose realisation cannot be tied to the fulfilment of any duties by the rights holder.[60] Howard even dismisses the whole idea completely, insisting that an African conception of human rights simply does not exist.[61] Moreover, she states that cultural values such as reciprocity and communitarianism are neither unique to Africa nor were they founded on the basis of rights.[62] In Donnelly's view, cultural traditions that could have anchored any semblance of human rights within Africa have been eroded by the

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[52] Deng F *Human Rights in the African Context* in WireduKwasi (ed) A Companion to African Philosophy' (2004) 500.
[53] Wa Makau M 'Conflicting Conceptions of Human Rights: Rethinking the African Post-Colonial State' *(American Society of International Law, Proceedings of the 89th Annual Meeting*, April 1995) available at SSRN:<*https://ssrn.com/abstract=1533451*> 361.
[54] Ibid.
[55] Ibid.
[56] Mbiti J *Introduction to African religion and Philosophy* (Heineman, 1990) 105.
[57] Ayotunde Jand Bewaji I *Ethics and Morality in Yoruba Culture* in WireduKwasi (ed) *A Companion to African Philosophy* (2004) 396.
[58] Masolo D *Western and African Communitarianism: A Comparison* in WireduKwasi(ed) *A Companion to African Philosophy* (2004) 489, 494.
[59] Sadhiya S 'The impact of clawback clauses on human and peoples' rights in Africa' (18) (4) *African Security Review Journal* (2009) p 95. Clawback clauses are restrictions that qualify rights and permit a state to restrict those rights to the extent permitted by domestic law.
[60] Rhoda E Howard *Evaluating Human rights in Commonwealth Africa* (1986) 11.
[61]Ibid.
[62] Ibid.

forces of modernisation and globalisation.[63] Donnelly concludes that it is only the Western conception of human rights doctrine that offers emancipatory language to protect the African people.[64]

One of the crucial theoretical problems confronting human rights in Africa is the perception of its historical derivation related to the universal or relative character of the rights declared.[65] This problem continues to act as a catalyst for the continued debate on the rights of women, especially in Africa. Universalism on the one hand refers to the notion that rights are universal and should apply to every human being regardless of age, race and colour.[66] Cultural relativists on the other hand argue that there are cultural differences in thought and value, and allowing 'international norms to override the dictates of culture and religion is a violation of state sovereignty.'[67] How this debate has possibly affected the effective realisation and implementation of the rights and better status for women, especially in Nigeria, calls for a detailed review.

IV. UNIVERSALISM THEORY AND THE RIGHTS OF WOMEN IN AFRICA

The term 'universal' and 'universality' can be defined as 'of, belong to, done by all; affecting all', and a universal rule as one with no exception.[68] The concept of universalism holds that every human being possesses certain inalienable rights simply because he or she is human, and these rights are not granted by any State.[69] Universalism can also be described as an underlying human unity which entitles all individuals, regardless of their cultural or regional antecedents, to certain basic minimal rights, known as human rights.[70]

Donnelly identifies the Universal Declaration of Human Rights as the basis for establishing the 'contemporary consensus on internally recognised human rights'.[71] Donnelly[72] summarises the universalist approach as all humans have rights by virtue of their humanity, and a person's right cannot be conditioned by gender, national or ethnic origin. He posits further that human rights exist universally as the highest moral right, and therefore no right can be subordinated to another person, or to an institution. [73]

Ejidike, who adopts the same position as Donnelly, states that the concept of human rights rests on the principle that human rights belong to all human beings, irrespective of among others, their sex, race, religion, cultural or ethnic origin.[74] He argues that the concept or scope of human rights should be

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[63] Donnelly J and Rhoda H Human Dignity, Human Rights and Political Regimes (80) (3) *American Political Science Review* (1986) 801, 808.
[64] Ibid.
[65] Okey Martin Ejidike 'Human Rights in the cultural traditions and social practice of the Igbo of South-Eastern Nigeria' (1999) *Journal of African Law* 71.
[66] Jack Donnelly 'Cultural relativism and universal human rights' (1984) 6 *Human Rights Quarterly* at 400-419.
[67] Karen Musalo *When Rights and Cultures Collide* (2015), *https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/when-rights-and-cultures-collide/* accessed 12-08-2020.
[68] Oxford Advanced Learner's Dictionary.
[69] What are human rights? United Nations Human Rights – Office of the High Commissioner *https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx* accessed 18-03-2021.
[70] Ibid.
[71] Donnelly J *Universal Human Rights in Theory and Practise* (2003 22.
[72] Donnelly op cite note 66.
[73] Donnelly op cite note 66.
[74] Ejidike op cit note 65 at 16.

interpreted and implemented in the same manner everywhere on the planet.[75] Several arguments and theories have been advanced to support the universalism of human rights

(a) Arguments on Universalism

Proponents of universalism argue that human rights guaranteed in international treaties must prevail , regardless of how they conflict with established cultural or religious practices in any country.[76] The notion of universalism is based upon the equality, indivisibility and universality of human rights.[77] The universalists firmly believe that human rights and fundamental freedoms are inherent in the nature and dignity of each human being and there should be a set of basic ethical standards and principles acceptable to all cultures, religions and political systems.[78] Humanity is therefore the only source of rights, and cultures are consequently irrelevant to the validity of moral rights and rules.[79]

Hellum, for example, argues that human beings are similar regardless of their different social and cultural contexts. Therefore, gender equality, self-determination and freedom must be protected in the same way everywhere, and inalienable rights exist above those in power, regardless of time and space.[80] Cranston provides a broader definition of universalism:

> Human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is a human.[81]

> Cultural relativists on the other hand assert that human rights should be viewed from a relativist perspective.[82]

Cultural relativists argue that culture is supreme and that imposing a Western culture of rights will only result in an infringement of the African right to culture, and consequently canvass for a ‘pure’ or ‘unique’ African concept of human rights.[83]

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[75] Ejidike op cit note 65 at 16.
[76] Musalo op cit note 67 at 2.
[77] Istvan Lakatos Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights (2018) *Pecs Journal of International and European Law* 10.
[78] NeriSybesma-Knowl *The United Nations System for the protection of human rights. What is happening to the principle of universality?* In: Andre Alen, Veronique joosten, rietLeysen, Willem Verrijdt (eds), LiberaeCogitationes. Liber amicorum Marc Bossuyt. Cambridge Intersentia (2013) 703.
[79] Sylvain Bayalama ’Universal Huma Rights and Cultural Relativism’ *Scandinavian Journal of Development Alternative* (1993) 12(2)(3) 132.
[80]Anne Hellum ’Women’s Human Rights and African Customary Laws: Between Universalism and relativism – Individualism and Communitarianism’ December 1, 1998, *European Journal of Development Research*.
[81] M Cranston *What are Human Rights?* 2 ed (1973) 36.
[82] Nussbaum C. Martha & Glover Jonathan (eds) *Women, Culture and Development: A Study of Human Capabilities* (1995) 407-426.
[83] Lindholt L *Questioning the Universality of Human Rights: The African Charter on Human and Peoples’ Rights in Botswana, Malawi and Mozambique* (1997) 7. Mutua M ’The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the language of duties’ (1995) 35 *Virginia Journal of International Law* 351-357.

V. CULTURAL RELATIVISM THEORY AND THE RIGHTS OF WOMEN IN AFRICA

Cultural relativism rests on the notion of moral autonomy and communal self-determination.[84] It states that a human person is not separate from, or above society, and that since societies vary from culture to culture, evaluations are relative to the cultural background out of which they arise. Cultural relativists argue that different cultures espouse different philosophies and values concerning the human condition and so there cannot be a commonly or uniformly applicable theory of human rights.**[85]** Chris Brown states his position forcefully:

> It is implausible to think that rights can be extracted from liberal policies, decontextualized and applied as a package worldwide. This is not simply because of international value-pluralism; it is decontextualization that is critical whether international or domestic.[86]

Simply stated:

> Cultural relativism insists that human rights cannot be universal because as a matter of social fact, cultures maintain highly divergent mores and conceptualize human rights differently, or not at all, and these mores conflict in intractable ways that belie pretensions to "universality."[87]

Several arguments have been made in favour of cultural relativism, top of the list being that cultures differ in terms of their moral codes and standards. Consequently, whether an action would be considered wrong or right is entirely within the bounds of a particular culture.

(a) Justifications of Cultural Relativism

The most valuable feature of cultural relativism was, and still is, its ability to challenge the presumed universality of standards.[88] Advocates of cultural relativism have strongly argued that cultural differences exist in human thought and value, and in the ways in which evaluations or judgments are made. Therefore, rights only exist when a society perceives them as such. Churchill is a proponent of cultural relativism and argues that human rights cannot be truly universal because of the relativity of all norms.[89] He opines that there are no compelling reasons to believe that all values must derive their legitimacy from one culture. Churchill argues further that 'human right' is a Western product, and therefore cannot be transferred from one culture to another because the introduction of foreign human rights norms will destroy values native to a culture.[90]

In Renteln's view, cultural relativism sought not only to demonstrate that the standards of morality and normalcy are not only culture-bound, but also calls into question the ethnocentric assumption of Western superiority.[91] Renteln asserts further that different value systems must be seen as unique and

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[84] Malcolm Evans & Rachel Murray *The African Charter on Human and Peoples' Rights: The System in Practice* (2002) 221.
[85] Ibid.
[86] Chris Brown 'Universal Human Rights; A Critique' (1997) 1 *International Journal of Human Rights.*
[87] Robert D Sloane 'Out Relativizing Relativism: A Liberal Defense of the Universality of International Human Rights' (2001) 34 *Vand J Transnatl L* 531
[88] Alison Dundes Renteln Relativism and the Search for Human Rights (1998) 90 *American Anthropologist* 58.
[89] *Robert* Paul Churchill *Human Rights and Global Diversity* Routledge (2016) 45.
[90] Ibid at p 68-71.
[91] Renteln op cit note 88.

incomparable, while conflicting views from different traditions cannot be settled in a universal way.[92] Every culture and society is therefore responsible for characterising what is right, which is evidenced in their uniqueness.[93]

The positions of cultural relativism vary widely, from radical relativism to strong relativism and weak relativism. While radical cultural relativism asserts that culture is the only source of validity of a moral right or rule,[94] strong cultural relativism is willing to accept the universal application of a few basic rights but allows variations for most other rights. Weak cultural relativism on the other hand recognises a comprehensive set of prima facie universal human rights and allows limited local variations and exceptions.[95] Some other variations of relativism argue that since civilizations and cultures vary both in time and geographical location, so too will their life-worlds vary. On this basis, international human rights standards are simply European or Western norms which are being imposed upon all other contemporary cultures.[96]

Another variation of cultural relativism maintain that even if it were to be agreed that there are some human norms which have universal acceptance, it would be impossible to attach similar value and weight to them irrespective of location and circumstance'.[97] This thinking maintains that an activity perceived as a human rights violation in one nation may be acceptable under the prevalent cultural beliefs of another.[98] Another school of thought argues that although there are some human rights norms that do have universal acceptance, others are negotiable in the light of the prevailing cultural, historical or other values applicable at any given time or place.[99] There is a need to value differences, and realise that each culture has its own way of interpreting and understanding universal norms.[100] In its complete sense, however, cultural relativism is often used to support the position that a particular articulation of human rights, even those of the most basic rights, may be incompatible with cultural observances of other societies, and hence unacceptable.[101]

The continued tension between radical universalism and cultural relativism theorists arguably divided the international community and has served as a barrier to the effective promotion of human rights, most especially the rights of women in Africa, and specifically in Nigeria.[102] The unresolved conflict between the universalists and cultural relativists glosses over an important reality which cannot be easily overcome: the fact that women all over the world believe in and perpetuate the roles that culture, tradition

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[92] Ibid.
[93] Ibid.
[94] Donnelly op cit note 66 at p 400.
[95] Donnelly op cit note 66 at p 400.
[96] John P O'Regan and Malcolm N MacDonald 'Cultural Relativism and the Discourse of Intercultural Communication: Aporias of Praxis in the Intercultural Public Sphere (2007) 7(4) *Language and Intercultural Communication* 267-278.
[97] Ibid.
[98] O'Regan et al op cit note 96.
[99] O'Regan et al op cit note 96.
[100] Victor Oluwasina Ayeni (Ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016).
[101] Belden Fields A and Narr Wolf Dieter 'Human Rights as a Holistic Concept' 14 Feb. 1992) *Human Rights Quarterly* 1-20.
[102] Elene G Mountis 'Cultural Relativity and Universalism: Re-evaluating Gender Rights in Multicultural Context' (1996) 15(1) *Dickinson Journal of International Law*113.

and religion demand that they play.[103] Moreover, given the choice, many women would decide not to abandon the traditions that they were socialised to accept.[104]

Cultural relativists therefore call for a cross-cultural understanding and respect for others' ways of life,[105] because there are no absolute values or principles upon which any culture or society should be judged, apart from those of the given culture. Mutua proposes that 'the entire human rights corpus should be debated and restructured with the participation of all societies and cultures'.[106] The discourse should not be about the breach of certain rights but more about the different implementation of human rights in view of cultural differences. This is important because the application of the same human rights standards within different cultural contexts is bound to give different results.[107]

The extreme positions of both the universalists and cultural relativists would arguably only continue to compound the challenges faced by women, particularly in Nigeria. A minimum standard for the protection and promotion of women's rights should therefore be sought wherein the Nigerian woman is not deprived from enjoying her international human rights, while her cultural rights and identi preserved and promoted.

VI ACHIEVING A BALANCE BETWEEN THE UNIVERSALISM AND CULTURAL RELATIVISM DEBATE

The tension between the universality of international human rights law and cultural defence is premised upon a dogmatic application of international human rights universally, and a rigid view of culture's role in the interpretation of human rights.[108] While proponents of the cultural defence regard culture as the supreme guide to moral values, universalists insist on the universal application of international human rights.

Over the years, universalism has been challenged primarily by non-Western states, claiming culture-based defences to human rights violations.[109] Another compelling challenge to the universalism principle is expressed by Makau Mutua who argues that "while the current body of human rights is undeniably well-meaning, international human rights fall within the historical continuum of the European colonial

[103] Ibid; Frances Raday Culture, religion and gender (1 October 2003) 1(4) International Journal of Constitutional Law 665 available at http://arabic.musawah.org/sites/default/files/Culture%2C%20Religion%20and%20Gender.pdf accessed 15-05-2021.
[104] Mountis op cit note 102.
[105] Bayalama op cit note 79 at 137-138.
[106] Makau Mutua in Istvan Lakatos 'Thoughts on Universalism versus Cultural Relativism with Special Attention to Women's Rights' (2018) *Pecs Journal of International and European Law* 16.
[107] Ibid.
[108] Guyora Binder Cultural Relativism and Cultural Imperialism in Human Rights Law (1999) 5 *Buff. H. Rts. L. Rev*. 211, 211-17.
[109] Holning Lau 'Sexual orientation Testing the universality of international human rights law' (2004) 71 *University of Chicago Law* Review XXX.

project."[110] Universal human rights are consequently seen as the equivalent of the colonial administrator, seeking the transformation of non-Western cultures by Western cultures.[111]

Donnelly, consequently, proposes weak cultural relativism where culture is seen as an important source without leaving out completely the aspect of universalism.[112] Donnelly proposes a weak presumption of universality, while the relativity of human nature, communities, and rights serve as a check on potential excesses of universalism.[113] Cassese, holding a dissenting opinion, argues that human rights are both conceived and observed differently, and universality is at present a myth.[114] A less radical approach is expressed by Quashigah who avers that 'since societal development has never been universally in *pari materia*, human rights contents which are specific ideas rooted in certain social facts of the particular societies cannot be expressed to be universal'. He, however, also acknowledges that certain basic needs are 'indisputably universally ascribable to persons of every historical and cultural background'.[115]

Arguably, rights cannot be universally applicable in non-Western cultures because of the peculiar cultural differences and ideologies prevalent, especially within African cultures. Cultural interpretations and applications of rights are necessary for rights to find meaning within the African context. Furthermore, in Africa it is the community that protects and nurtures the individual, and as such group rights should be considered in any human rights discourse.[116] Cultural differences are undeniably compelling grounds for consideration in any debate on international human rights. Activists must therefore be aware that while they perceive universalism as an important ideal, this view is not shared by all adherents of culture. Cultures have their varying ideals based on their cultural practices and traditions. Societies cling to these traditions as a source of identity and their people look to them for a sense of belonging.[117]

Closely knit with the issue of culture is that of religion. In the opinion of advocates of religion, nothing can be universal that is not founded on transcendent values, symbolised by God and sanctioned by the guardians of the various faiths.[118] This also poses a great challenge to a universal concept of human rights.

The achievement of a balance between the two extreme positions of universalism and cultural relativism is key to finding lasting solutions to the plight of women. This balance can arguably only be achieved where attempts are made at finding out how culture, through adaptation and modification, can serve to complement rather than constrain specific human rights aspirations. As rightly argued by Ibhawoh,

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[110] Henry J. Steiner et al. Eds *Law, Politics, Morals* 3 ed (2008) quoting Makau Mutua *The Complexity of Universalism in Human Rights, in Human Rights with Modesty* 51 (Andras Sajo ed., 2004) 115-18.
[111] Ibid.
[112] Donnelly op cite note 66.
[113] Ibid..
[114] Antonio Cassese *Human Rights in a Changing World* (1990) 5.
[115] Quahigah Kofi 'The Philosophical Basis of Human Rights and its Relation to Africa' (1992) 1(2)/2(1/2) *Journal of Human Rights Law and Practice*.
[116] Shashi Tharoor 'Are Human Rights Universal?' (Winter 1999/2000) Vol. XVI No. 4 *World Policy Journal, https://www.mtholyoke.edu/acad/intrel/tharoor2.htm accessed 28-10-2019.*
[117] Ibid at 115-116.
[118] Tharoor op cit note 116.

it is not enough to identify the cultural barriers and limitations to international human rights standards. A more viable approach is to understand the social basis of cultural traditions and determine how they may be adapted to or integrated with international laws and national legislations aimed at promoting human rights of women. Such adaptation and integration, however, needs to be done in such a way that they neither compromise the cultural integrity of people nor render irrelevant the essence of the protections provided.[119] According to Makau, though the content of human rights in Africa is founded on universal principles, it has to bear a 'African cultural fingerprint' that emphasises group rights, duties, social cohesion and communal solidarity as opposed to rigid individualism. Makau suggests that non-Western societies [in Africa] should attempt to develop international human rights regimes that are founded on basic universal human rights standards but also enriched with African cultural experiences.[120]

Anne Philips argues that one of the problems that arises in discussions on the universality or cultural relativity of rights is the failure to engage with the differences that exist within the various cultures. She explains that 'an equality of rights will generate inequality when it pays no attention to certain background conditions.'[121] For example, asserting the equal right of women and men to employment can end up being discriminatory when the prevailing arrangements of familial and domestic responsibilities prevent most women from working. For example, the cultural structures prevalent in most African communities place the burden of childcare and domestic responsibilities on the woman. It could be burdensome on women who are forced to navigate long hours carrying out domestic chores to efficiently compete with men in the workplace. Extending to all the same set of rights and guarantees obscures (although may in some circumstances reinforce) those background inequalities that continue to generate inequalities of power.[122]

Nhiha Le argues on the other hand that the conflicts between universalism and cultural relativism can have positive effects as well:[123] They are the opposite sides of the same coin and can mutually reinforce each other. Nhiha Le opines that human rights advocates can benefit from the cultural sensitivity of cultural relativism by developing their human rights campaigns in a specific cultural context and avoiding negative reactions from the host society.[124] On the other hand, human rights experts will be able to contribute to the development of culture, making it more adaptive to international human rights standards by helping to reconcile traditional practices with international standards.[125]

An-Na'im departs from the usual orthodox analyses of human rights that is conceptualised in either strictly universal or culturally specific terms, and provides practical means of reaching a consensus between

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[119] Ibhawoh Bonny *Between Culture and Constitution −The Cultural legitimacy of Human Rights in Nigeria* (1999) *The Danish Centre,* 839.
[120] Makau Mutua in Istvan Lakatos op cit note 106 at 20.
[121] Anne Phillips 'Multiculturalism, Universalism, and the Claims of Democracy in 'Gender Justice, Development and Rights', (2002) *United Nations Research Institute for Social Development',* 115 – 138.
[122] Ibid at 117
[123] Nhina Le 'Are Human Rights Universal or Culturally Relative?' (2016) 28 *Peace Review: A Journal of Social Justice* 203.
[124] Ibid at 209.
[125] Nhina Le op cit note 123 at 288.

the two opposing world views.[126] An-Na'im accurately captures the essence of the conflicting, yet mutually reinforcing priorities, when he argues that the challenge facing the human rights paradigm is how to ensure that people enjoy the same rights within their communities, while respecting the cultural autonomy of those communities.[127] He therefore acknowledges the universality of certain fundamental precepts of human rights, and also emphasises the need for a balance between international rights and traditional African cultural values, beliefs, and practices. While agreeing that contemporary conceptions of human rights have their origin in Western philosophical traditions, An-Na'im argues for a truly universal paradigm through the accommodation of African and other non-Western cultural norms into current international instruments.[128]

Therefore, according to An-Na'im, a more pragmatic approach to achieving a balance and ensuring the effective protection of the rights of women would arguably be for State parties to engage in an intra-cultural discourse and exchange.[129] During this intra-cultural exchange, the African concept of human rights can also inform what is considered as basic universal human rights. The various cultures would converge at the drawing table to stipulate and interpret what they perceive to be 'basic rights' in view of their peculiar cultural situations. This would allow states parties to reach a consensus on what constitutes basic rights, aimed at maintaining human dignity, respect, honour and protection of life and person, and interpreted in culturally specific and responsive ways. This approach would arguably bring long-term solutions to the age long discourse on the relativity of international human rights laws and the rights of women in Africa.[130]

The debate about whether the concept of human rights (and specifically women's rights) is universal or culturally relative has also created more difficulties for the enforcement of the international rights of women in Nigeria. As earlier stated, while universalists assert that human rights are universal and should be construed without cultural undertones, cultural relativists in Nigeria argue that universality should not proceed oblivious to the significance of the cultural context for interpretation and enforcement.[131] It is a dilemma that constantly confronts the legal system in search for parity of cultural values and religious ethos, vis-a-vis its international obligation on the rights of women in Nigeria. The Nigerian legal system, however, remains generally unfavourable to women despite ratifying several international and regional instruments on the rights of women. Furthermore, many of the existing laws in Nigeria are arguably inadequate and cause more hardship for women.

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[126] Abdullahi A. An-Na'im (ed.) *Cultural Transformation and Human Rights in Africa* (2002) 269.
[127] Ibid.
[128] An-Na'im op cit note 126.
[129] An-Na'im, op cit note 126.
[130] Laws such as *The Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights 1966, International Covenant on Civil and Political Rights 1966, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.*
[131] Ejidike op cit note 65 at 71.

VII LEGAL FRAMEWORK FOR WOMEN'S RIGHTS IN NIGERIA

Nigeria has signed and ratified many international and regional declarations, conventions, protocols, and treaties on the rights of women.[132] However, these international and regional treaties and conventions do not automatically have the force of law in Nigeria after ratification.[133] There is a constitutional requirement for every international treaty to be domesticated before it can have the force of law in Nigeria.[134] Nigeria has adopted the dualist approach to domestication, which means that duly ratified treaties do not have force of law in Nigeria unless and until they have been domesticated.[135] The process of domesticating a treaty to which Nigeria is a party depends largely on the subject matter of the treaty. Where a treaty is related to any of the items under the Exclusive Legislative List, such treaty is deemed duly to have been domesticated upon a law passed to that effect by the National Assembly.[136] However, where the subject matter of the treaty falls outside the Exclusive Legislative List, a law to domesticate such treaty must be passed by the National Assembly and further ratified by a majority of the 36 state parliaments.[137] The effect of the dualistic approach to the domestication of laws in Nigeria means that state governments have the option to refuse to pass laws either on cultural and religious grounds, which results in limiting the rights that women can enjoy under international and regional laws in Nigeria.

Undomesticated treaties on the other hand, have no force of law in Nigeria but could serve as a useful guide for the court.[138] Consequently, judges usually refrain from enforcing the provisions of international treaties that have not yet been domesticated. In *Abacha v Fawehinmi,* the Nigerian Supreme Court held:

> It is therefore manifest that no matter how beneficial to the country or the citizenry an international treaty to which Nigeria has become a signatory may be, it remains unenforceable if it is not enacted into the law of the country by the National Assembly.[139]

Many of the international and regional human rights instruments specifically enacted for the promotion of women's rights have yet to be domesticated and consequently have no influence on decisions before Nigerian courts.[140]

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[132] *The Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979; and the African Charter on Human and People's Rights (ACHPR) 1981.*

[133] Ibid.

[134] Section 12, 1999 Constitution '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; Sandra Eke 'Nigeria: Non-domestication of Treaties In Nigeria As A Breach of International Obligations' (04 December 2020) *https://www.mondaq.com/nigeria/international-trade-investment/1013006/non-domestication-of-treaties-in-nigeria-as-a-breach-of-international-obligations-sandra-eke* accessed 17-03-2021.

[135] Section 12 1999 Constitution.

[136] Section 12(1) and (2) of the Constitution.

[137] Sec 12 (1) 0 (3) of the Constitution. Section 12(1) 1999 Constitution: "no treaty between the Federation and any other country shall have the force of law in Nigeria except to the extent to which any such treaty has been enacted into law by the National Assembly."

[138] Okeke and Anushiem 'Implementation of Treaties in Nigeria: Issues, Challenges and the Way forward' (2018) *NAUJILJ* 9(2) 221.

[139] *Abacha v Fawehinmi* (2000) 6 NWLR Part 660 p. 228.

Nigeria operates a plural legal system based on the Constitution, which includes the received English common law, local legislation, Shari'ah law, and customary law.[141] Shari'ah law was recognised in the 1999 as a main body of civil and criminal law in 12 Muslim-majority northern states in Nigeria.[142] These states have Islam as their dominant religion, and the states chose to have Shari'ah courts as well as customary courts.[143] Shari'ah law is a group of Islamic moral codes and laws that determine what is and is not allowed for Muslims, and exists side by side with civil law in the predominantly Muslim-majority states.[144] However, Islam continues to govern religious matters in some non-northern states of Nigeria as well. Other than the Hausa/Fulani that practice mostly Shari'ah law, each ethnic group has a system of customary law, with variations among the various communities.

The challenge with the plural legal system operating concurrently in Nigeria[145] is that there are several applicable laws to a given situation, which could act as an enabler for gender discrimination. For example, with regard to marriage, the federal government has no control over customary and Islamic marriages, but only marriages conducted under statutory law. This is because customary and Islamic laws are not included in the exclusive legislative list, thereby giving states power to legislate on marriage related matters. [146] Consequently, even though the Child Rights Act[147] criminalises child marriage,[148] cases of child marriage are difficult to prosecute, especially within the Islamic northern states of Nigeria and remains outside the purview of the federal government. Each state in Nigeria has to enact the Child Rights Act under its own state laws before it is enforceable.

The legal framework on women's rights in Nigeria on the other hand is based primarily on the Constitution, domestic laws, and international treaties relating to women which have been ratified in the country. Arguments, however, abound that most of the prevalent laws that address the rights of women in Nigeria are reflective of patriarchal understandings and standards, and accordingly discriminate against women. Consequently, where affected women resort to the court of law for redress of any form of discrimination, the court would still rely on the prevalent patriarchal laws which strengthen the effect of the already existing discriminations. Therefore, there is an urgent need for a complete cultural and religious

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[140] Examples of non-domesticated treaties include the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.*
[141] Otite O 'Ethnic pluralism and ethnicity in Nigeria' (1990) *Google Scholar*, 35-36.
[142] The states include: Zamfara state, Kano state, Sokoto state, Katsina state, Bauchi state, Borno state, Jigawa state, Kebbi state, Yobe state, Kaduna state, Niger state and Gombe state.
[143] Nigeria: International Religious Freedom Report (2008) US Department of State.
[144] Sefi Atta '*Too Many of Nigeria's Women Are Targets – Not Just the Kidnapped* Girls' (19 May 2014).
[145] Received English common law, local legislation, Shari'ah law, and Customary law.
[146] Second Schedule, Part 1 "Exclusive Legislative List" Section 61 "The formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law including matrimonial causes relating thereto." Tim S Braimah 'Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage' (2014) *African Human Rights Law Journal* Chapter 8 Vol 2.
[147] Nigeria: Act No. 26 of 2003 *https://www.refworld.org/docid/5568201f4.html* accessed 20-03-2020.
[148] Part III Section 22 of the Child Rights Act, 'No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.'

evolution, which would in turn enable the drafters of the laws in Nigeria to produce a comprehensive gender inclusive instrument that would provide better protection for the rights of women in Nigeria.

Domestic laws in Nigeria that address the protection of the rights of women against the cultural/religious practices under review include the 1999 Constitution of Nigeria, the Penal Code,[149] the Violence against Persons (Prohibition) Act,[150] the Child Rights Act,[151] the Marriage Act,[152] and customary law. Attempts have also been made by certain States to implement some laws prohibiting child marriage and female genital mutilation. However, evidence of the enforcement of these laws is not available. The operative domestic laws on the rights of women in Nigeria are discussed in the next section.[153]

(a) The 1999 Constitution

The Constitution of Nigeria is the supreme law of the Federal Republic of Nigeria, and any law or action that is inconsistent or incompatible with any of the provisions contained in the Constitution is null, void, and of no effect. The Constitution came into force on 29 May 1999[154] and is 'the main book of laws', though not all the laws in Nigeria are contained in the Constitution. It is designed to reflect the peculiarities of the federal character of Nigeria and has entrenched in its provisions laws relating to fundamental human rights. Some sections of the Constitution that address the rights of women include section 15(2)[155] and 42(1),[156] which prohibit sex-based discrimination, and section 17(3),[157] which focuses on gender-based disparity and equal pay for equal work.

The Constitution nevertheless does not provide comprehensive provisions on gender equality. For example, only one provision in the Constitution specifically mentions the word 'equality', and it is found in the preamble. The preamble states that 'the purpose of the constitution is to promote good government and welfare for all persons in the country on the principles of Freedom, Equality and Justice'.[158] Arguably, the provision for equality as contained in the preamble is vague and not substantive enough to provide for equality for women in Nigeria. This is unlike what is obtainable in certain African jurisdictions such as

[149] Laws of the Northern Nigeria Cap 89.
[150] 2015.
[151] 2003.
[152] Cap 218, Chapter 218 Volume xi, laws of the Federation of Nigeria, 1990.
[153] *The 1999 Constitution of Nigeria, the Penal Code, the Violence against Persons (Prohibition) Act, the Child Rights Act, the Marriage Act, and Customary Law.*
[154] The Constitution acquired the force of law through the Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999, Decree No. 24.
[155] "…national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited."
[156] (1) 'A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected wither expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject.'
[157] The State shall direct its policy towards ensuring that: (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment; … (e) there is equal pay for equal work without discrimination on account of sex or any other ground whatsoever.'
[158] *Constitution of the Federal Republic of Nigeria 1999.*

South Africa, whose Constitution provides a more substantive approach to equality by providing very elaborate provisions on equality.[159]

The Nigerian Constitution also presents women as second-class citizens, even though Nigeria is signatory to many international conventions, declarations, and treaties on women's rights. For example, according to s 26 of the Nigerian Constitution, men are allowed to confer Nigerian citizenship on their spouses (foreign wives), while women cannot confer citizenship on their foreign husbands.[160] Under this provision, the president is not empowered to confer similar citizenship 'to a man who is married to a Nigerian woman'.[161]

Furthermore, the Constitution glosses over gender discrimination,[162] and contains no adequate provision for the elimination of violence against women and harmful traditional practices such as female genital mutilation/female circumcision (FGM/FC) which is common practice in Nigeria that affects the health and life of young girls and women. The Constitution is also not clear about what constitutes 'full' age for the purpose of contracting a valid marriage. While s 29(4)(a) states that full age for marriage means the age of eighteen years and above, s 29(4)(b) on the other hand states that 'any woman who is married shall be deemed to be of full age'. Therefore, the girl child is considered to have reached maturity when she marries regardless of her biological age.[163] These contradictions about the legal age for marriage leaves a lot of room for misinterpretation, and results in the prevalence of child marriages in Nigeria. In addition, and as earlier mentioned, a defaulter cannot be prosecuted when, for example, the marriage is contracted under Islamic law, because the federal government would be interfering with an Islamic marriage and would be in violation of the Second Schedule Part 1 item 61 of the 1999 Constitution.[164] According to a report launched by Save the Children International, 48 per cent of girls in northern Nigeria were married by the age of 15 while 78 per cent became wives before 18. According to Save the Children International, the figures of child marriage in Nigeria indicate that Nigeria has one of the highest rates of child marriage in the world.[165]

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[159] The South African Constitution provides that 'everybody is equal before the law and has the right to equal protection… equality includes the full enjoyment of all rights and freedom, to promote the achievement of equality, legislative and other measures to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken. The state may not unfairly discriminate against anyone on grounds of gender, sex…' Sec 9 (1-3) Constitution of the Federal Republic of South Africa, 108 of 1996.

[160] Section 26 1999 Constitution: 'The president may confer Nigerian citizenship on "any woman who is or who has been married to a citizen of Nigeria. Rita Ozoemena Development as a right in Africa: Changing attitude for the realisation of women's substantive citizenship available at *saflii.org/za/journals/LDD/2014/13.pdf* accessed 21-03-2021.

[161] Ibid.

[162] Article 15(2) *'*Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited*.'*

[163] Azubike Onuora-Oguno 'Constitutionalising the Violation of the Right of the Girl Child in Nigeria: Exploring Constitutional Safeguards and Pitfalls' (5th August 2013) Oxford Human Rights Hub. *https://ohrh.law.ox.ac.uk/constitutionalising-the-violation-of-the-right-of-the-girl-child-in-nigeria-exploring-constitutional-safeguards-and-pitfalls/* accessed 21-03-2021.

[164] The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto are items under the Exclusive Legislative List and under the exclusive purview of the States. See also 'Controversy in Nigeria over minimum age of marriage' (26 July 2013) *https://www.girlsnotbrides.org/articles/controversy-in-nigeria-over-minimum-age-of-marriage/* accessed 21-03-2021.

[165]https:// www.icirnigeria.org/save-the-children-says-78-per-cent-of-girls-in-forced-child-marriage-in-northern-nigeria/ accessed 20-04-2022.

Young girls are consequently deprived of basic education, experience domestic violence within the marriage due to their unequal negotiating power, and face several health hazards when trying to give birth at a very young age.

The Constitution further provides for the right to acquire immovable properties. However, in several communities in Nigeria, due to the application of customary laws, women do not possess land rights.[166] The Constitution also addresses the rights of women to equality with general provisions such as: s 42(1)(a),[167] and s 42(1)(b),[168] which prohibits according any privileges or disadvantages to any person that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions. These provisions are arguably vague and cannot be used as a defence in cases of gender inequality. As mentioned above, a good example of a provision that adequately provides for gender equality is found in the South African Constitution; this prohibits discrimination on the grounds of both sex and gender.[169] According to Makama, 'gender is the socially and culturally constructed roles for men and women, while sex relates to the biological differences between male and female'. Gender is therefore important when establishing people's perception, attitude, behaviour, and response to social interaction. The Nigerian Constitution's general approach to the definition of equality arguably allows for varying social and cultural interpretations and responses to issues of the rights of women in Nigeria.

There are other gender specific laws in Nigeria that address various aspects of the rights of women, but as earlier mentioned the Constitution is the supreme law of the land and any law or action that is inconsistent or incompatible with any of the provisions contained in the Constitution is null, void, and of no effect.

(b) The Marriage Act

The principal legislation on marriage in Nigeria is the Marriage Act.[170] This provides generally for the rights of Nigerian women in marriage, and considers spouses as equal partners in marriage, with equal rights and responsibilities. A married woman also has a right to be involved in the disposal of family assets during or after the marriage or upon the death of her husband. In the event of the death of her husband intestate, a

[166] Uzodike E N U *Women's rights in law and practice: Property rights In Women in law (*ed) Obilade A O (1993) 330-334, Lagos: Southern University Law Centre and Faculty of Law University of Lagos.

[167] (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a*)* be subjected wither expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject.

[168] (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion.

[169] See Chapter 2 Section 9(3) South African Constitution: 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.'

[170] Cap 218, Chapter 218 Volume xi, laws of the Federation of Nigeria, 1990.

woman is entitled to a percentage, of at least one-third, of the deceased's estate.[171] The Marriage Act fails to provide for the rights of women who are not married under the Marriage Act, but who contract their marriages under indigenous law and custom.

Furthermore, the only form of marriage recognised in Nigeria under the Marriage Act is monogamous marriage (marriage between one man and one woman). The legal requirement of monogamous marriages contradicts the current situation in Nigeria where several polygamous marriages are contracted either under customary law or Islamic law. Currently, only 12 out of the 36 Nigerian states recognise polygamous marriages as being equivalent to monogamous marriages. All twelve states are governed by Sharia law.[172]

(c) The Child Rights Act, 2003

The Nigerian federal government enacted the Child Rights Act (CRA)[173] in December 2003. The legislation was adopted to implement principles enshrined in international instruments, including the 1989 Convention on the Rights of the Child (CRC) and the 1990 African Union Charter on the Rights and of the Child (CRCW), ratified by Nigeria in 1991 and 2000 respectively.[174] The CRA deals comprehensively with the rights of a child in Nigeria and addresses situations in which a child may be subjected to abuse.[175] The CRA also prohibits specifically the marriage of those considered to be children under 18 years. Part III s 21 states:

> No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.

Also, Part III s 22 prohibits the betrothal of children, and states that 'no parent, guardian or any other person shall betroth a child to any person.' The CRA, however, face major challenges to its enforcement within Nigeria. The CRA was not automatically enacted into law within the 36 states of Nigeria, but each state had to pass its Bill into their state laws for it to become enforceable and to guarantee and protect the rights of children. Since the CRA was passed in 2003, 12 states have not yet adopted it.[176] Children within the states where the CRA has not yet been adopted have no rights, and the practice of child marriage is not an offence within those states. Worthy of note is that, apart from the state of Enugu, the 11 states which are yet to adopt the CRA are in the northern part of Nigeria where the Penal code and Shari'ah law are operative.[177] The CRA conflicts with the Shari'ah law's point of view as practiced in the northern states of Nigeria, particularly in relation to the minimum age of marriage. While the CRA sets a child to be a person under 18, there is arguably no age that marks childhood in Islam. A child's maturity is said to be known when signs of

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[171] Section 36(1) Marriage Act

[172] The twelve states are within Northern part of Nigeria and include Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Nigeria, Sokoto, Yobe and Zamfara. *https://en.wikipedia.org/wiki/Polygamy_in_Nigeria* accessed 10-11-2022.

[173] No. 116, 90 Federal Republic of Nigeria Official Gazette A451-679 (2003).

[174] UNICEF, Information Sheet: The Child's Rights Act (2000), available at *http://www.unicef.org/wcaro/WCARA Nigeria Fact sheets CRA.pdf.*

[175] For example, section 10 and 11 Child Rights Act 2003.

[176] Enugu, Kaduna, Kano, Sokoto, Kebbi, Borno, Yobe, Gombe, Adamawa, Bauchi, Katsina and Zamfara.

[177] Northern Nigeria consists of 19 states of which 12 have penal laws enacted under the aegis of Shari'ah namely, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara.

puberty such as menstruation, the growth of breasts and pubic hair are seen.[178] Consequently, female children in the northern states are subject to the practice of child marriage.[179]

The Second Schedule, Part 1 s 61 of the 1999 Constitution also reinforces the challenges faced by the CRA. It provides that when a person marries a child under Islamic law in Northern Nigeria, such a person cannot be prosecuted, because the federal government will be interfering with an Islamic marriage and would be in violation of Part 1 s 61 of the 1999 Constitution.[180] The Constitution was used as a backing for law in 2010, when a Nigerian senator, Ahmad Yerima, married a 13-year-old Egyptian girl. Although the marriage was in contravention of s21 of the CRA, Yerima (the defendant) justified the marriage on religious grounds.[181] He argued that Prophet Muhammad (SAW) married Aisha at the age of nine. Therefore, any Muslim who marries a girl of nine years and above is following the teaching and practices of Prophet Muhammad (SAW). The Attorney-General (AG) of the Federation, Mohammed Bello Adoke, maintained that the marriage was contracted under Islamic law, and Ahmad Yerima would therefore not face prosecution. The AG stated further that if a child marriage is contracted under Islamic law or custom, the federal government cannot interfere with such marriages by virtue of Part 1 Section 61 of the 1999 Constitution.

Despite the promulgation of the CRA, and Nigeria's ratification of international and regional instruments providing for the protection of the child,[182] child marriage is still a regular phenomenon in Nigeria, particularly among the Hausa/Fulani and Igbo. Another set of legislation that addresses issues of violence against women in Nigeria is the criminal and penal Code.

(d) Criminal and Penal Code

The criminal code[183] and penal code[184] have been criticised for not providing adequate protection for women from violence in Nigeria.[185] For example, while rape is a crime punishable by life imprisonment, there is no provision for marital rape; and domestic violence is not covered by criminal legislation. Some provisions of the Penal Code further allow husbands to beat their wives as a form of chastisement.[186]

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[178] Braimah op cit note 146.
[179] Why the Child Rights Act still doesn't apply throughout Nigeria' 24 September 2020, The Conversation. *https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345* accessed 25-09-2021.
[180] Second Schedule Part 1 section 61 "endows plenary powers on the formation, annulment and dissolution of Islamic and customary marriages on states of the Federation because such marriages are part of the residual legislative list."
[181] YouTube 'Nigerian senator defends teen marriage' *http://www.youtube.com/watch?v+ rQJ8Rbgiox4*
[182] *The Convention on the Rights of the Child (CRC) on 16 April 1991, and the African Charter on the Rights and Welfare of the Child on 12 July 2001.*
[183] Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990, operative within the Southern states of Nigeria.
[184] Penal Code (Northern States) Federal Provisions Act (No. 25 of 1960) operative within the Northern States of Nigeria.
[185] Cheluchi Onyemelukwe 'Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act (2016) 5(2) *DePaul Journal of Women, Gender and the Law* 7.
[186] Section 55 Penal Code Act Cap (2), Nigeria; (1) Nothing is an offence which does not amount to the infliction of grievous hurt upon any person which is done: …. (d) by a husband for the purpose of correcting his wife, such husband and wife being subject to any native law or custom in which such correction is recognized as lawful.

(e) The Violence Against Persons (Prohibition) Act 2015 (VAPP Act)

The Violence Against Persons (Prohibition) Act 2015 (VAPP) was passed by the Senate and signed into law by President Goodluck Jonathan.[187] The VAPP was enacted in line with Nigeria's international obligations under CEDAW and the Protocol to the African Charter.[188] The VAPP aimed at eliminating violence in private and public life, by providing maximum protection and effective remedies for victims and punishment of offenders. It also aimed to improve on similar provisions on violence as contained in the criminal and penal codes. The Criminal Code in force in the south of Nigeria, and the Penal Code in force in the north of Nigeria, did not adequately protect women from violence. For example, offences such as domestic violence and marital rape were not provided for in both the criminal and penal codes. The VAPP is the first criminal legislation in Nigeria to expand the concept of rape beyond the penetration of the vagina and anus by the penis and to include penetration of the mouth by the penis.[189] The VAPP is also the first instrument to prohibit or punish female genital mutilation and harmful widowhood practices. It criminalises harmful traditional practices, but uses a gender-neutral approach, and therefore overlooks the fact that women and girls are most affected and often suffer grievous harm at the hands of the cultural practice of female circumcision.

The passage of the VAPP was, however, challenged for many years by the majority of legislators who were male, due to its focus on women-specific issues. The legislators felt that a gender-neutral approach would be more inclusive. Thus, the bill, originally submitted as the Violence Against Women Bill, was changed to read the Violence Against Persons (Prohibition) Bill, 2003. The VAPP has been criticised as not affording complete protection for women in Nigeria.[190] The title of the VAPP arguably does not acknowledge women as the clear beneficiaries of the legislation. The Act is therefore on its face, gender-neutral, and fails to recognise that there are some discriminations suffered that are peculiar only to women. The VAPP[191] also fails to specifically mention all of the harmful traditional practices that are detrimental to women, such as levirate marriages, initiations, rites of passage, and wife inheritance.

Another source of law in Nigeria is customary law, which comprises a set of customs, practices and beliefs that are acceptable as obligatory rules of conduct by indigenous peoples and local communities.

(f) Customary Law

In the case of *Eshugbayi Eleko v The Government of Nigeria*,[192] customary law was referred to as 'unwritten customs and traditions, which have been accepted as obligatory by members of a community'.[193] It is the

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[187] 'Nigeria-Violence Against Persons Prohibition Bill Becomes Law' (25 May 2015) The African Centre for Democracy and Human Rights Studies *https://www.acdhrs.org/2015/06/nigeria-violence-against-persons-prohibition-bill-becomes-law/* Accessed 13-06-2020.

[188] Ibid.

[189] Anthony N. Nwazuoke 'A Critical Appraisal of the Violence Against Persons (Prohibition) Act 2015 (2016) *Journal of Law, Policy and Globalization* 47.

[190] Ibid.

[191] *Violence Against Persons (Prohibition) Act (2015).*

[192] (1931) A.C. 662.

aggregate of accepted customary practices, usages, mores, and norms which are accepted as binding on the members of the community. There are as many customary laws in the country as there are communities, and in most communities, the rights of women are infringed. Women, for example, are usually not entitled to land,[194] women rarely inherit and mostly obtain only 'use rights' to the lands through their husbands.[195] This includes the right to use the land only for agricultural labour and farming.

Customary law in Nigeria may be divided into two classes: ethnic or non-Muslim customary law and Muslim law. Muslim law is religious law based on Islamic faith, and it governs the customary practices of the northern states of Nigeria. Ethnic customary law on the other hand is unwritten and varies from one ethnic group to another. The diversity of customs is arguably a major obstacle to the uniformity of customary law systems in Nigeria.[196]

Under Nigerian native laws and customs, women suffer a series of discriminations and unfair treatment. Kaganas and Murray argue that customary law openly discriminates against African women.[197] For example, unlike a woman who marries under the Marriage Act, a woman who marries under customary or Islamic law in Nigeria does not enjoy adequate protection in the distribution of assets. Under customary arrangements, the husband is generally regarded as having dominant/legal power to dispose of family property. In some cases, the husband would exercise this power without taking cognisance of the wife's contributions to the assets as they are usually acquired in the husband's name.[198] In most customs also, wives are regarded as chattels to be sold by the parents to the husbands as soon as the purchase price (dowry) has been paid. And if the husband dies, the wife is regarded as part of the estate of the deceased husband.[199]

Customary inheritance laws in Nigeria also discriminate against women. Broadly, inheritance is regulated by state laws.[200] However, where a person subject to customary law contracts a statutory marriage and such person dies intestate, any property which the said testator might have disposed of by will shall be distributed in accordance with the customary law. Local enactments relating to the administration of estates

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[193] Derek Asiedu-Akrofi 'Judicial Recognition and Adoption of Customary Law in Nigeria' (1989) *The American Journal of Comparative La,* 573.

[194] Collective Actions and Property Rights (CAPRI), S Abdulwahid 2006.' Gender Differences in Mobilization for Collective Action: Case Studies of Villages in Northern Nigeria' available at *http: www.capri.cgiar.org/pdf/capriwp58.pd) CAPRI Working Paper No. 58. Washington, DC< CAPRI*

[195] 'Gender and Land Rights Database, Nigeria Food and Agriculture Organisation of the United Nations, http://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=NGA accessed 13-06-2020.

[196] Chuks Bethel Uweru 'Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism' (2) (April 2008) *AFR* 293.

[197] Kaganas and Murray *Law and Women's Rights in South Africa: An Overview* in Murray (ed) Gender and the New South African Legal Order (1994) 16.

[198] Ngozi Oluchukwu Odiaka 'The concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' 2(1) (2013) Afe Bablola University*: Journal of Sustainable Development Law and Policy* 200.

[199] Rufai Muftau 'An Appraisal of the Legal Rights of Women in Nigeria' 52 (2016) *Journal of Law, Policy and Globalization* 69.

[200] The key laws governing testate inheritance include the Marriage Act, the Administration of Estates law of 1959 Cap 133 Laws of Western Nigeria (as amended by States in the former western region, the Succession Law Edict of 1987 (as amended by south-east states), the English Wills Act of 1837, and the Wills Amendment Act of 1852 (generally applicable except in the south-west). Others are the Wills Law of 1959 (south-west) Cap 113 Laws of Western Region of Nigeria, the Wills (Soldiers and Sailors) Act of 1918, and the Wills Law of old Bendel State, Cap 172, Laws of Bendel State, 1976.

will apply.[201] It is worth noting that the majority of land in Nigeria is in rural areas and customary law regulates the lives of most Nigerians.[202] Therefore, where a man married under the Marriage Act dies intestate, the statutory entitlements of his widow will not extend to land he received from his family or kin group, since it is deemed to devolve in accordance with customary law.[203] Also arguable is the fact that Nigerians are not enthusiastic about making wills because of cultural and religious phobias about death; so consequently, many people die intestate.

Further to the varying inadequacies and lacuna in domestic laws, women's rights and other civil society groups began to agitate for a change which required a comprehensive reform of laws to ensure protection for women against violence and other forms of discrimination. Legislative advocacy by different groups resulted in the promulgation of new laws at the State and Federal levels. Several states such as Edo and Osun have passed laws to criminalise female genital mutilation.[204] Other states criminalised harmful widowhood practices, such as Cross River, Oyo, and Anambra, while others such as Lagos, Ekiti, Ebonyi, and Jigawa criminalised domestic violence.[205] However, as mentioned above, many of these laws are not comprehensive but only cover limited aspects of violence and discrimination against women and are only operative in specific states.

(g) Interventions by Women Organisations

Women's struggle against gender discrimination and the fight for gender equality has been in existence in Nigeria since the nineteenth century.[206] A women's movement became prominent in Nigeria in the attempt to improve on the rights of women and provide better opportunities for women. However, the culture of patriarchy continues to hinder the full realisation of rights for women. Recently, a bill for gender equality of women with men in Nigeria was turned down by the Senate.[207] Notwithstanding, several women's organisations and individuals continue to make more effort to work towards women liberation in Nigeria. These women's organisations include non-governmental organisations (NGOs), community-based organisations (CBOs), civil society organisations (CSOs), and other organisations that have the political and social development of women at heart.[208] Women's movements in Nigeria and have been at the centre of

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[201] Itua P O 'Legitimacy, legitimation and succession in Nigeria: An appraisal of section 42(2) of the Constitution of the Federal Republic of Nigeria as amended on the rights of inheritance' (2012) 4 *Journal of Law and Conflict Resolution*, 36.

[202] Nigerian Institute of Advanced Legal Studies (ed) Restatement of customary law of Nigeria (2013) Preface.

[203] Ezeilo J N 'Law and practices relating to women's inheritance rights in Nigeria: An overview' (1998-9) 7 *Nigerian Juridical Review*, 139. See also section 49(5)(b) of the Administration of Estates Law of 1959 "Any real property, the succession of which cannot by customary law be effected by testamentary disposition, shall descend in accordance with customary law, anything herein to the contrary notwithstanding".

[204] Bayelsa State – FGM (Prohibition) Law (2004), Cross River State – The Girl Child Marriages and Female Circumcision (Prohibition) Law 2000, Edo State – Prohibition of Female Genital Mutilation Law (1999), Rivers State – Child Rights Act (2009).

[205] Ebonyi State – Law Abolishing Harmful Traditional Practices Against Women and Children (2001)

[206] Comfort Yemisi Afolabi The Invisibility of Women's Organisations in Decision Making Process and Governance in Nigeria' (9 January 2019) Frontiers in Sociology, available at *https://www.frontiersin.org/articles/10.3389/fsoc.2018.00040/full* accessed 12-06-2020.

[207] Uguwede K 'Men are Trash: The Problem with being Feminist in Nigeria (2017) Business Day Media' available at *http://www.businessdayonline* accessed 12-06-2020.

[208] Ibid.

activities focused on addressing specific challenges that affect women and have hindered the ability of women to make a positive impact in the fight for the rights of women in Nigeria. Some of these movements have focused on women's rights to vote or to be elected to public and political offices, while others focused on equal rights to enjoy national resources, own properties or have access to quality education.[209]

Despite the legal protections available to women in Nigeria as discussed in the subsections above, the violations of the legal rights of women still occur in Nigeria. Arguably, these violations are attributable to many factors: first the cultures in Nigeria, and secondly, the prevailing religious prescriptions which undeniably have become the norm and acceptable way of life. Nigeria on the other hand has signed and ratified a number of regional human rights instruments that promote the rights of women, one of which is the Protocol to the African Charter on the Rights of Women in Africa (the Protocol).

VIII THE PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA

The Protocol is the first regional instrument on the protection of women's rights in Africa. It is the first instrument developed by Africans for women in Africa and addresses a broad range of human rights concerns. The Protocol has been applauded as an instrument that has created the appropriate legal environment to enable equity and equality to be realised for the African woman.[210] Through its bold challenge of some cultural practices and belief systems, such as affirming the equality of rights between husband and wife in marriage, and prohibiting all forms of violence in the private sphere, the Protocol brought to the fore many critical issues that had been left unresolved in the private sphere.[211] The Protocol has equally been applauded for its attempt to promote and reinforce existing international standards, and its provision for women's rights to live in a positive cultural context.[212]

However, the Protocol may be said to have set out goals that are difficult to attain; and this could result in its becoming yet another addition to the body of human rights instruments meant rather for academic discourse than for practical enforcement.[213] Article 6(d) is an example of some of those provisions that set goals that are unattainable within Africa which states: 'every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised'. Most communities in Africa are still rural areas, with no access to proper registries or registration facilities for marriages; consequently, many marriages are contracted at the customary level and are unregistered. Therefore, basing the legality of marriages on registration imposes more hardship on the women it seeks to protect. Furthermore, the issue of child marriage is another example of these goals. Outlawing child marriage, especially when girls reach the age of puberty, without providing a better alternative for the girls and their

[209] Ibid.
[210] Janah Ncube *Africa Fast Tracking to Women's Equality* (Feb 8 2007) available at *www.allAfrica.com* accessed 12-06-2020.
[211] Esther Atoyebi *Challenge of culture for the rights of women in Africa; Case study of the African Protocol to the rights of women in Africa* (2008) Unpublished Dissertation, University of Cape Town, South Africa 61.
[212] Banderin M 'Recent developments in the African Regional Human Rights System' (2005) 5/1 *Human Rights Law Review* 118.
[213] Atoyebi Op cit note 211.

families, such as an easy access to education and economic empowerment for parents, may be a difficult goal to attain.

The Protocol has as well been greatly criticised as being Western due to its focus on individual rights and its silence on the rights and responsibilities of the family as a whole and the interdependence between the rights and duties existing between members of the family and the community. The Protocol, for example, mentions the word 'family' only twice in all its provisions.[214] In Mbiti's argument presented above, African philosophy ties the individual's fate to that of his family and community.[215] Therefore the articulation and protection of rights within African society must take into account the peculiarities of the family unit and the communities wherein the rights are expected to be realised.

The Protocol was equally perceived to have failed to address the notion of 'group rights and 'individual duties' that has so far been the core to the African concept of human rights.[216] However, when viewed from the perspective of the drafters of the Protocol, its focus on individual rights could be said to have been necessary for the idea of personal autonomy to be effectively emphasised.[217] The Protocol may have arguably focused more on individual rights so as to clearly address the oppression which women suffer within the family unit, and from the dictates of group rights and duties. Where the identity of women is brought under the rights of the family unit, it would be much difficult to control any form of discrimination that would be suffered by them. Furthermore, previous African human rights instruments, such as the African Charter, had comprehensively dealt with group rights. Regardless of its seeming over-ambitious provisions, the Protocol arguably still boasts of rich and robust protections that can potentially improve on the status and rights of women in Africa.

The next sections outline the significance of the Protocol and attempt to critically analyse its relevance for the rights and lives of women in Africa, particularly in Nigeria. Some provisions of the Protocol are critically analysed, particularly the provisions dealing with the cultural practices under review in this thesis: child/forced marriage, widow's rites and practices, female genital mutilation, and inheritance under customary law.

(a) Significance of the Protocol

Unlike any other women's human rights instrument, the Protocol details wide-ranging and substantive human rights protection for women, covering the entire spectrum of civil and political, economic, social and cultural, as well as environmental, rights. It remains one of the most progressive legal instruments providing a comprehensive set of human rights for African women.[218] The Protocol contains almost identical

[214] See Art 6(i) of the Protocol relating to the responsibility of a man and a woman to safeguarding the interests of the family and Art 14(1)(g) on the right to family planning.
[215] J Mbiti *Introduction to African religion and Philosophy* (Heineman, 1990) 105.
[216] Makau Mutua 'The African Human Rights System: A Critical Evaluation' *http://hdr.undp.org/sites/default/files/mutua.pdf* Accessed 21-03-2021.
[217] Atoyebi Op cite note 211 at 62.
[218] Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa", Submitted by the Women, Gender and Development Directorate (WGDD) of the African Union Commission.

provisions as CEDAW and expands on the legal protection for women. Specifically, it takes a more nuanced approach to culture and tradition and explicitly acknowledges the positive role culture and tradition can play in women's lives.[219] Compared to CEDAW, the Protocol speaks in a clearer voice about issues of particular concern to African women and expands the scope of protected rights beyond those provided for under CEDAW.[220]

The Protocol further provides specificity where vagueness prevailed; for example, when it clarifies that 'positive African cultural values'[221] are those 'based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy'.[222] The Protocol challenges the old stereotypes about the place and role of women in society and places women as full, effective and equal partners with men in the development of their communities.[223] It also places a moral obligation on states parties to promote equal opportunities for men and women and allows women to play meaningful roles in society.[224]

The Protocol has been integrated into several constitutions and national laws and policies of several African countries.[225] There are now provisions on sexual and gender-based violence, economic, social and cultural rights and the principle of equality and right to non-discrimination in various States constitutions, policies and in legislations across the continent.[226] South Africa, for example, submitted an interpretative declaration on the Protocol which requires that the South African Bill of Rights shall not be interpreted to offer any less favourable protection of human rights than the Protocol.[227] In Cote d'Ivoire, the Protocol has a higher status than the Constitution, while in Ethiopia, international human rights treaties, including the Protocol, have a status higher than local legislation, and have an equal status with the Constitution.[228] Also, the Bill of Rights of Ethiopia has incorporated specific provisions that address women's rights and gender equality issues in a similar manner to that of the Protocol. Nigeria was one of the founding states parties to the Protocol, having signed and ratified the Protocol on 16 December 2003 and 16 December 2004 respectively. Nigeria also deposited the instrument of ratification of the Protocol on 18 February 2005 to the African Commission.[229] The Protocol, nevertheless, continues to face challenges to its domestication in Nigeria.

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[219] Johanna E. Bond 'CEDAW in Sub-Saharan Africa: Lessons in Implementation' (2014) *MICH. ST. L. REV,* 262.
[220] Frans Viljoen 'An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *WAS. and LEE J.C.R. and SOC. JUST.* 11, 21.
[221] Article 29(7) African Charter.
[222] Centre for Reproductive Rights 'The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights' available at *http://reproductiverights.org/wp-content/uploads/2018/08/pub_bp_africa.pdf,* accessed 21-03-2019.
[223] Article 9 Protocol.
[224] Maputo Protocol op cit note 218.
[225] 'Women's Rights in Africa' *https://au.int/sites/default/files/newsevents/workingdocuments/32590-wd-womensrightsinafrica_singlepages-1.pdf* accessed 25– 05-2020.
[226] Ibid.
[227] *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 14.
[228] Ibid.
[229] African Union List of countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights' http://www.au.int/en/treaties.

The significance and potential of the Protocol goes well beyond Africa.[230] It advocates for an approach to protecting women's rights which recognises the fact that equality between men and women is impossible unless certain traditional and cultural beliefs, attitudes and stereotypes are corrected.[231] For example, the Protocol prohibits cultural attitudes and stereotypes that place women in inferior positions to men. It also contains a number of global 'firsts': the Protocol represents the first time that an international human rights instrument explicitly called for the prohibition of harmful practices such as female circumcision/female genital mutilation (FC/FGM), which has ravaged the lives of countless young women in Africa.[232]

The debate about whether the concept of human rights (women's rights) is universal or culturally relative has also created more difficulties for the enforcement of the Protocol in Nigeria. To determine whether the Protocol has been able to achieve the balance between the universalism and cultural relativism theories, an analysis of the Protocol is called for.

(b) Analysis of Key Provisions of the African Women's Protocol

This section examines and critically analyses the rights in the Protocol that respond to the various cultural and religious practices under review in this thesis. These practices include child/forced marriage, denial of female inheritance, widowhood rites, and female genital mutilation.

*(*i) Provisions relating to violence against women

The Protocol provides that 'every woman shall be entitled to respect for her life and integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited'. [233] It expressly guarantees women's right to be protected from all forms of exploitation, cruel, inhuman and degrading punishment and treatment, including threats of both physical and verbal violence.[234] States are urged to take effective legal and other measures to prevent, eradicate and punish all forms of public and private violence against women, including unwanted or forced sex.[235] The Protocol goes beyond existing global and regional treaties by affording specific legal protection against gender-based violence, in both the public and private sphere, including domestic abuse and marital rape.[236] The private sphere is emphasised as an important domain in which rights are to be realised, and the Protocol underlines the need for 'positive

[230] Centre for Reproductive Rights op cit note 222.
[231] Atoyebi Op cit note 211 at 55.
[232] Centre for Reproductive Rights op cit note 222.
[233] Article 4(1).
[234] Centre for Reproductive Rights op cit note 222 at 9. Article 3(4) States Parties shall take appropriate and effective measures to adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.
[235] Article 4(2) States Parties shall take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.
[236] Art 4(2)(b) States Parties shall take appropriate and effective measures to 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.

action'.[237] This is significant because the private sphere is where women in Africa, particularly in Nigeria, experience most discrimination.

The Protocol is unique in its express guarantee of women's right to be protected, not just from violence but from threats of both physical and verbal violence.[238] It further guarantees a woman's 'right to dignity'[239] 'to respect of her person and to the free development of her personality'.[240] This provision underscores the fact that women are independent human beings who deserve respect and can exercise and claim their rights independently or in association with others.[241]

States are required to punish the perpetrators of violence against women while rehabilitating the victims.[242] The Protocol seeks to reform social and cultural traditions and practices and create a common civil code that upholds the dignity of women as equal partners with men in a society.[243] The Protocol therefore provides that states parties should modify social and cultural patterns through education with a view to eliminating harmful cultural and traditional practices.[244]

The Protocol goes further than existing international and regional treaties by requiring states to prohibit, through legislative measures backed by sanctions, all forms of female genital mutilation.[245] No other global human rights instrument expressly calls for the prohibition of female genital mutilation by name.[246] The language of the Protocol does not allow for a cultural defence of female genital mutilation.[247]

While the Protocol specifically mentions female circumcision/female genital mutilation FC/FGM as harmful practices that should be prohibited, listing other harmful practices would have been useful to show that the Protocols' intention was not to qualify FC/FGM as the only harmful practice that should be prohibited. The danger of not providing a list of harmful cultural practices presupposes that those other practices, though discriminatory, are not necessarily harmful. In this regard, the Protocol failed to

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[237] see Art 1(j) Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to such act; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war. See also Article 3(4).

[238] Art 5(d) States Parties shall take all necessary legislative and other measures to ensure the protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance. See also Centre for Reproductive Right op cit note 220.

[239] Art 3(1) Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

[240] Ibid.

[241] Danwood Chirwa 'Reclaiming (WO)manity: The Merits and Demerits of the African Protocol on Women's Right (2006) *Netherlands International Law Review* 75.

[242] Art 4(2)(e) States Parties shall take appropriate and effective measures to punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims.

[243] Chirwa op cit note 241 at p 75. Article 2(2) States 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 stereotyped roles for women and men.

[244] See Article 12 Protocol.

[245] Article 5 (b) States Parties shall prohibit through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.

[246] Ibid.

[247] Article 5 (b).

comprehensively enumerate what constitutes harmful practices within the African context,[248] leaving its determination to the respective states' parties.[249]

(ii) Provisions relating to rights within marriage

The Protocol clearly specifies 18 years as the minimum age of marriage for girls and affirms the protection of girls from child marriage.[250] According to Article 6(b) 'states Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage and shall enact appropriate national legislative measures to guarantee that the minimum age of marriage for women shall be 18 years. Child marriage adversely impacts on the rights of girls and women, and is often justified on traditional, religious, cultural or economic grounds. Child marriage is also a contributory factor to intimate partner sexual violence and sexually transmitted infections, including HIV, as well as the denial of girls' access to education.[251] Child marriages are most likely found in rural areas and among the poorest segment of the population.[252]

The Protocol reaches further into the spheres of family, community and tradition – the areas where women are most likely to experience violations of their rights – and provides for equal protection for women in marriage.[253] The Protocol surpasses current global human rights protections by prohibiting forced marriages and other discriminatory practices during and upon the dissolution of marriage.[254] It provides that marriage will take place only with the full consent of both parties and also provides that women and men should enjoy equal rights and be regarded as equal partners in a marriage.[255]

Although the Protocol identifies monogamy as the 'preferred form of marriage' [256] it did not fail to recognise the rights of women in polygamous marriages.[257] The Protocol's recognition of the rights of women in polygamous marriages is key, particularly within the Nigerian cultural and religious context, as will be seen in subsequent chapters. The Protocol does not seek to abolish the practice of polygamy, but recognises and promotes it, however reluctantly, while introducing the minimum standard of equality in marriages. The Protocol nonetheless can in this regard be said to have attained a balance by respecting the peculiarity of various cultures, and advocating for the observance of minimum standards of universal rights

[248] Such as wife inheritance and wife beating.
[249] Sibongile Ndashe *Using International human rights instruments to re-envision gender in customary law* in *Gender instruments in Africa: Critical perspectives, future strategies* (ed) by Christi van der Westhuizen (2005) Institute for Global Dialogue 79-80
[250] Article 6(b)
[251] 'A story for International Women's Day: A girl's education comes first, marriage will follow later (7 March 2017) *https://www.standup4humanrights.org/en/highlight_girlseducation-senegal.html* accessed 15-08-2020.
[252] UNICEF, A Profile of Child Marriage in Africa *https://data.unicef.org/resources/a-profile-of-child-marriage-in-africa/* accessed 15-08-2020.
[253] Centre for Reproductive Rights, op cit note 222 at 14. *Art 6(c)* 'States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.'
[254] Centre for Reproductive Rights, op cit note 222 at 13. *Article 6(a)* 'no marriage shall take place without the free and full consent of both parties.' Art 7(b) 'women and men shall have the same rights to seek separation, divorce or annulment of a marriage". Art 7(d) "in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.'
[255] Art *6* States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.
[256] Art 6 (c) States Parties shall enact appropriate national legislative measures to guarantee that: monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected.
[257] Ibid.

that allow for some cultural variability.[258] Although the Protocol is applauded for providing extensively for rights of women within the institution of marriage, its promotion of monogamy in Article 6(c) as the preferred form of marriage,[259] has failed to take cognisance of the complex cultural dimensions in Africa.[260] Africa has a large number of adherents of the Islamic faith as well as traditionalists and 'liberal' Christians, and therefore the suggestion that polygamy should be suppressed is unrealistic.[261] Polygamy is widely accepted and practiced, and a treaty of this nature should present an acceptable framework that captures the real life and experiences of the people it aims to protect.[262] A comprehensive provision that would identify and deal with the inequalities that women face within polygamous marriages in Africa would have been expected from an 'African instrument'. These inequalities range from absence of freedom to choose who to marry, a female's right to consent to a marriage, and absence of equal sharing in family property. While polygamy was not expressly condemned by the Protocol, it would have been preferable if it explicitly addressed the rights of women living within polygamous marriages.

The Protocol has equally been commended for its specific prohibition of unwanted and forced sexual intercourse in private and in public.[263] This provision brings to the fore the issue of 'marital rape', which is categorised as 'impossible' or 'not heard of' between married couples, especially in Nigeria, and it therefore remains a right of a man under Nigerian cultures and religions.[264] As will be seen in Chapter Five below, many women are victims of marital rape and continue to endure pain and humiliation within their marriages.

The essence of Article 6(d) is also defective in context.[265] The Protocol states that women have legal rights within their marriage as long as their marriage is subsisting. This provision raises questions as to the rights of women to inherit property in the event of divorce or death of their husband. Article 6(d) insists that marriages be recorded in writing and registered in accordance with national laws for the marriages to be legally recognised; non-registration leads to a marriage being declared invalid. Failing to recognise a marriage as legal on grounds of non-registration constitutes a failure to respond to many African women's realities. These include low literacy levels and the lack of awareness of existing laws. Registration of customary marriages differs from that of a civil marriage. As earlier mentioned, customary marriages in Nigeria are largely informal, and are mainly entered in places where facilities for registration do not exist. Many marriage registration offices are in towns or cities and are not accessible to the women living in rural

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[258] Atoyebi op cit note 211 at 73.
[259] Ibid.
[260] Dejo Olowu 'A critique of the rhetoric, ambivalence, and promise in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (2006) *Human Rights Review* at 88; Art 6(c) 'Monogamy is encouraged as the preferred form of marriage and the rights of women in marriage and family, including in polygamous marital relationships as promoted and protected.'
[261] Atoyebi, op cit note 211 at 64.
[262] Olowu, op cit note 260.
[263] Article 4(2)(a) 'States Parties shall take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.'
[264] 'Nigeria: Spousal Rape – What the Law Says' (3 March 2020) Daily Trust *https://allafrica.com/stories/202003030478.html* Accessed 10-12-2020.
[265] It says 'every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized.'

areas. Therefore, invalidating marriages that are not registered would amount to inflicting hardship that will only serve to punish the women the Protocol is seeking to protect.[266] Consequently, women in unregistered marriages would automatically be deprived from sharing in family property in the event that their husbands die intestate.[267]

Another area of concern is the custody of children of a marriage after separation or termination.[268] The Protocol provides that women and men have reciprocal rights and responsibilities towards their children. This provision is vague and does not clearly address the current prevalent situation in most African communities where culture deprives women access to their children upon the dissolution of her marriage or death of her husband.

(iii) Provisions relating to Widows' Rights

The Protocol is unique in its articulation of the rights of widows. The Protocol provides:

(a) States Parties shall take appropriate legal measures to ensure that: a. widows are not subjected to inhuman, humiliating or degrading treatment;

(b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and welfare of the children;

(c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.[269]

The Protocol prohibits all forms of inhuman or degrading treatment against widows, therefore addressing the series of discriminatory practices and rites which widows are forced to endure. The widow is also afforded the right to remarry, and to marry the person of her choice.[270] Allowing widows the right to remarry a man of their choice is commendable in the light of the existing practice in Africa, particularly in Nigeria where widows are inherited by their late husbands' relatives without their consent. Nevertheless, the provision arguably seems unrealistic to the extent that most widows in the grassroots of Nigeria have no source of livelihood and depend on the relatives of their late husband to provide for them financially. Furthermore, widows in Nigeria are acculturated into remaining unmarried and will more likely follow the dictates of culture than otherwise. Thirdly, granting a widow the right to remarry a person of her choice may also be unrealistic without providing an enabling environment for societal acceptance after the marriage.

(iv) Equality and non-discrimination

The Protocol makes it clear in its preamble that it aims to reaffirm the principle of 'promoting gender equality'.[271] Article 8 of the Protocol states 'women and men are equal before the law and share the right to equal protection and benefit of the law.' It guarantees the right of equality between women and men before the law

[266] Atoyebi, op cit note 211 at 64.
[267] Olowu, op cit note 260.
[268] Article 7 of the Protocol.
[269] Art 20.
[270] Art 20 (b)-(c).
[271] See para 9. See also Art 1(f) 'Discrimination against women means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.'

and the right to equal protection and benefit of the law.[272] In keeping with this promise, Article 2(1) places a clear obligation on States Parties to combat all forms of discrimination against women.[273]

While the definition of discrimination suggests that the Protocol is concerned about all forms of discrimination against women occurring in both the public and private spheres, its substantive provisions do not expressly impose direct obligations on non-state actors. Rather, its scope is limited to states parties. This is the case with all other rights recognised in the Protocol and constitutes one of its most disappointing features.[274] The Protocol did not specify which players such as institutions, traditional or religious leaders, etc. should be saddled with the responsibility of enforcing its provisions. While States Parties are supposed to play their part in the elimination of discrimination against women, women in Africa suffer grave discrimination within the private sphere of the family as a result of cultural dictates, and States do not have direct influence within the traditional/religious communities. The Protocol has, therefore, failed to achieve a balance in this regard by not addressing a peculiarity within African societies. [275]

States parties are required to take all appropriate measures to ensure that women enjoy their right to sustainable development. States parties are therefore expected to introduce a gendered perspective in their national development planning procedures, ensure participation of women at all levels of development policies and programmes, and promote women's access to credit, training, skills development to provide women with a higher quality of life and reduce the level of poverty among them.[276] However, as earlier stated these obligations can only be effective when the same obligations are imposed on traditional and religious leaders.

(v) Women's property and inheritance rights

The Protocol grants a married woman the right to acquire her own property and to administer and manage it freely. It states, 'during her marriage, a woman shall have the right to acquire her own property and administer and manage it freely'.[277] This provision is vital because in some African societies, and within some cultures in Nigeria, women are not allowed to own properties acquired during marriage. Chirwa, nonetheless, argues that this provision raises concern in the light of Article 7 of the Protocol, which provides that in the case of a separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.[278] Chirwa argues that the effect of articles 6(j) and 7[279] is that marriage per se does not entitle a spouse to the property of the other spouse. Each one is entitled to maintain, acquire, or dispose of their separate estate during the marriage, and upon divorce or separation have an 'equitable' share in the joint property. Chirwa states further that because most women in Africa get married

[272] Art 8
[273] Chirwa, op cit note 241, 73.
[274] Chirwa, op cit note 241, 73-74.
[275] Atoyebi op cit note 211 at 66.
[276] Art 19.
[277] Art 6(j)
[278] Art 7(d) 'in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.'
[279] Chirwa op cit note 241 and 435.

early and become dependent on their husbands for a living, many women are not entitled to have a share in the property acquired by the husband in the marriage.[280]

On the contrary, however, Articles 6(j) and 7 should also arguably be read to mean that the Protocol acknowledges the non-financial contributions of the woman in a marriage, and therefore grants her an equitable share to properties acquired in the marriage because of joint efforts and contributions of the spouses. Such contributions could be financial, material, emotional and psychological.

A widow is also granted an equitable share in the inheritance and property of her husband, including the right to continue living in the matrimonial home.[281] This provision adequately addresses one of the challenges faced by widows within most cultures in Nigeria, as will be discussed in the next chapter.

(vi) Right to a positive cultural context

The Protocol provides that 'women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies'.[282] This provision evidences the Protocol's position on the role of culture in influencing and also limiting the rights of women.'[283] The Protocol expands the protective scope of women's rights by transcending cultural boundaries, and deals with all aspects of social functioning, particularly gender equality in decision-making processes.[284] States therefore have the obligation to encourage women to participate in the formulation of cultural policies at all levels. Therefore, while the Protocol condemns negative aspects of culture, particular with respect to the life, health and well-being of women, there should be room to promote cultural ideals, beliefs and customs that do not negatively impact on the lives and health of the women'.[285] The Protocol therefore affirms through article 17(1)[286] that the legal protection of tradition ends where discrimination against women begins.[287] As earlier indicated in its preamble the Protocol states that African values are to be 'based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy'.[288]

The Protocol boldly addresses the status of women within African culture and the varying effects of patriarchal power. This it does by providing for individual rights of women, and women's right to live in a 'positive cultural context'. It places an obligation on States to enhance the participation of women in the formulation of cultural policies at all levels.[289] This provision however raises certain problems. Apart from the fact that it is not clear what 'positive cultural context' means, Article 17(1) appears to limit the

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[280] Chirwa, op cit note 241, 73-74. See also note 434 and 435.
[281] Art 21 'A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house.'
[282] Article 17(1).
[283] Article 17(1) 'Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.' (2) States Parties shall 'take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.'
[284] Olowu op cit note 260.
[285] Art 17(2) of the Protocol.
[286] 'Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.'
[287] Centre for Reproductive Rights op cit note 222, 11.
[288] Blazing a Trail: The African Protocol on Women's Rights Comes into Force' (2006) 20(1) Journal of African Law, 75.
[289] Art 17(2) of the Protocol.

application of women's right to positive cultural context to only matters or actions by the State and wrongly assumes that culture is created by the State.[290] On the contrary, however, most concerns about African cultural practices and their negative impact on women have no direct relation to the official position or policies of the government; rather, they stem from the practices that occur at the grassroots levels, local communities and within the family. .[291] For example, widowhood rites are enforced by the traditional heads and women leaders at the local levels, and they also strongly influence the perceptions of women in the urban areas.

The Protocol also covers various economic and social welfare rights of women. In particular, governments are urged to promote equal opportunities in employment, to punish sexual harassment in the workplace and to ban the abuse of women in advertising and pornography.[292] Women are further guaranteed the right to education and training,[293] food security,[294] to adequate housing,[295] the right to a healthy sustainable environment[296] and to sustainable development.[297] Article 25 requires States Parties to provide remedies to any victim of abuse through competent bodies.[298] However, the monitoring mechanisms of the Protocol should equally be reinforced, thereby compelling states parties to incorporate the Protocol within their national systems.

While the Protocol might be regarded as a progressive step in enhancing the quality of the lives of African women specifically, and the region's human rights regime in general, the Protocol has faced stiff challenges to its domestication in Africa, and in Nigeria in particular. Several reasons are adduced for this. According to Chirwa,[299] the greatest strength of the Protocol lies in the way it tackles a broad range of critical issues that affect women in Africa – such as inheritance, property ownership, marriage-related rights, reproductive rights, and custody over children. The Protocol's greatest weakness, however, is that it departs significantly from the core components of African perspectives on human rights as established by the African Charter. Chirwa concludes that though the Protocol contains laudable provision that could address the discriminations suffered by women in Africa, it also, as identified in the previous sub- sections, also contains provisions that could enable its rejection within the African continent. "[300] Musa, Mohammed and Manjion assert that the Protocol charts the course for the realisation of the rights of and freedom for African

[290] Article 17(1), 'Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.'
[291] Atoyebi op cit note 211, 63.
[292] Article 13.
[293] Article 12.
[294] Article 15.
[295] Article 16.
[296] Article 18.
[297] Article 19.
[298] Article 25 States Parties shall undertake to: (a) 'provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated,' (b) "ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.'
[299] Chirwa op cit note 241, 64.
[300] Chirwa op cit note 241, 64.

women, but it is sadly not realising its potentials'.[301]Mukasa, in addition, describes the Protocol as an instrument developed by Africans for African women and should not be challenged because it has no roots in African values and culture.[302] Mukasa further notes that, like most instruments, the Protocol is not perfect, and has some gaps and weaknesses. Nevertheless, the Protocol is still a potential force for changing the lives of African women for the better.

Nigeria has over the years shown its commitment to international and regional human rights frameworks and has taken steps to sign and ratify treaties in Nigeria. There has also been development of laws and reforms within Nigeria, all geared towards providing better protection for the rights of women. Notwithstanding the development of these reforms by the Nigerian government, women still suffer from many discriminatory practices/laws[303]

IX CONCLUSION

The concept of human rights has attracted intense philosophical challenges, especially in Africa. This is certainly true in relation to the raging debate on universalism and cultural relativism of human rights. This debate has been on-going since the drafting and adoption of the Universal Declaration of Human Rights, and it is mostly connected with women's rights. It is argued that women's rights are rights which belong to the private sphere and therefore should be regulated by local traditions and not international law.[304]

The Protocol can be said to have attempted a balance between the universalists and cultural relativist positions by reaching into the private spheres of the family, community, and tradition where women are more likely than not to experience violations of their rights, dignity, respect and promotion of women's universal rights.[305] This is evident in the manner in which the Protocol addresses the traditional practice of polygamy by not attempting to abolish it, but rather promotes it, however reluctantly, while providing for a minimum standard of equality in marriages.[306] The Protocol goes further to promote and protect the rights of women in polygamous marital relationships. It can also be said to have attained a balance by respecting the peculiarity of various cultures, and advocates for the observance of minimum standards of universal rights that allow for some cultural variability.[307]

The requirement of balancing women's right to equality with their identities as members of various groups is of utmost importance if a change is to be achieved in the lives of African women.[308] These are

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[301] Musa Roselyn '*Breathing Life into the African Union Protocol on Women's Rights in Africa*' (2006) 10.
[302] Rosemary Semufumu Mukasa *The African Women's Protocol: Harnessing a Potential force for Positive change (2008) Oxfam GB* 5.
[303] Examples are the Criminal Code, Penal Code, and cultural practices such as FGM/FC and women's rights in marriage.
[304] Lakatos op cit note 106 at 7.
[305] Atoyebi op cit note 211 at 70.
[306] Article 6 'States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage….'
[307] Atoyebi op cit note 211 at 73.
[308] Atoyebi op cit note 211 at 75.

competing claims that require subjective consideration if a change is to be achieved.[309] The way forward may therefore lie in defining the content of individual rights in group contexts, while upholding the values of the communities in the process. There is an urgent need to strike a delicate balance and try to establish whether a practice is detrimental to the well-being of women, and therefore needs to be abolished such as female genital mutilation, or whether these practices are simply alien to a group of people that are not a part of the societies where these practices exist. Provision should, in some cases, be made for them as is the case with polygamy. While some practices may seem abstract and alien to the Western world, some level of leverage should be accorded to allow for the exercise of a 'distinct' lifestyle, especially if it does not cause any harm to those subjected to it.[310] This is evident in the practice of widow's rites, as will be analysed in detail in Chapter Five. Several cultural reasons are given for the subsistence of widow's rites, such as honouring the deceased husband, preserving the lineage of the deceased, while negative aspects such as forcing the widow to drink the water used to wash the corpse should be abolished.[311]

In conclusion, the Protocol can be seen as ground-breaking in Africa and deserves merit for its attempts to explicitly address some cultural and traditional issues that have long formed human rights discourse in Africa. If properly harnessed the Protocol can be the desired tool for change for the rights of women within the African continent and in Nigeria in particular.[312]

[309] Ndashe op cit note 249.
[310] Atoyebi op cit note 211 at 75.
[311] See chapters 4 & 5.
[312] Ibid.

CHAPTER FOUR

RIGHTS OF WOMEN AND THE NIGERIAN RELIGIO-CULTURAL CONTEXT

I INTRODUCTION

The place of women's rights in culture and religion is the focus of numerous academic discussions in Nigeria. As in many other nations south of the Sahara, culture and religion in Nigeria arguably determine societal beliefs, norms, and attitudes towards women. According to Abara,[1] culture has a pervasive influence on women's rights in Nigeria. Makama posits that culture and religion have dictated men and women's relationships for centuries and have entrenched male domination into the structure of social organisations and institutions at all levels of leadership.[2] The patriarchal society sets the parameters for women's unequal position by condoning gender differentiation and justifies the marginalization of women in every area.[3]

Several arguments are advanced to show that the gender differentiation and inequality prevalent in Nigeria have roots in the colonial system.[4] Authors such as Awe,[5] Oyewunmi[6] and Falola[7] argue that traditional Nigeria had its notions of rights, which was complementary to the rights of men, and that women's rights were sufficiently protected during the pre-colonial era. They further contend that the entry of colonialism/Western influence brought with it the current discriminations and inequalities now suffered by women in Nigeria. Ogbomo, on the other hand, argues that the studies of early Nigerian women focused only on the outstanding women leaders and warrior queens such as Amina, but these were not the norm.[8] Chapter Four, however, presents arguments to refute the position of the authors who may argue that colonialism introduced discriminations and inequalities to Nigeria. Chapter 4 presents a critical analysis of the complementary position of women in Nigeria before colonialism and the discriminations imposed on women. The chapter concludes that patriarchy and discrimination against women existed in Nigeria before colonization, however, colonization worsened the position of women by enforcing the strong patriarchal systems that were already in place at the time in Nigeria.

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[1] Chinwe Julie Abara *Inequality and Discrimination in Nigeria; Tradition and Religion as Negative Factors Affecting Gender* (2012) at 3.
[2] Godiya Allanana Makama (ed) Patriarchy and gender inequality in Nigeria: The way forward (2013) 9 (17) *European Scientific Journal* at 116.
[3] Salaam T *A Brief Analysis on the Situation of Women in Nigeria Today, SM* (2003) in Makama op cit note 2 p 125.
[4] Ibid at 120.
[5] Awe Bolanle 'The Iyalode in the traditional Yoruba political system' in Andrea Cornwall (ed) *Readings in Gender in Africa* (2005) at 196–200.
[6] Oyewunmi Oyeronke *The Invention of Women: Making an African Sense of Western Gender Discourses* (1997) at 13–15.
[7] Toyin O Falola 'The role of Nigerian women' (2007) *Encyclopaedia Britannica*, available at *https://www.britannica.com/topic/role-of-Nigerian-women-1360615*, accessed on 8 January 2021.
[8] Ogbomo O W and Ogbomo Q O 'Women and society in pre-colonial Iyede' (1993) 88 (4/6) *Anthropos.*

The aim of this chapter is to address research question two (RQ 2) – What was the status and place of women in historical Nigerian society, and to what extent have religious beliefs and practices, and cultural values and systems hindered the promotion of women's rights in Nigeria as entrenched in the Protocol to the African Charter on the rights Rights of Women in Africa (hereinafter referred to as the Protocol)

This chapter commences with an analysis of the position, status, and rights of women in Nigeria during the pre-colonial era, and the influence of colonization on those rights. It also presents the various justifications made for the existence of women's rights during the pre-colonial era and argues that contrary to the position held by several authors on women rights, the gender differentiations and discriminations currently suffered by women have been long existent within Nigerian culture.

The chapter proceeds to consider the status, role, and rights of women within the three main religions in Nigeria: African Traditional Religion, Christianity, and Islam, and how these religious beliefs and prescriptions fuel the discriminations suffered by women in Nigeria. Available literature and relevant religious texts are reviewed to provide a clear understanding of the various religious principles and practices that affect women.

The chapter also discusses the cultural norms, values, and practices prevalent within the Nigerian society that discriminate against women, as evidenced in the three main cultural groups: Hausa/Fulani, Igbo and Yoruba. The cultural practices include child/forced marriage, female genital mutilation, widowhood rites and female inheritance.

II HISTORICAL CONTEXT OF WOMEN'S RIGHTS IN NIGERIA

Nigeria is a pluralistic society in terms of ethnicity, religion, and laws. Religion, particularly, is often blended with ethnicity/culture in Nigeria. Legal pluralism in Nigeria takes three distinct forms. First, there is the legal pluralism arising from the diverse legal cultures in the country. As was stated in Chapter Three, laws in Nigeria are derived from three distinct laws or legal systems, namely, customary law, Islamic law, and received English common law.[9] Customary law is that which is indigenous to Nigeria, with each of the various ethnic groups in the country having its own distinct customary law.[10] Second, legal pluralism in Nigeria arises from the country's federal system where legislative power is shared between the federal and state governments.[11] This has resulted in differences between federal and state laws as well as others among the individual states laws. For example, federal laws govern statutory marriages while state laws govern Islamic and customary law marriages. Thirdly, legal pluralism is a product of Nigeria's political history, particularly in the separate ways in which the colonial authorities administered the northern and southern

[9] Received English Laws include the Common law, the Doctrine of Equity, and the Statutes of General Application. Abdulmumini A Oba 'Religious and Customary laws in Nigeria' *https://law.emory.edu/eilr/content/volume-25/issue-2/religious-nigeria/religious-customary-laws-nigeria.html.* accessed on 10-09-2020.
[10] Yemisi Dina et al, 'Guide to Nigerian Legal Information' GLOBALEX (Feb. 2005), http://www.nyulawglobal.org/globalex/nieria.htm accessed 04-05-2021.
[11] Section 4 1999 Constitution.

protectorates. Over the years, the various regions had their applicable unified laws, and currently the bulk of the laws in the states owe their origin to the era of regionalism.[12]

Nigerian society is patriarchal in nature, and is a society in which gender roles and relations are distinct and are informed by the dynamics of patriarchy which casts women in a subordinate role to men.[13] As outlined by Walby, 'patriarchy is a system of social structures and practices in which men dominate, oppress and exploit women'.[14] Cockburn describes patriarchy as 'a system in which leadership, authority, aggressiveness and responsibility reside in men and masculinity, while nurture, compliance, passivity and dependence are the part of women and femininity'.[15] In patriarchal systems, men are regarded as the authority within the traditional family, clan or tribe, while possessions are passed on from father to son and lineage remains only in the male line.[16]

Despite Nigeria's adoption of several international and regional laws and treaties on women's rights,[17] and the various local legislations[18] that should protect the rights of women in Nigeria, women continue to suffer massive discriminations and hardship. The challenges faced by women seem to be further compounded by the unending debate concerning the recognition of an African concept of rights, and the rebuttal of international human rights prescriptions. It is also argued that the discriminations and subordinations now suffered by Nigerian women are as a result of 'European patriarchy' ushered in by the colonial administration.[19] This European patriarchy was said to consider women as subordinate to men and held stereotyped perceptions of women's roles in the domestic and public domains.[20] As mentioned earlier, Okome states that 'the elements of institutionalized male dominance present in Nigerian society were as a result of 'Victorian 'ideology' which restricted women from full participation in the public sphere'.[21]

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[12] Abdulmumini A Oba 'Religious and Customary Laws in Nigeria' (2011) 25 (2) Sharia, Family, and Democracy: Religious Norms and Family Law in Pluralistic Democratic States, *Emory International Law Review* available at *https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1022&context=eilr* accessed 04-05-2021.

[13] Olabisi I Aina *Women, culture and Society* in Amadu Sesay and Adetanwa Odebiyi (eds) Nigerian Women in Society and Development. (1998); M O Okome 'Domestic, Regional and International Protection of Nigerian Women Against Discrimination: Constraint and Possibilities' (January 2002) *African Urban Quarterly* 6(3); O A Akintan, Akintan 'Powerful and Powerless: Women in Religion and Culture in the Traditional Ijebu Society' (2013) 3(22) *Journal of Social Science*; Abara op cit note 1; Makama op cit note 2.

[14] Sylvia Walby *Theorizing Patriarchy* (1990) 24.

[15] Cynthia Cockburn *Can We See Gender as Cause and Consequence of Militarization and War*? (2004) available at https://www.cynthiacockburn.org/Blogfeministreview.pdf accessed 04-05-2021.

[16]Sefinatu Aliyu Dogo 'The Nigerian patriarchy: When and how' (Sept-Oct 2014) *Cultural and Religious Studies* Vol. 2, No. 5, 263-264.

[17] *The Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights 1966, International Covenant on Civil and Political Rights 1966, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, African Charter on Human and People's Rights 1981.*

[18] *The 1999 Constitution, Marriage Act, The Child Rights Act, The Violence Against Persons (Prohibition) Act 2015 (VAPP), Customary Law.*

[19]Igbelina-Igbokwe N *Contextualizing Gender-based Violence within Patriarchy in Nigeria* (2013) 632 available online at *http://pambazuka.org/en/category/features/87597* accessed 24-04-2020.

[20] Ibid.

[21] Okome M O 'Domestic, regional and international protection of Nigerian women against discrimination: Constraint and possibilities' (2002) 6(3) *African Urban Quarterly.*

However, many studies on the historical status of women in Nigeria seem to focus more on some outstanding women leaders, founders of settlements, warrior queens such as Amina and some others; but these women were not the norm.[22] Arguably, Nigeria's pre-colonial society was mostly dominated by men, with many instances of patriarchal oppression occurring at the time.

The sections below present arguments by several authors justifying the existence of rights for women during the pre-colonial era, and the effect of colonisation on those rights. The position of women within the three main cultures and religions in Nigeria are analysed, and dissenting arguments offered to show that patriarchy and gender subordination have long been in existence within the Nigerian society.

(a) Gendered relations during the pre-colonial era

A detailed review of the existing literature on the Nigerian woman in the pre-colonial era is filled with arguments attempting to show that women in pre-colonial times occupied positions of authority and played significant roles in political and economic matters. Arguments abound that the discrimination now suffered by women in Nigeria resulted from colonialism and the introduction of Western conceptions of gender roles.[23] It is, however, difficult to concur with these views when it is clear that gendered distinctions and restrictions existed prior to colonialism, for example, on issues of land acquisition and land sharing, which still apply only to women that have husbands and fathers as their go-betweens. As will be seen in the sub sections below, discriminations against women in Nigeria was not introduced by colonialism. However, the discriminatory structures now prevalent within Nigeria were reinforced by colonialism.

Awe, in her study of Nigerian women in pre-colonial times, shows ample evidence of a female population that was not only industrious and resourceful, but which demonstrated significant and distinguished leadership within their society.[24] These women include Queen Moremi of Yoruba, Daura of Hausa, Queen Amina, Queen Kambasa, Iyalode Efunsetan, and Mrs Funmilayo Ransome-Kuti, who all played roles of 'saviours' in times of crisis, and were also the heroines of the 'Women War of 1929'.[25] This war was as a result of the vast frustration of the Igbos with the colonial administration, the high level of taxation and the grievances against the system of warrant chiefs that undermined tradition. Queen Kambasa and Queen Amina had been vested with full sovereignty and placed at top of a social hierarchy, while Iyalode Efunsetan occupied the highest rank open to women and participated with a high degree of success in the exercise of power.[26] According to Awe, the traditional system which gave women the chance to have a say in matters that affected their lives, particularly in the public domain, was disrupted during the colonial era; and that power was never fully regained. The effort to recover some of the authority gave rise to the

[22] Ogbomo & Ogomo op cit note 8 at 473.
[23] Igbelina-Igbokwe op cit note 19.
[24] Bolanle Awe (ed) *Nigerian Women, A Historical Perspective* (2001).
[25] The Women's War of 1929.
[26] Ibid.

emergence of figures like the heroines of the Women's War among the Igbo and Ibibio, and Mrs Funmilayo Ransome-Kuti and Adunni Oluwole among the Yoruba.[27]

Falola states similar views to those of Awe and argues that women during the pre-colonial era played a major role in both social and economic activities.[28] Women were central to trade among the Yoruba and had enormous opportunities for accumulating wealth and acquiring titles. However, though women were central to trade, the division of labour was along gender lines and women only controlled economic activities such as food processing, mat weaving, pottery, and cooking – although they considered these positions empowering. Moreover, contrary to Falola's view on communal ownership of land, it has been shown that women had access to land only through their husbands or parents, which was also a clear case of gender discrimination.[29] Falola also ignores the lack of fundamental rights of women to equality in her argument regarding the exalted position of *the Iyalode*, a position in Yoruba culture that permits select women to sit in the council of chiefs and traditional leaders. Her position is, however, limited to women affairs only. The *Iyalode* position is below that of other chiefs in council and she is entitled to only one vote in decision making. Only one woman can be represented in the council in Yoruba land, which makes it difficult for her to expect a majority vote where she airs her opinions.

Rojas argues that during the pre-colonial era women held positions of authority in their religious circles. The religion of many Nigerian societies in the pre-colonial era recognised the social importance of women by emphasising the existence of female gods of fertility and social peace.[30]

Amodu, however, presents dissenting arguments when stating that a woman's place in traditional Nigerian society was seen to be in the home where she was confined to domestic chores, and the bearing and rearing of children; whereas the man was the leader and head of the society.[31] From the time a child is born in Nigeria, they are placed in the role ascribed for their gender by society. Children are brought up in the awareness of societal gender roles and grow up to fulfil them. These roles confine the genders to supposedly appropriate manners of behaviour and areas of endeavour based on their biological identification of being either male or female.[32] This philosophy of gender differences, according to Azodo and Menon, legitimises various forms of oppression as natural and inescapable, because the oppression arose from supposedly natural sources. Where the people fail to conform to the cultural expectations, they are regarded as deviants.[33]

Rojas, writing in 1990, postulates similar views to those of Azodo. According to her, Nigerian society has always been male dominated. Though women in pre-colonial Nigerian societies held a

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[27] Awe op cit note 24.
[28] Falola op cit note 7.
[29] Ibid.
[30] Maria Rojas 'Women in pre-colonial Nigeria' (1990) 32 (English) *African Postcolonial Literature in English in the Postcolonial Web*, available at *www.postcolonialweb.org/nigeria/precolwon.html*, accessed 5 August 2020.
[31] Azodo A U & Eke M N *Gender and Sexuality in African Literature and Film* (2007).
[32] Sefinatu Aliyu Dogo 'The Nigerian patriarchy: When and how' (2014) 2 (5) *Cultural and Religious Studies* 264.
[33] Nivedita Menon *Seeing Like a Feminist* (2012).

complementary position to the men, the patrilineal and patriarchal kinship structures were always prevalent.[34] Okome also argues that in pre-colonial Nigerian society, male dominance was built into the social system of most Nigerian ethnic groups.[35] The traditional Yoruba culture, for example, which gave significant autonomy to the women, had embedded inequalities which were hardly perceived because they were 'culturally legitimized'.[36] These inequalities were translated into the present social arrangement where women are still relegated to a secondary role and compelled to fulfil both its traditional and modern expectations.[37]

Evident from several of the authors' arguments mentioned above, women in Nigeria were subjected to varying levels of discrimination from time immemorial owing to the dictates of culture and religion.[38] The inequalities in the status of women and the discriminatory cultural practices that now exist were not as a result of the introduction of colonization but have always formed part of the Nigerian culture and have been a hardship that women have been taught to endure by virtue of their being women. For example, the type of education individuals received in the traditional society was based on gender stereotypes. A girl -child in the pre-colonial era was expected to learn the skills that would make her play the role of a responsible adult woman. She was exposed to socially imposed responsibilities of motherhood and domesticity, to embrace the characteristics of motherhood, while her male counterpart was socialised into manhood status: a role of control and authority over women and girls.[39]

(i) Women in Pre-Colonial Hausa/Fulani Society

The heterogeneous Hausa/Fulani constitutes the largest ethnic group in Nigeria and is one of the most influential ethnic groups in West Africa. Although a small number of Hausa/Fulani in northern Nigeria are Christians, Hausa/Fulani culture and society are Islamic.[40] Between the fifteenth and the eighteenth centuries, northern Nigeria was Islamised, resulting in the introduction of Shari'ah law. According to the Nigerian Constitution of 1999, Muslim states in northern Nigeria are allowed to apply Shari'ah law in personal matters such as marriage, divorce, inheritance, custody, and landed properties.

Historical accounts of Hausa/Fulani pre-colonial society point to the fact that women monarchs ruled at times. There were exceptional examples of women in northern Nigeria, who gained access to political power, while some played roles of warriors, even spies in the political development of their kingdom. In pre-colonial Bornu state, for example, some women played active roles too. Historical records of ancient Zaria also admired the efforts of women. According to Attoe, the modern city of Zaria was founded in the first

[34] Rojas op cit note 30.
[35] Okome op cit note 21 at 35.
[36] Simi Afonja 'Changing modes of production and the sexual division of labour among the Yoruba') in Eleanor Leacock & Helen I Safa (eds) *Women's Work: Development and the Division of Labor by Gender* (1986) at 122.
[37] Ibid.
[38] Okome op cit note 21 at 35.
[39] Ezegbe Bernedeth Nkiruka & Felicia N Akubue 'An Appraisal of the status of Nigerian women: Educational implications and national development' (2012) 2(2) *American Journal of Sociological Research*, 27–31.
[40] Tim S Braimah 'Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage' (2014) 14 (2) *African Human Rights Law Journal* at 474–488

half of the sixteenth century by a woman called Queen Bakwa Turuku. She also had a daughter called Amina who subsequently succeeded her as queen.[41]

In Ezeigbo's account, 'the finest example was the magnificent Queen Amina of Zazzau (Zaria) in the sixteenth century, famous for her exploits in war and politics'. She conquered the Hausa land and exacted tributes from its different parts.[42] Bergstrom opines that historical studies on what is now Kano State in northern Nigeria have shown that women acted as tax collectors, market administrators and religious leaders through the famous Bori spirit possession cult.[43] Many of these Hausa/Fulani women also controlled the activities of large households, and frequently invested their time and labour in money-making pursuits.[44]

Regardless of the power exuded by some of these exceptional Hausa/Fulani women during the pre-colonial period, many women were arguably subjected to a series of discriminations and inequalities by virtue of their gender. The practice in Hausa/Fulani society was a culture of the subordination of women to men, and this stemmed from the intersection of the patriarchal Islamic and Hausa/Fulani cultural values which were in place even before the colonisation of Nigeria.[45] Hausa/Fulani womanhood was characterised by their Islamic beliefs and cultural norms that are considered appropriate regarding the roles and behaviour between men and women. Shari'ah law, for example, advocated and still advocates the practice of *purdah,* a social practice of female seclusion prevalent among Muslims in northern Nigeria. The practice takes two forms: the physical segregation of the sexes and the requirement that women cover their bodies and conceal their form, and the exclusion of women from public life and activities.[46] Seclusion is the appropriate living arrangement for married Hausa/Fulani women, irrespective of their age.

In Callaway's account, Hausa/Fulani women were clearly separated from, and subordinate to, men. They did not go outside during the day, either to shops or to the market. They did not generally stand for public office, belong to organisations, or work outside the home; they had fewer property rights than men and could be divorced merely by denunciation, whereupon they lose custody of their children. They were taught from an early age that they are inferior to men and that in all matters they must refer to male authority.[47]

Another cultural practice that discriminated against women in pre-colonial Nigeria was the betrothal of young female children to adult males, which was a regular practice among the Hausa/Fulani ethnic group. The practice of child marriage in northern Nigeria is a cultural practice which was heavily influenced by

[41] Effah-Attoe S A *Women in the Development of Nigeria since pre-colonial Times* (2002).
[42] Awe op cit note 24 at 82–83.
[43] Kari Bergstrom *Legacies of Colonialism and Islam for Hausa Women: A Historical Analysis, 1804-1960* (2002) at 276.
[44] Callaway BJ Ambiguous consequences of the socialisation and seclusion of Hausa women (1984) 22 (3) *The Journal of Modern African Studie*s 429–450.
[45] Braimah op cit note 40.
[46] Bergstrom op cit note 43.
[47] Callaway op cit note 44.

Islam.[48] The practice was greatly influenced by the Muslim Prophet Muhammad's marriage to Aisha as reported in the Hadiths and has been endorsed by the Muslims in northern Nigeria as their reason for the practise.[49] There, about 48 per cent of Hausa/Fulani girls are married by age 15 and 78 per cent are married by age 18.[50]

Another cultural/traditional practice within the Hausa/Fulani culture is female genital mutilation/female circumcision (FGM/FC). According to the National Demographic Health Survey (NDHS 2008), the most severe forms of FGM/FC are seen in the northern part of Nigeria.[51] FGM/FC is carried out in many Muslim communities with the belief that it is a requirement of the Islamic faith.[52]

(ii) Women in Pre-Colonial Igbo Society

The status of women within the pre-colonial Igbo society has been described by several authors as 'complementary' to that of men. Women were not completely dominated or tyrannised by men and had avenues through which their impact was felt, and their social standing gave them the leverage to compete favourably with their male counterparts. The strength of the Igbo women was particularly in their ability to form strong organisations that controlled their affairs, and the political influence they possessed on the basis of their collective strength.[53] It was through such female organisations that women retained power in the patriarchy that was patterned to marginalise them.[54] The impact of the Igbo women was, for example, demonstrated in the Aba Women's War of 1929.[55]As mentioned earlier, the war was as a result of the frustration of the Igbo with the colonial administration, the high incidence of taxation and the grievances against the system of warrant chiefs that undermined tradition. Women were also significant contributors in the development of long-distance trade which was evident in the trading activities between delta communities and those of the hinterland, and across the delta from east to west.[56]

Chuku analyses the life of Igbo women in the pre-colonial era as one in which gender roles were not rigidly masculinised and feminised. The flexibility of gender relations allowed women to play male roles and vice versa.[57] Colonialism, according to Chuku, had a far-reaching effect on the economic activities of women and their socio-political roles. She posits that women concentrated their economic activities on

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[48] Braimah op cite note 40.
[49] Ibid.
[50] United Nations Population Fund 'Early marriage in Nigeria' available at *http://nigeria.unfpa.org/nigeriachild.html* accessed on 21 August 2020.
[51] National Population Commission and ICF Macro National Demographic Health Survey 2008 (2009) at 299–314; TC Okeke, USB Anyaehue & CCK Ezenyeaku' An overview of female genital mutilation in Nigeria (2012) 2 *Ann Med Health Sci Res* :70–73.
[52] Antika Siddhanta 'Attitude and perception towards female circumcision: A study of vulnerability among women in Kenya and Nigeria', available at *www.researchgate.net* accessed on 21 August 2020.
[53] Egodi Uchendu 'Woman-woman marriage in Igboland' in Ada Azodo and Maureen Eke (eds) *Gender and Sexuality in African Literature and Film* (2007) 141.
[54] Emma Nina Mba, *Nigerian Women Mobilised: Women's Political Activity in Southern Nigeria, 1900-1965 (*1982) at 36.
[55] Afigbo A E *'The Warrant Chiefs'* (1972) at 207–248; A E Afigbo, *Ropes of Sand* (1981); S. Leith-Ross *Steppin-Stones: Memoirs of Colonial Nigeria (1907 –1960)* 1983 at 92.
[56] Nkparom C Ejituwu & Gabriel A O I (eds) *Women in Nigerian History: The Rivers and Bayelsa States Experience* (2002) at 39.
[57] Gloria Chuku *Igbo Women and Economic Transformation in South-eastern Nigeria 1900–1960* (2005) 7.

agriculture, crafts and local industrial production and trade. However, she believes that these contributions were affected by the complexities of the Victorian gender ethos and shifting gender relations, where men were encouraged to enter previously female-dominated economic activities.

Amadi argues that life of the pre-colonial Igbo was not, however, that of unmitigated chaos and lawlessness. Law and order prevailed with human rights protection being a significant concern of the society.[58] Rural Igbo women were able to assert themselves positively in the politics of their community, and had the opportunity to participate in decision-making, especially on matters affecting their welfare and status, and had equal access to political power.[59] However, in some situations, women were excluded from participating in political decisions affecting the community at large. They nevertheless had complete control over the affairs concerning themselves.[60]

In Uchendu's account, women displayed wealth through marrying wives for their husbands, while others were wealthy and influential and married fellow women as a means of celebrating their wealth and for economic gain. This privilege of marrying a wife gave the wealthy Igbo women equal opportunities with the men in their society.[61]

The principle of seniority, determined by biological age or by order of marriage into a lineage group, or by membership of an association or organisation, also guided relationships between males and females in society. Age elevated some women to participate in certain ceremonies that were restricted to men.[62] Another requirement that conferred authority and power on individuals in Igbo society was positive/outstanding service. There were women who, by their own achievements, occupied such important social positions as female kings and queens, priestesses, and female priests.[63] Women were also able to provide health care and spiritual services as most traditional religions had immortal females as goddesses. Most of these goddesses were portrayed as river goddesses and offered solutions to fertility issues and other ailments.[64]

Although the pre-colonial Igbo society was predominantly patrilineal, it also had matrilineal and dual-descent subgroups. While matrilineal descent groups held agricultural land, patrilineal descent groups

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[58] Amadi I R 'Human rights in pre-colonial Igbo society of Nigeria: An analysis'*Africa: Rivistatrimestrale di study e documentaxionedell'IsL"Africa e l'Oriente, Anno* 46(3) (1991) 403–410.
[59] Itang Ede Egbung 'Women's political empowerment in Nigeria*:* A reading of Akachi Ezeigbo's *The Last of the Strong Ones*' in Toyin Falola & Wanjala S Nasong'o (eds) Gendering *African Social Spaces: Women, Power, and Cultural Expressions* (2016) at 79.
[60] Theodora Akachi Ezeigbo 'Traditional women's institutions in Igbo society: Implications for the Igbo female writer (1990) 3 (2) (151) *African Languages and Cultures* 49–165.
[61] Egodi op cit note 53 at 141.
[62] Chuku op cit note 57.
[63] Ibid.
[64] Nefi Ainesi Wole-Abu *Nigerian Women, Memories of the Past and Visions of the Future through the Communication Narratives of the Media'* (2018)

controlled residential property. In each of the descent groups, the flexibility of gender roles and identities created avenues for both men and women to excel in society.[65]

Regardless of the strength exuded by women within the pre-colonial Igbo society, women also experienced gendered discrimination, and the region was divided along gender lines. For example, in trading, women were not allowed to trade in all types of crops and could not trade freely. Women were not allowed to trade in yam crops as it was regarded as a male crop.[66] Though land was largely communally owned, only the lineage of men could own land individually, while women were denied the right to own land. The only way women could have access to land for cultivation was in their capacity as female-sons' or 'female-fathers' (by inheritance) or as sisters, daughters, or wives to men.[67] Women were also involved in the processing of food and trading, but they could not inherit the land even though they tilled the land with men.[68]

Furthermore, even though women during the pre-colonial period were considered as free adults with independence in terms of income, they were limited as they were still regarded as subordinate to male authority.[69] According to Ejidike:

> The male-female dichotomy was easily perceptible, accepted and recognized, perhaps overlooked, as a fact of nature like the law of gravity. It underlined all societal practices and retains its resilience today.[70]

Women never inherited property from their fathers, and most developed property belonged not to the first child but to the first male child. Where a husband died early his wife and property reverted to his brother unless there was a male child who had come of age and could exercise property rights.[71] In some instances, a widow would be inherited by her deceased husband's kinsman, usually by the son or brother of her deceased husband. This practice was aimed at ensuring that the property of the deceased is managed and held in trust for a minor son, and to assist the widow to provide labour for cleaning, ploughing, planting, and harvesting, and to contribute to the maintenance of her household.[72] A young widow was expected to continue bearing children with her deceased husband's kinsman, with the children belonging to her late husband. Where the widow had a grown son, she was under pressure to marry her deceased husband's

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[65] Chuku op cit note 57.
[66] Chuku op cit note 57, At 36; Agatha Ifeyinwa Nnnazor *The Institutional Factors that Influence Women's Agricultural Productivity: The Case of Igbo Women in South-Eastern Nigeria* (unpublished dissertation, University of British Columbia, 1993), available at *https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/831/items/1.0086276* accessed on 10 October 2010).
[67] Chuku op cit note 57 at 36; Women that chose to become "'female-son's and female-father" were not allowed to get married, but must stay in their fathers' house to continue their father's lineage.
[68] Wole-Abu op cit note 64.
[69] Ibid.
[70] Okey Martin Ejidike 'Human rights in the cultural traditions and social practice of the Igbo of South-Eastern Nigeria' (1999) *Journal of African Law* at 94.
[71] Ibid.
[72] Canada Immigration and Refugee Board of Canada Nigeria *Igbo Levirate Marriage Practices* 2000 available *at https://www.refworld.org/docid/3ae6ad69c.html,* accessed (26 October 2020).

relative. She depends on her son to perform the male role in the gendered division of labour and give other required assistance.[73]

Another practice which women had to endure in pre-colonial Igbo society was female genital mutilation or female circumcision (FGM/FC). FGM/FC was encouraged as an element of the rite of passage preparing young girls for womanhood and marriage.[74] The practice was believed to, among others, promote chastity, ensure genital hygiene, ensure a level of sexual stimulation and serve as a passage to womanhood.[75]

Forced marriages were also common in Igbo society, with parents choosing spouses for their daughters because they thought that they were acting in their best interests. Igbo marriages were a means of building alliances and forging communal solidarity, regardless of the inequalities that the young girls suffer within such marriages[76]

Chuku further argues that colonialism altered the status of women in eastern Nigeria and reduced their power through the imposition of Western conceptions of family, women, and gender roles. She argues that women were stripped of important socio-political roles not only for reasons of economic functionality, but because of European racial and gender prejudices.[77] Rojas asserts that colonialism introduced the idea that the appropriate social role for women was to engage in child rearing, home care, and other domestic chores.[78] Okome has contended that the introduction of Western education and Christianity changed the role and status of Nigerian women. Colonial education emphasised the preparation of women for domestic rather than leadership roles within society.[79] Christian missionaries and the colonial administrators, therefore, were believed to have introduced the assumptions of European patriarchy into Nigerian society through education and their religious beliefs.[80] According to Ezeani, colonialism brought the colonial ideology of the domestication of women. Women were not to function in the public domain like men, while the purpose of education was to enable men to acquire skills that would help them serve in public offices.[81]

In Callaway's account, often the people who were appointed 'native authorities' during the colonial rule were male. This created a ruling system dominated by men.[82] Women became non-existent because

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[73] Ibid.
[74] Frances A Althaus 'Female circumcision: Rite of passage or violation of rights?' (1997) 23 (1) *International Perspectives on Sexual and Reproductive Health available at https://www.guttmacher.org/sites/default/files/article_files/2313097.pdf 131* accessed 21-06-2021.
[75] Rose Nkechi Uchem et al 'Female genital cutting and the role of religious education in Igboland' (2016) 24 (7) *Transylvanian Review* available at *https://www.researchgate.net/publication/304541011_Female_Genital_Cutting_and_The_Role_of_Religious_Education_in_Igbol and* accessed 31-06-2021.
[76] Buchi Emecheta *The Bride Price* (1976); Musisi B Nakanyike 'Women, "Elite Polygyny" and Buganda State Formation' (1991) 16 (4) *Signs*) at 757–86.
[77] Chuku op cit note 57 at 86.
[78] Rojas op cit note 30; Dogo op cit note 32 at. 274.
[79] Okome op cit note 21.
[80] Ibid.
[81] OE Ezeani 'Gender and political participation in Nigeria' (1998) 1 (1) *International Journal of Studies in the Humanities* at 100.
[82] Callaway op cit note 44.

they no longer had a place in traditional authority, and there was no 'female sphere' into which they could retreat.[83] For example, in the Igbo region, the institution of warrant chiefs was created, while the male office of the *Obi* was transformed into a salaried position. The Obi's female counterpart, the *Omu* was ignored. Women were not considered for appointment as warrant chiefs, women organisations ceased to be politically active, and the market administration which had been under the jurisdiction of the Omu was taken away from her. Salaried men dominated the new bureaucratic structure and the Warrant Chief System introduced by colonialism.[84] The colonial government was masculinised while domestic responsibilities were delegated to women.[85]

Dogo further argues that as far as trade was concerned, men also dominated the farming of cash crops which were needed for the international market and were therefore of more importance and received more focus than other crops, while women were confined to the growing of food crops which attracted few returns.[86]

(iii) Women in Pre-Colonial Yoruba Society

The activities of women during the pre-colonial Yoruba society were arguably within a gender relations structure that perpetuated and legitimised male domination. Arguments have shown that the division of labour was a gendered one, where men were the dominating gender and leader of the family and society and took decisions, while women were subordinate partners fulfilling their societal roles.[87] Oyewunmi states that one of the major differences in gender was in respect of the different roles in pregnancy at the beginning of marriage.[88] When people married in Yoruba society the newcomer wife would be ranked below all the members of the family she married into. She could only climb the power system by having children. By adding to the family lineage, a woman would move up in seniority.[89]

Women under Yoruba culture did not have absolute inheritance rights; they could only inherit land from their parents, brothers, or sisters, but not from their husbands.[90] This is because there was no concept of co-ownership of property by couples in traditional Yoruba culture. It was presumed that all substantial property, including land, belonged to the husband; and the woman herself was considered a form of property, a chattel. Widows therefore had no inheritance rights under these traditions.[91] Although married women did not have inheritance rights to their husbands' property, they were autonomous in the sense that

[83] Ibid.
[84] Chuku op cit note at 57.
[85] Egbung op cit 59 at 79.
[86] Dogo op cit note 32 at 274.
[87] Ibid.
[88] Oyewunmi Oyeronke '*The Invention of Women: Making an African Sense of Western Gender Discourses,'* (1997) at 13–15.
[89] Ibid.
[90] Aderanti Adepoju *Family, Population and Development in Africa* (1997) 42.
[91] Yetunde A Aluko 'Patriarchy and property rights among Yoruba women in Nigeria' (2015) 21 (3) *Feminist Economics* at 57.

they could accumulate their own property, to which their husbands could not lay claim.[92] Yoruba women also had the capacity to contract, acquire, and dispose of all forms of property, including land.[93]

Several dissenting arguments abound to show the positive roles of women within pre-colonial Yoruba society. According to Oyewunmi, patriarchy was not always present among the Yoruba but the concept of 'seniority' ordered and divided their society.[94] She bases this claim on the fact that 'the Yoruba language has no gender markers, whereas seniority is linguistically marked and is an essential component of identity'.[95] Pre-colonial Yoruba society also accommodated females as economic leaders who moved efficiently between overlapping domestic and public social spaces, and exercised marriage and property rights.[96] The society considered the work women did as complementary to the work of men; and some women achieved an impressive status in the economic and social realms of Yoruba life.[97]

Yoruba society was said to offer the greatest opportunities for women to participate in economic activities such as manufacturing and trade. Women were described as the major figures in long-distance trade, with enormous opportunities to accumulate wealth and acquire titles. Whereas men dominated the inter-regional long-distance trading activity, women were active in the intra-regional retail trade. Men dominated activities such as clearing of land, land tilling and sowing, while women played important roles in the weeding and harvesting of plants and produce, and the threshing and storage of crops.[98]

Awe posits that Yoruba women during the pre-colonial era were also politically relevant within both the private and public spheres.[99] Women rose to acquire the prestigious chieftaincy title of *Iyalode*, a position of great privilege and power.[100] Women also took chieftaincy titles and held the highest political office of Oba, the Yoruba term for traditional rulers.[101] Another example was twelfth-century *Moremi* of Ile-Ife.[102] There were also female *Obas* known as 'kings' in Ile-Ife, in the Oyo Kingdom, Ondo, and in other communities.[103] Women were known to occupy certain positions among the kingmakers and among the council of elders who helped the Oba to rule. Although women in southern Nigeria did not have dynamic

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[92] Nathaniel Akinremi Fadipe *The Sociology of the Yoruba* edited and introduced by Francis Olu Okediji & Oladeju O Okediji (1970).
[93] Mba op cit note 54; Nurudeen Alliyu *Propertied Women in a Patriarchal Society: A Study of Their Characteristics, Attitudes and Roles in Development*) (unpublished PhD dissertation, University of Ibadan, 2004).
[94] Oyeronke op cit note 88 at 13–15.
[95] Oyeronke op cit note 88 at 13–15.
[96] Ibid; Judith Hoch Smith 'Radical Yoruba female sexuality: The witch and the prostitute' in Judith Hoch-Smith et al *Women in Ritual and Symbolic Roles* (1978 at 245.
[97] Oyeronke op cit note 88 at 471.
[98] Iyela A 'The economic role of Nigerian Women in the pre-colonial period (1998) *Academic Discourse: An International Journal*.
[99] Awe op cit note 24.
[100] Oyeronke op cit note 88; Hoch Smith op cit note 96.
[101] Awe op cit note 24 at 196–200.
[102] Falola op cit note 7.
[103] Awe op cit note 24 at 582–83.

female organisations through which their impact could be felt in their societies as a group, individual women of high rank and status exercised some political power through the office of the queen mother.[104]

Despite the above and irrespective of the numerous arguments canvassed that women had complementary rights to men during the pre-colonial era, it is strongly arguable that Nigerian society, past and present, was structured on male dominance and patriarchy, and the reality and existence of this cannot be denied. While acknowledging the accounts of the great achievements and contributions made by some women during the pre-colonial era, arguments have also been made to show that women were in several ways restricted from exercising similar and equal rights and opportunities with men. Whether these practices are described as a gendered distribution of labour, as was evidenced in the Yoruba culture, or the male lineage and female inability to inherit property as seen in the Igbo culture, or the cultural restrictions of movements and obligatory practices of child marriage as was the case among the Hausa/Fulani, it is evident that the Nigerian society, past and present, was structured on male dominance and patriarchy.

Another source of discrimination against women is found within religious practices. While the religions of many Nigerian societies conceive the position of women as complementary to that of men, men are still believed to be superior to women and, to some extent, in control of women. Sibani observes that the organisational structures of religious institutions in Nigeria as well as the doctrines inferred from interpreting religious books have had a very strong influence on the level of regard accorded women within society.[105]

III RELIGIOUS PRACTICES AND THE RIGHTS OF WOMEN IN NIGERIA

Religion or belief is central to the daily lives of millions of people around the globe. Organised religions often have some form of force and regulation imposed on their members, and these religious traditions have become an institutionalised aspect of culture.[106] Religious beliefs in most parts of the world reinforce traditional patriarchal relations between the sexes. Most religious beliefs uphold the traditional concepts of male superiority and religious notions of female inferiority.[107] These beliefs become engrained in the people as deep-rooted values and are highly influential in their daily social lives. As such, religious and cultural beliefs and practices have become indistinguishable.

Nigeria is an extremely religious country, and religious leaders are held in high esteem with fear, respect, and love. Religious bodies play major roles in shaping beliefs and perceptions of the people. Most religions in Nigeria perceive women as inferior to men, and women are expected to remain 'submissive' to

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[104] Awe op cit note 24 at 82–3.
[105] CM Sibani 'The politics of gender and power in Nigeria: The Christian analysis (2013) 1 (1) *Journal of Theology, Religion and Cultural Studies*432–49.
[106] Rikki Holmaat & Jonneke Naber *Women's Human Rights and Culture*: *From Deadlock to Dialogue* (2011) 82.
[107] Hauwa Mahdi 'The position of women in Islam' in Ayesha Iman, & Rene I Pittin & H Omole (eds) Women and Family in Nigeria (1989) 55–59; Mojbol Olfnk Okome 'Domestic, regional, and international protection of Nigerian women against discrimination: Constraints and possibilities' (2002) 6 (3) *African Studies Quarterly*; Mathew Hassan Kukah Women, the family and Christianity: Old Testament, New Testament and contemporary concepts' in *Women and Family in Nigeria* (1985) at 66–72.

men, and consequently have no equal standing with men. Religion in Nigeria has been described as an instrument used in defence of patriarchy and differential treatment between men and women.[108] Sibani observes that the organisational structures of religious institutions in Nigeria as well as the doctrines inferred from interpreting religious books have had a very strong influence on the level of regard accorded women within the society.[109] According to Mahdi, all religions in Nigeria subjugate women – African Traditional Religion, Christianity and Islam – and contribute to discrimination against women.[110]

(a) African Traditional Religion and women's rights in Nigeria

African Traditional Religion (ATR) is a compilation of the cultural practices of indigenous African people,[111] and it is closely intertwined with culture. The core concept of African Traditional Religion includes the worship of deities, nature worship, ancestor worship, and the belief in an afterlife. The central belief is that human beings do not live in this world alone; there is a sense of their close relationship with nature.[112] Humanity, animals and plants have their own existence and place in the universe as independent parts of a whole.[113] It is also believed that there are spiritual beings that are more powerful than humans who although unseen, exert much power on humans and control their affairs these spiritual beings are believed to exist in a parallel spiritual dimension to earthly life.[114]

Ekenife posits that African Traditional Religion means 'those institutionalized beliefs and practices of indigenous religion of Africa which are rooted in the past Nigerian religious culture, transmitted to the present generation'.[115] Mbiti also asserts that religion in the indigenous Nigerian culture was an integral and inseparable part of the entire culture. African traditional worshippers are guided by the dictates of the patriarchal patterns, customs and belief systems handed to them by their traditional leaders, and these customs and beliefs also discriminate against women.[116]

In the Yoruba traditional religion specifically, women play leadership roles, especially as concerns rituals. However, many of these rituals are discriminatory against women. Examples include, the *Oro Festival* observed by the Yorubas. It is an annual traditional festival that is of a patriarchal nature, as it is only celebrated by male descendants who are paternal natives of the specific locations where the event takes place. During the festivals, females must stay indoors, and death is the penalty for default i.[117]

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[108] Makama op cit note 2.
[109] Sibani op cit note 105.
[110] Mahdi op cit note 107; Kukah op cit note 107.
[111]Douglas R Thomas *African Traditional Religion in the Modern World* (2015) at 154.
[112] Yusuf Turaki Christianity and African gods: A method in theology, Nairobi" (1999) at 95.
[113] Ibid.
[114] Christopher I Ejizu 'Emergent key issues in the study of African Traditional Religion' available at http://www.africaworld.net/afrel/ejizu.htm 7 accessed 22.-08-2021.
[115] OEkwenife A N *Consecration in Igbo Traditional Religion* (1990).
[116] Mbiti J S *African Religions and Philosophy* (1969).
[117] Alade Aromashodu, 'A peep into the secret Oro festival in Yorubaland' (18 February, 2019) Vanguard Newspaper, Nigeria. *https://www.vanguardngr.com/2019/02/a-peep-into-the-secret-oro-festival-in-yorubaland/.*

There is also the *Osun/Osogbo* festival practiced by the Yorubas. This is a festival that attracts over a million worshippers from across Nigeria and Cuba. It is an annual festival celebrated at Osogbo, the capital of Osun State in Nigeria. It involves the carrying of the *Arugba* (a calabash) by a virgin girl who must remain unmarried for the rest of her life.[118] In the event that she desires to marry, she would undergo 'a cleansing ritual' after which a husband is chosen for her, either the king who already has several wives or an initiated leader of the cult.[119] Other forms of discrimination against women include their being prevented from praying during their monthly menstruation cycle. Women are considered as unclean during their menstrual period and their freedom of religion and worship discriminated against.[120]

Although many Igbo people are now Christians, traditional Igbo religious practices still abound, and these practices are deeply rooted in culture.[121] In the religious Igbo culture, women are an imperative part of the religion. They play diverse religious roles, ranging from functioning as deities, religious personalities, and adherents. Most importantly, some women belong to the Igbo traditional group of authorities that play leading roles in the religious culture of the Igbo. They are referred to as 'ritual symbolic persons'[122], or 'religious authorities'.[123] Igbo women could therefore be religious leaders in diverse areas of the Igbo culture, among others, as medicine women, priestesses, mediums, rain makers, or diviners, they share these positions with their male counterparts. Female religious leaders within the Igbo traditional religion are believed to be imbued with supernatural powers. In fact, the most powerful deity in Igbo religion is portrayed and represented as a woman.[124] The patrilineal-based Igbo society, therefore, accommodates the place of women as sacred personages and religious leaders.[125]

Yet, the Igbo traditional religion also has various aspects that discriminate against women and masculinity dominates the gender ideology among the Igbo.[126] The marriage system in Igbo culture, for example, is more favourable to a man than to a woman. Men under the Igbo traditional religion are allowed to marry more than one wife, while women do not have the freedom to marry more than one husband.[127] For the most part, women who practice African Traditional Religion can only occupy subordinate ritual roles as suppliants, ritual assistants, and most importantly mediums.[128]

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[118] Emeka E Okonkwo Pilgrimage circuit of Osun Osogbo sacred grove and shrine, Osun State, Nigeria' (2020) 8 (4) *International Journal of Religious Tourism and Pilgrimage*.
[119] Ibid.
[120] Okonkwo op cit note 118.
[121]Mbiti op cit note 116.
[122] Ifesieh,E I *Religion at the Grassroots: Studies in Igbo Religion* (1989).
[123] Anyacho E O *Essential Themes in the Study of Religion* (2005).
[124] Udeagha Nduka & Nwamah Grace Ozioma 'Chinua Achebe's *Things Fall Apart* and the role of women in Igbo traditional religious culture' (2019) 7 (12) Open *Journal of Social Sciences.*
[125] Ibid.
[126] Mbiti op cit note 116.
[127] Ibid.
[128] Marion Kilson Women in African Traditional Religions (1976) Vol. 8, *Fasc.* 2p 138.

(b) Christian religion and women's rights in Nigeria

About 46.9 per cent of Nigerians practice Christianity[129] and it is the predominant religion in the southern and middle-belt regions of the country.[130] Christianity was introduced into Nigeria in the fifteenth century by the activities of European missionaries and later spread throughout the country with an overwhelming influence.[131]

Christians are guided by the religious laws which are documented in the Holy Bible. The Bible contains prescriptions and guidelines for Christians from accounts in both the Old and New Testaments. Accounts in the Old Testament of pre-monarchical Israel show that women were not only household managers but many also performed significant leadership roles.[132] For example, there were the leadership role of Miriam,[133] Deborah,[134] and Esther as shown in the Bible.[135] A critical review of accounts in the Old Testament supports women's rights to property and inheritance.[136] In ancient Israel, the land was allotted to the male heads of households in different tribes, who also transferred such allotments in patrilineal patterns.[137] However, where there were no male heads, as in Zelophehad's case, lands were allotted to daughters.[138] In addition, widow's rights to property appear to be protected biblically. This is clearly depicted in the Book of Ruth, where it is alluded that Ruth intended selling the land that had belonged to her late husband.[139] As a widow without sons to inherit from her, the intent to sell the land presupposes that she had exclusive rights over the inherited land upon the death of her husband.[140]

However, male-controlled institutions were illustrated in the New Testament, such as the monarchy and the Jerusalem temple, but there was a decline in the impact of women.[141] The female activities in the patriarchal household decreased in importance and were devalued, compared with the male activities which

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[129] Adewole A M O' The role of church influence and social context on selected Pentecostal Christians in the political leadership of Nigeria' (2017) Fuller Theological Seminary, School of Intercultural Studies. Central Intelligence Agency World Factbook (2001) Religions *https://www.cia.gov/library/publications/the-world-factbook/fields/2122.html/#ni*

[130] Feb 2019 CIA Nigeria.

[131]Kolapo K *Christian missionary engagement in central Nigeria, 1857-1891: The church missionary society's all-African mission on the upper Niger* (2019.

[132] Masenya M 'The dissolution of the monarchy, the collapse of the temple and the 'elevation' of women in the post-exilic period: Any relevance for African women's theologies?' (2013) 7(4) *Old Testament Essays* 138.

[133] Exodus 15:1-21.

[134] Judge 5.

[135] Esther 4:14,16.

[136] Case M *Inheritance injunctions of Numbers 36: Zelophehad's daughters and the intersection of ancestral land and sex regulation. Sexuality and Law in the Torah* (2020) 194.

[137] Ibid; Murray V 'A comparative survey of the historic civil, common, and American Indian tribal law responses to domestic violence' (1998) 23 *Okla City UL Rev* 433 *https://heinolnline.org/HOL/LandingPage?handle=hein.journals/okcu23&d=&page= accessed 20-07-21;* Shemesh Y *A gender perspective on the daughters of Zelophehad: Bible, Talmudic Midrash, and modern feminist Midrash* (2007) Biblical Interpretation 15; Verburg JM Women's property rights in Egypt and the law of the levirate marriage in the LXX (2019) *Zeitschrift fur die alttestamentliche Wissenschaft*.

[138] Ibid.

[139] Lakama Y *A Comparative Study of Widowhood in Ancient Israel (the Book of Ruth) and in Billiri Society of Gombe State, Nigeria* (2019) (Unpublished Doctoral Dissertation).

[140] Hiers R'Transfer of property by inheritance and bequest in biblical law and tradition' (1993) 10(1) *Journal of Law and Religion available at https://doi.org/10.2307/1051171* 121 accessed 15-07-2021; Lakama Y *A Comparative Study of Widowhood in Ancient Israel (the Book of Ruth) and in Billiri Society of Gombe State, Nigeria* (unpublished doctoral dissertation, 2019.)

[141] Masenya op cit note132, p 141.

were publicly applauded. Women were excluded from significant temple duties, as the Judaism was essentially masculine in nature, and only male priests were employed.[142] In Burrows' account, women in the Old Testament seem to have had a low status. The status of a wife in relation to her husband was like that of a slave.[143] Sheila Colins affirms also that women were regarded as inferior and were owned like cattle, incapable of participating in the mysteries of the worship of Yahweh.[144]

In the New Testament also, during the time of Jesus, the status of women was seen to be lower than that of men. Women were viewed not only as secondary citizens, but as men's property.[145] The role of women in synagogue worship was strictly receptive, and even the oral reading of the Scriptures was not for women.[146] Women were generally assumed by the 'rabbis'[147] to be persons incapable of learning about religious things. However, Jesus' attitude to women was different. He related with men and women equally, which was contrary to the culture of the day.[148] After the time of Jesus, women continued to play significant roles, which was evident in Paul's ministry.[149] In Fiorenza's account, women during the time of Paul appeared not merely as rich patronesses, but as prominent leaders and missionaries and contributed to the growth of the gospel.[150]

However, in Christian religion in Nigeria, women are arguably still regarded as subordinate to men. In most Christian sects in Nigeria, women are arguably not allowed to hold opinions or express themselves freely in church. Women also experience discrimination in accessing leadership positions in the church and they bear the burden of remaining submissive to their husbands, despite cases of ill treatment and abuse at home.[151] Several cases of marginalisation of women exist in churches where, despite their number in a church, women are still not qualified to act as overall leaders.[152] Sibani explains further that female ministers confront sexism in their churches and denominations. They experience discrimination in accessing ministerial assignments and responsibilities, and unequal salaries, even if they have higher degrees and further seminary training than their male counterparts.[153]

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[142] Masenya op cit note 132, p 143.
[143] Burrows M *The social institutions of Israel* (1982) in M. Black and H.H Rowley (eds.), 135.
[144] Claassens J L 'Female resistance in spite of injustice: Human dignity and the daughter of Jephthah' (2013*) Old Testament Essays* 26(3), 607-608.
[145] Masenya op cit note 132, p 146.
[146] Ibid.
[147] Religious leaders.
[148] Ibid.
[149] Acts 16:13-15, 40 of the Bible.
[150] Fiorenza, cited in Baumert N S J *Woman and man in Paul: Overcoming a misunderstanding* (1996) transl. S.J.P. Maloney, M. Glazier, Collegeville, Mn 177.
[151]Sibani op cit note 105 p 644.
[152]For example, the Gospel Faith Mission International (GOFAMINT) that has been in existence for the past 62 years, but still keeps a man as the head of the women ministry and affairs of the church. Other ministries like Mountain of Fire and Miracles Ministry (MFM) and Deeper Life Bible Church (DLBC), will not allow a woman to hold a top leadership position.
[153] Sibani, op cit note 105, p 644.

Hackett argues further that women in Nigeria are only able to acquire the status of a prophetess within the church but even then their upward mobility within church structures is limited.[154] She notes that female founders of churches are 'renowned but rare', and even when a woman founds a church, her successor is often male.[155] Essien and Ukpong in their research on gender and religion in the Akwa Ibom State of Nigeria, opine that patriarchy has its foundation embedded in religion. They argue that Christian religion is replete with negative effects of patriarchy and gender inequality due to the teachings of theological leaders who are not enlightened.[156]

Comfort asserts that the Christian religion plays a pivotal role in the prevalence of inequality against women in Nigeria. She argues that the subordination of women is taught with the story of creation serving as a base in which a woman was made from the man's rib and therefore made for man's advantage.[157] Consequently, women in Christianity are taught to remain submissive to their husbands and to men generally. In the context of marital relations, wives are required to remain unconditionally submissive, endure hardship and strive to make the marriage work at any cost.[158]

In Nigeria generally, many Christian denominations exclude women from leadership, and place women in positions lower than men. Their doctrines are based on the New Testament text of 1 Corinthians 14:33b-36,[159] while others rely on the words of Paul to Timothy, which state that women should not be allowed to teach or have authority over men.[160] These Bible texts have been used to justify the unequal treatment of women within the Christian religion.

Recently, however, women have been given varying levels of rights and opportunities within some Christian denominations in Nigeria, even though Christian denominations still remain divided on the actual role and status of women and the inclusion of women in church leadership. The majority of denominations give women access to some level of leadership particularly in women-related matters, while some others, especially among the mission churches, still believe that the leadership of the church should not be made open to women. These interpretations stem from the varying reactions by churches to the text of 1 Corinthians 14:33-35:

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[154] Rosalind Hackett L J *Women and new Religious Movements in Africa"* in Religion, Gender, (ed) Ursula King, (1995) 257.
[155] Ibid.
[156]Essien A M and Ukpong D P 'Patriarchy and Gender Inequality: The Persistence of Religious and Cultural Prejudice in Contemporary Akwa Ibom State, Nigeria' (2012*) 2(4) International Journal of Social Science and Humanity* 286-290.
[157]Comfort Ashu Eneke *The Cultural Emancipation of a Woman from a Christian Perspective* (The African Example) (2000) 27; 1 Corinthians 14:34-35.
[158]Ephesians 5:22-24.
[159] 1 Corinthians 14:33b – 36 As in all the churches of the saints, the woman should keep silence in the churches. For they are not permitted to speak, but should be subordinate, as even the law says. If there is anything they desire to know, let them ask their husbands at home. For it is shameful for a woman to speak in church. What! Did the word of God originate with you, or are you the only ones it has reached? (Revised Standard Version (RSV)).
[160] 1 Timothy 2:11-15 Let the woman learn in silence with all subjection. But I suffer not a woman to teach nor to usurp authority over the man, but to be in silence. For Adam was first formed, then Eve. And Adam was not deceived, but the woman being deceived was in the transgression. Notwithstanding she shall be saved in childbearing, if they continue in faith and charity and holiness with sobriety.

> For God is not the author of confusion, but of peace, as in all the churches of the saints. Let your women keep silence in the churches, for it is not permitted unto them to speak, but they are commanded to be under obedience, as also says the law. And if they will learn anything, let them ask their husbands at home, for it is a shame for women to speak in church.

The earliest churches as recorded in the Bible did not include women in church leadership, as a matter of denominational practice based on the 1 Corinthians texts. This category includes churches such as Evangelical Church Winning All (ECWA), the Anglican Communion, the Methodist Church, and especially the Roman Catholic Church. The inclusion of women began within the Pentecostal churches.[161] Not all, though, as some Pentecostal churches such as New Testament Christian Mission, Deeper Life Bible Church, and End-Time Message Believers' Fellowship still hold firm to the 1 Corinthians text, and practice male dominance. However, in some Pentecostal churches, women are even given the highest leadership title of the church. This is the case in Living Faith Church, Christ Embassy, Foursquare Gospel Church, the Redeemed Christian Church of God, Rhema Chapel, Mountain of Fire and Miracles, among others.[162]

Literature dealing with the Christian view on FGM/FC is scarce. However, Christian authorities unanimously agree that FGM/FC has no foundation in the religious texts of Christianity. Although FGM is not prescribed by religious law, many of those practicing it may consider it a religious obligation, because female purity plays an important role in Christianity.[163]

(c) Islamic religion and women's rights in Nigeria

Nigeria has one of the largest Muslim populations in West Africa. Islam has a large followership of about 51.6 per cent of the Nigerian population,[164] and was introduced into Northern Nigeria in the eleventh century.[165] The official school is the Maliki school of thought, and the Hausa/Fulani in Northern Nigeria show a strict adherence to the Quran and the Prophet Muhammad's Sunnah. Islam plays a pivotal role in the lives of most northern Nigerians, and the culture and traditions of the Hausa/Fulani are intertwined with Islamic religion.[166] Needless to say, Islam is a powerful religious force that shapes the socio-political and socio-ethnic milieu of Nigerian society.[167]

As previously discussed, Shari'ah law is strictly adhered to by Muslims within the northern states of Nigeria. Shari'ah law is the codified Islamic law applicable within the northern states of Nigeria and applies only to Muslims. However, a non-Muslim can sign a consent form choosing to take their cases to a Shari'ah

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[161] Ademiluka S O *Issues at stake in the contemporary Nigeria church* (2007) 79-80.
[162] Ibid.
[163] El-Demanhoury 'The Jewish and Christian view on female genital mutilation' September 2013 19(3) *African Journal of Urology*.
[164] Central Intelligence Agency, Nigeria. World Factbook, 2019.
[165] Honavar N 'Behind the veil: Women's rights in Islamic societies' (1988) 6(2) *Journal of Law and Religion* 355.
[166] *https://www.hrw.org/reports/2004/nigeria0904/3.htm* accessed 13-10-2020.
[167]Oluwakemi D. Udoh, Sheriff F. Folarin and Victor A. Isumonah '*The influence of religion and culture on women's rights to property in Nigeria'* (2020) 7 (1) Cogent Arts and Humanities.
https://www.tandfonline.com/doi/full/10.1080/23311983.2020.1750244 accessed 06-01-2021.

court, particularly if the case involves a Muslim.[168] Shari'ah courts, however, lack the authority to compel participation by non-Muslims. In this thesis the term Shari'ah law will be used when referring to Islamic religious practice within the northern states of Nigeria, while Islamic law will be used to reference the religious practice within non-northern states, where Shari'ah codified law is not applicable.

Islamic law is said to border on the principles of peace and order and to improve the status of women. It propagates the principle of equality of all humans while shunning all inequalities due to sex, race, or nationality.[169] In Islam, sex difference does not count before Allah in terms of religious duties. Both genders have spiritual rights and duties in an equal degree, and both will be rewarded.[170] However, Islam assigns different roles and responsibilities to men and women. Women in Islam, for example, are charged with the primary responsibility of providing spiritual, moral and emotional support to their husbands and children. Women are expected to provide for the proper upbringing of their children and give them moral and spiritual guidance.[171]

Islamic law reveals that women are endowed with many rights. Some of these include the right to live and respect human life[172] to justice,[173] to the equality of human beings and freedom from discrimination,[174] to freedom from slavery and inhuman treatment,[175] to co-operate or not to co-operate,[176] to freedom from want and deprivation,[177] to security of life and property,[178] to honour, respect and chastity, to privacy of life,[179] to freedom from unlawful arrests or detention,[180] and to freedom of expression.[181] According to the Qur'an, women and men are all creatures of Allah, and exist on a level of equal worth and value. The 'male and female are created *min nafsin wahidatin* (from a single soul or self) to complement each other'.[182] Islam recognises women's rights in marriage, property and inheritance, and says women should be held in honour and not treated as chattels.[183] A woman's right to own properties and to inheritance must be protected, and they must be treated with kindness.[184]

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[168] Heather Bourbeau et al 'Shari'ah Criminal Law in Northern Nigeria Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017-2019' United States Commission on International Religious Freedom (December 2019).
[169] Sait, S and Lim H '*Land, law and Islam: Property and human rights in the Muslim world'* (2006).
[170] Qur'an 33:35; 16:97.
[171] Bukhari Hadith No 7138 and Muslim Hadith No 1829.
[172] Qur'an 5:32; 6:15
[173] Qur'an 5:8; 4:135
[174] Qur'an 49:13
[175] See the Hadith report by Al-Bukhari and Ibn Majah Full citation of hadith?
[176] Qur'an 5:2
[177] Qur'an 51:19
[178] Qur'an 4:93; 2:188
[179] Qur'an 24:27: 49:11-12
[180] Hadith Report Which hadith? Reference properly.
[181] Reported by Imam Muslim as cited in Ladan M T *Women's Rights and Access to Justice under the Sharia in Northern Nigeria* in Ezeilo J andAfolabi A K (eds.), *Sharia and women's Human Rights in Nigeria: Strategy for Action* (Abuja, 2002) 57.
[182] Qur'an 4:37
[183] Qur'an 4:4; 4:11.
[184] Qur'an 4:4; 4:11.

In terms of religious and ethical obligations, women and men are clearly seen as equal. However, in practice, while the Qur'an provides women with several rights, it also limits women's access to the enjoyment of some of the rights provided. The Qur'an, for example, grants women the right to buy and sell, to enter into contracts, to earn, and to hold and manage their own property and money. The Qur'an provides: 'unto men a fortune from which they have earned, and unto women a fortune from that which they have earned'.[185] The Qur'an also equally provides for the right of Muslim women to inherit.[186] However, the mode of distribution of the property of the deceased between male and female is far from equitable. The Qu'ran states: 'God directs you as regards your children's (inheritance), to a male, a portion equal to that of two females.'[187] Makama asserts that Shari'ah law gives a central place to paternalistic interpretations of women's appropriate roles and socio-political arrangements of society and places many restrictions on the rights of women.[188] For example, although the Qu'ran provides that females cannot be precluded from inheriting, it frames their fixed share as half of that which their male counterparts are entitled. Where the deceased is survived by a son and a daughter, the son will inherit twice as much as the daughter. Similarly, if the deceased leaves a brother and a sister, the sister inherits half as much as her brother.[189] The Qur'an, according to Amien, goes further by including a 'fixed heir' clause that ensures the financial protection for the wife or wives of a deceased husband. However, its provisions are still discriminatory as they frame the woman's fixed share as half of that which their male counterparts are entitled to inherit.[190] Therefore, while the Qur'an makes provision for women's rights to property and inheritance, the Qur'an still creates inequality for the woman and does not allow her to enjoy equal rights to the property like her male counterpart. She is only entitled to half of her brother's share of inheritance. This inequality is drawn from the assumption that the man has more financial obligations towards the woman and those obligations exceeds the women.[191]

A widow equally faces levels of discrimination because of religious laws and prescriptions. After the death of a husband, the wife (with children) can only inherit one-eighth of the deceased property, and if childless, her portion is one-fourth.[192] The Qur'an does not, despite these evident inequalities, permit a man

[185] Qur'an 2: 256; 18:29; 14:46.
[186] Qur'an 4:7.
[187] Qur'an 4:11.
[188] Makama op cit note 4 115-144; Abiola Akiyode-Afolab 'Democracy, Women's Rights and Sharia Law in Nigeria' (23 January 2003) *Pambazuka News, Voices for freedom and Justice*.
[189] Ibid. See also Qur'an 4:11.
[190] For the husband, fixed portion is ½ if the deceased left no children; and ¼ if the deceased left children. For the wife, ¼ if deceased left no children, and $^1/_8$ if deceased left children. Waheeda Amien, 'The viability for women's rights of incorporating Islamic inheritance laws into the South African legal system' (1) (01 January 2014) Acta Juridica, 198.
[191] Udoh et al, op cit note 183.
[192] Ibid.

to inherit forcibly the women of deceased kinsmen, [193] although it has been argued that it justifies wife beating.[194]

Several other forms of discrimination against women are evident within the practise of Islam in Nigeria,[195] and women are portrayed as inferior to men in every respect: spiritually, physically, mentally, and even intellectually.[196] As in the traditional African context, men in Islam are seen as superior to women. Men are in charge of women because Allah hath made one to excel the other.[197] Male children are preferred to female, while female children are said to 'bring gloom and despair'.[198] There is also the practice of purdah (seclusion), which requires women to cover their bodies and conceal themselves and live physically segregated.[199] This practice is common among the Hausa/Fulani. Women are put in seclusion immediately after marriage, if their husbands can afford to do and they are forced to have no contact with men except their relatives, while their public movements are strictly regulated. The practice of female genital mutilation/Female Circumcision (FGM/FC) has also been defended and justified by many Muslim scholars and jurists as an Islamic custom, which is considered to be consistent with Islamic piety and purity.[200]

Furthermore, under the Maliki school of law, which is practiced by Muslims in Nigeria, a father can arrange for the marriage of his young virgin daughter, regardless of her age and without her consent.[201] Women also experience series of discriminations under the practice of divorce. While Islam provides that divorce could emanate from either party to the marriage, this is not the case in practice in Nigeria. In practice, women would rarely seek this option but choose to stay in abusive marriage due to the harsh conditions for a woman to access a divorce. The method of divorce widely used by Muslim women in Nigeria is the *Khul'u* divorce, because the method is easier, and the wife usually gives no reason for asking for a divorce but must agree to pay the husband an agreed sum for her freedom.[202] The wife must offer to pay back the dowry that the husband paid during her marriage, and the husband is not obliged to provide any maintenance for the upkeep of the wife following this kind of divorce. The practice of denying wives their

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[193] Qur'an 4:40.

[194] Qur'an 4:34 As regards those women on whose part you fear defiance and ill-conduct, admonish them (first), (next) separate in bed, (and last) tap them (if they still persist in their defiance); but if they cooperate and pay you head, do not look for excuses to harm them. Note well that there is Allah above you all.

[195]Ikenga Oraegbunam K E 'A Critique of certain aspects of Islamic Personal law in Nigeria: Re-examining the Jurisprudence of Women's Righs' (2013) 3(1) *African Journal of Law and Criminology* 1-19.

[196] Leo Igwe 'Women's Rights in Traditional African Practices and Islam' (Feb 5, 2012) Institute for Ethics and Emerging Technologies available at *https://ieet.org/index.php/IEET2/more/igew20120203* accessed 08-09-2019. Frank A Salamone *The Hausa of Nigeria* (2010) 139.

[197]Sura 4:34

[198]Sura 43:15 reads: *yet when a new-born girl is announced to one of them his countenance darkens, and he is filled with gloom.*

[199]Yusuf H E 'Purdah: a religious practice or an instrument of exclusion, seclusion, and isolation of women in a typical Islamic setting of Northern Nigeria' (Jan 2014) *American International Journal of Contemporary research* https://www.eldis.org/document/A101394 accessed 12-11-2022.

[200]Igwe op cit note 212.

[201] Centre for Reproductive Rights 'The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights' 83 available at *http://reproductiverights.org/wp-content/uploads/2018/08/pub_bp_africa.pdf*, accessed 21-03-2019.

[202] Nigeria: Availability of divorce for women in a Muslim marriage who have experienced domestic abuse (9 April 2001) Research Directorate, Immigration and Refugee Board, Canada available *https://www.refworld.org/docid/3df4be7f1e.html* accessed 12-11-2022.

post-marriage entitlements is common and has a negative impact on the women and their young children.[203] Additionally, while Shari'ah permits either party to file for a divorce, the wife is required to spend a certain number of months in *iddah* (a period of waiting). During this period, the wife is expected to remain unmarried, while this compulsory process is not imposed on the man.[204]The conditions women must fulfil to file for a divorce within the practice of Islam in Nigeria shows clear evidence discrimination against women.

Culture is another factor that influences the ideologies, belief systems and practices prevalent in Nigeria. Culture has a strong influence on gender perceptions and roles in Nigeria.[205] There are various cultural/traditional practices prevalent within the various cultural groups that particularly prescribe the 'cultural expectations' from women. However, many of these cultural/traditional practices violate the rights of women attract attention from the media, civil society, and international organisations. The cultural practices that form the crux of this research include child/forced marriage, widowhood rituals/rites, female genital mutilation/cutting, and female inheritance under customary law. These cultural practices are discussed in detail in the next section, with particular reference to the rights of women.

IV CULTURAL NORMS AND VALUES AND WOMEN'S RIGHTS IN NIGERIA

(a) Concept of Culture

Culture refers to the totality of the pattern of behaviour of a particular group of people and includes everything that makes them distinct from any other group of people. For instance, their greeting habits, dressing, social norms and taboos, food, songs and dance patterns, rites of passage from birth, through marriage to death, traditional occupations, religious as well as philosophical beliefs.[206] Culture can be described as the totality of human phenomena, material achievements and norms, beliefs, feelings, manners, and morals.[207] According to Bello, culture is:

> the totality of the way of life evolved by a people in their attempts to meet the challenge of living in their environment, which gives order and meaning to their social, political, economic, aesthetic and religious norms.[208]

Culture can also be defined as the way of life of a people and consists of among others, cherished values or beliefs that are shared by a group, lineage, and religious sect.[209] According to An-Na'im, culture is a powerful source and determinant in the perceptions and communal living of people. It provides both the individual and the community with the values and norms to be pursued and is the major determinant of the

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[203] 'Promoting women's rights through Sharia in Northern Nigeria' Centre for Islamic Studies, Ahmadu Bello University, Zaria *https://cisp.cachefly.net/assets/articles/attachments/02913_promoting-women-sharia.pdf* .

[204] Ibid.

[205] Olabisi I Aina *Women, culture and Society* in Amadu Sesay and Adetanwa Odebiyi (eds). Nigerian Women in Society and Development. (1998); Okome op cit note 21.

[206] Aziza R C 'The Relationship between Language use and Survival of Culture: the case of Umobo youth' (2001) *Nigerian Language Studies* no. 4 p 31.

[207] Gabriel E Idang 'African culture and values' Phronimon 1(2) (2015) *http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1561-40182015000200006* accessed 03 -02-2021.

[208] Bello S 'Culture and Decision Making in Nigeria' (1991) *Lagos: National Council for Arts and Culture* 189.

[209] Ogbujah Columbus 'African Cultural Values and Inter-communal Relations: The Case with Nigeria' 4(24) (2014) https://core.ac.uk/download/pdf/234682106.pdf accessed 03-02-2021.

consciousness and experiences of the community.[210] Ibhawoh explains that culture has a strong effect on human behaviour and is a determinant of what people would consider as acceptable or otherwise.[211] Culture creates a gender understanding and interpretation of human relations, roles and acceptable behaviour. Culture can also be described as behaviours, traditions, habits, or customs that are shared, and values that are handed down from one generation to the next.[212]

Values on the other hand are 'core beliefs and practices from which people operate'.[213] Each culture possesses its own particular values, traditions, and ideals.[214] Cultural values define the behaviour specification of human beings, their role, and the rights and privileges for men and women, their belief system and life − style.[215] Culture is described as being dynamic in the sense that it is continually changing, for culture is not static.[216]

(b) Concept of Patriarchy

The Nigerian society is patriarchal in nature, with a social structure that perceives men as superior to women."[217] Patriarchy in Nigeria is associated with an authoritative and domineering masculinity, characterised by social supremacy that is generally identifiable in men. It is a social, psychological, political, and emotional weapon that makes women see themselves as weak objects of subordination, fear, and victims of masculine control.[218] Patriarchy is reproduced in Nigeria by teaching young males to understand and demonstrate that they are in control, while women are taught to submit to the authority of men. Also, men learn to assert authority by force, and violence is an acceptable behaviour for them; in contrast, women must remain calm and submissive.[219]

Furthermore, Nigerian women reinforce patriarchy by culturally reproducing the elevation of men and inferiority of women in young women. Older women teach the girls to respect gender traditions that make them inferior and promote boys' power.[220] Patriarchy is also seen in marriage contracts, where it is the belief of men that a woman's place is in the kitchen, whatever her status.[221]

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[210] An-Naim Abdullahi Ahmed *Human Rights in Cross-Cultural Perspectives* (1992) 27.
[211] Ibhawoh Bonny *Between Culture and Constitution - The Cultural legitimacy of Human Rights in Nigeria* (1999).
[212] Ibid.
[213] 'Cultural Values' http://psychology.iresearchnet.com/counseling-psychology/multicultural-counseling/cultural-values/#google_vignette accessed 24-03-2021.
[214] Ibid.
[215] Otinche S I and Nnabuenyi U M 'Culture and the Right of the Rural Woman in Nigeria: An Overview' (2015) 4(2) *International Journal of Basic, Applied and Innovative Research* 36.
[216] Gabriel E. Idang, African Culture and Values 16(2) (2015) 99.
[217] Aina op cit note 221.
[218] Idowu AA. *Women's rights, violence, and gender discrimination: The Nigerian circumstances* (2013) (31-45) in Ako-Nai (ed.) *Gender and power relations in Nigeria*.
[219] Adichie C '*We should all be feminists'* (2012) New York, NY: Random House. Idowu, A. A. *'Women's rights, violence, and gender discrimination: The Nigerian circumstances'* (2013) (pp. 31-45) In Ako-Nai (ed.), Gender and power relations in Nigeria.
[220] Bvukutwa G 'Gender equality is not a Western notion' (2014) https://thisisafrica.me/gender-equality-western-notion/ accessed 15-03-2021.
[221] Adu F M *Masculinity in gender relations: The Nigerian experience and contribution to sustainable development in* R.I. Ako-Nai (Ed.) Gender and power relations in Nigeria 101-113.

The prevalent customary laws of inheritance, for example, do not permit women to own land freely. This is evident in Abara's analysis of the North Eastern zone of Nigeria where only four per cent of land is owned by women, while in the South East and South South geopolitical zones of the country, women own just over 10 per cent of land.[222] In addition, the patriarchal system in Nigeria sets the parameters for the unequal position of women. Tradition or culture and religion have dictated men and women relationships for centuries and entrenched male domination into the structure of social organisations and institutions at all levels.[223] Blau et al argue that in most patriarchal societies women's property rights are often achieved vicariously, usually through their husbands.[224] Such rights are often limited to 'use rights' rather than 'outright ownership rights'.[225] The Nigerian woman is therefore defined in terms of her role as a mother and as a wife, and her worth depends largely on her marital status.

In Nigerian society, and as evident within African cultures generally, gender is associated with sex from the very time a child is born. From birth, the male child is preferred to the female. The first question usually asked when a child is born in Nigeria is whether it is a boy or a girl.[226] This is because it is believed that the boy will carry on the family name and is also the heir to his father's property.[227] One can therefore conclude that from the time a child is born, it is surrounded by gender expectations which it has to grow up to fulfil. This distinction of roles and expectations, according to Chua and Fijino, functions to create and maintain unequal power relations between people of different sexes, and results in the domination and exploitation of women as a group.[228] Expressing a similar view, Adetunji asserts that the cultural and gender problems which women have been facing dates back to their birth, as in many homes the birth of a baby girl does not receive the kind of enthusiastic reception that is usually given to that of a baby boy.[229]

Among the Hausa/Fulani, several cultural practices exist regardless of their harmful effects on the life, health and well-being of the girls and women and despite the many attempts made for their eradication. Often such practices are justified on the grounds of the right to practice culture/religion. Unfortunately, and as earlier mentioned, women themselves are the major promoters of these practices.[230] Culturally, Igbo society is patriarchal in nature, where men's decisions over issues are final and irrevocable. The Yoruba

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[222] Abara op cit note 1.
[223] Makama op cit note 2.
[224] Francine D Blau Marianne A Ferber and Anne E Winkler *The Economics of Women, Men and Work* 7 ed (2014).
[225] Nadia Stenzor 'Women's Property and Inheritance Rights: Improving Lives in Changing Times' (2003) Women in Development Technical Assistant Project, US Agency for International Development, Washington, DC. *http://pdf.usaid.gov/pdf_docs/PNADA958.pdf accessed 15-03-2021.*
[226]Omoregie N and Ikensekhien O A 'Persistent gender inequality in Nigerian Education' (2011) *Journal of Social Science,* 27(1), 7-74; Akintan op cit note 29,
[227] Ibid
[228] Chua P and Fujino D 'Negotiating New Asian American Masculinities: Attitudes and Gender Expectation' (1999) *Journal of Men's Studies*, 391-413.
[229] Adetunji H A *Re-Orientating the African Woman Toda* in Akintunde D.O (Ed) (2001) African Culture and the Quest for Women's Right, Ibadan: Sefer 106.
[230] Manjoo Rashida 'The Continuum of Violence against women and the challenges of effective redress (2012) *International Human Rights Law Review,* 9.

culture is also essentially patriarchal; hence men are understood to be more privileged than woman. It is a society described as one characterised by 'male super ordination and female subordination'.[231]

(c) Cultural Norms and Values

Norms and values are attributes of a cultural system and are part of the non-material culture of society. Therefore, where there are identified values, there must also be rules or regulations (norms) guiding their realisation.[232] Norms are the guiding rules and regulations that bind a society; they could be obligatory or may constitute the traditional behaviour or way of life of a particular community or group of people. The obligatory norms usually have harsh sanctions for their violations and are referred to as mores. They are the 'must do' of the society. The second category of norms is referred to as folkways. Folkways are practices accepted and deemed appropriate, but they do not carry harsh or strong sanctions for their violation.[233]

Values on the other hand can be defined 'as beliefs, standards, ideals about desirable or undesirable behaviour'.[234] Values refer to the attitudes, beliefs, behaviours, and actions that are cherished and acceptable standards of behaviours which each society expects that the members should abide by. Values are fundamental in all human societies and in human actions and activities.[235] Values differ from person to person, and from one society to another.[236] Falade et al define values as:

> a coherent set of attitudes, behaviour and action adopted and, or evolved by a person, organization, or society as a standard to guide its behaviour and preferences in all situations.[237]

Several social customs and cultural practices continue to exist in Nigeria that oppress women. These practices are discussed below with specific reference to the cultures where the practices are most prevalent.

(d) Cultural Practices and the Rights of Women in Nigeria

Nigeria boasts a rich culture with an array of cultural practices. However, many of them are negative in nature, mostly affecting the health, life and well-being of the girl child and woman. The sections below discuss four cultural practices most prevalent in Nigeria – child/forced marriage, female genital mutilation/female circumcision, widows' rites, and female inheritance of property. These practices are predominant within the three main cultures in Nigeria and form the crux of this thesis.

(i) Child/forced marriage

According to the United Nations Children's Fund (UNICEF), child marriage refers to any formal marriage or informal union between a child below the age of 18 and an adult or another child.[238] The Nigerian

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[231] Ubrurhe J O *Culture Religion and Feminism: Hermeneutic Problem* in Ilfie E (Ed) (1999) Coping with Culture 82.
[232] Faith Nkem Okobia, Mary I. Okafor and Justinia N. Osajie 'Reactivating Nigerian Norms and Values Through Religious Studies for National Transformation' *http://dx.doi.org/10.4314/og.v12i s1.10* accessed 19-03-2021.
[233] Ibid.
[234] Okobia and Osajie op cit note 232.
[235] Ogugua Patricia Anwuluorah and Jude Chinweuba Asike 'Nigeria Traditional Moral Values in the Context of Globalization: Approach of Justice and Responsibility' 192. *https://docplayer.net/45156717-Nigeria-traditional-moral-values-in-the-context-of-globalization-approach-of-justice-and-responsibility.html.* accessed 04-12-2020.
[236] Sunday Awoniyi 'African Cultural Values: The Past, Present and Future' (2015) 17(1) *Journal of Sustainable Development in Africa* 4.
[237] Falade, D.A., Akinde, O.O. and Adejubee *Proverbs as Traditional Means of Moral and Social Learning among the Yoruba of Nigeria* (2009) Ajayi, Adegboyega and Fabarebo Samuel Idowu (Eds.) Oral Traditions in Black and African Culture 482.

Constitution does not set a minimum age for marriage but stipulates that citizens can only renounce their citizenship when they are of full age to do so[239]. The section then adds that full age means the age of eighteen years and above.[240] However s 29(4)(b) goes further to specify that any woman who is married shall be deemed to be of full age. Section 29 consequently continues to set the tone for the ongoing controversy on the minimum age for marriage in Nigeria. The Nigerian Child Rights Act of 2002 sets the minimum age of marriage at 18 years of age, but some states in Nigeria are yet to adopt this Act.

Child/forced marriage is a reality for both boys and girls, although girls are disproportionately more affected.[241] In the case of a girl child, it is a situation wherein a girl child or young adolescent or teenager is married to an adult husband who, most times is twice or more her age. .[242] The incidence of child marriage has become a global phenomenon, particularly in sub-Saharan Africa and Southern Asia.[243] Also present in the practice of child marriage is the absence of the consent of the girl child who is most often coerced into the marriage. Muftau argues that marriage is a voluntary union between a male and female adult and should be based on consent. It is *supposed* to be voluntary, and the parties must freely give their consent to be bound by the marriage contract. However, in most Nigerian cultures, young girls and women are forced int/,.o marriage contracts which they did not consent to.[244]

Nigeria has over 3.5 million girls under 18 who are currently married, has the highest number of child brides in Africa, and the third highest number in the world.[245] The rate of child marriage varies significantly by geo-political zones in Nigeria, ranging from 39.0 to 67.6 per cent for the northern zones, and 13.9 to 21.6 per cent for the southern zones.[246] This cultural practice allows parents or guardians to betroth a girl-child, usually from childhood or at puberty age to an individual who had previously provided financial or otherwise support to the family. According to the 2003 Nigerian Demographic and Health Survey (NDHS), it was revealed that in 26.5 per cent of couples, there is an age difference of 15 or more years between husband and wife. It has also shown that the timing of marriage varies considerably by region and area of residence.[247]

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[238] UNICEF 'Child Marriage' https://www.unicef.org/protection/child-marriage accessed 20-03-2021.
[239] 'Controversy in Nigeria over minimum age of marriage' (26 July 2013) *https://www.girlsnotbrides.org/articles/controversy-in-nigeria-over-minimum-age-of-marriage/* accessed 20-03-2021.
[240] Section 29(4) 1999 Constitution.
[241] Iyabode O 'Child Bride and Child Sex: Combating Child Marriages in Nigeria' Promoting Access to African Research (2) (2011) *A Publication of Nnamdi Azikiwe, University Journal of Internal Law and Jurisprudence*, 194.
[242] Ibid.
[243] Ibid.
[244] Rufai Muftau 'An Appraisal of the Legal Rights of Women in Nigeria' (2016) 52 *Journal of Law, Policy and Globalization'* 78.
[245] Nigeria – Child Marriage Around the World. Girls Not Brides *https://www.girlsnotbrides.org/child-marriage/Nigeria/#stats-references* accessed 05-11-2020. A Profile of Child Marriage in Africa. UNICEF *https://data.unicef.org/respurces/a-profile-of-child-marriage-in-africa/* accessed 05-11-2020.
[246] Multiple indicator cluster survey 2016-17 (MICS). UNICEF Nigeria https://www.unicef.org/nigeria/reports/multiple-indicator-cluster-survey-2016-17-mics.accessed 05-11-2020.
[247] Children's and Women's Rights in Nigeria: A Wake -Up Call, Situation Assessment and Analysis 2001 (National Planning Commission, Abuja and UNICEF 2001) P. 200. Annabel S. Erulkar and Mairo Bello, 'The Experience of Married Adolescent

Marriage age is lowest among girls in North West and North East regions, at 15.8 and 16.8 years respectively. Rural girls are also more likely to marry early compared with urban girls. The Nigeria Demographic and Health Survey equally shows that girls from the northern part of Nigeria marry at a relatively younger age than girls from the southern region. [248] According to the organisation 'Girls not Brides', 45 per cent of girls in Nigeria marry before they reach 18 years of age, and the practice is more rampant in the northern part of Nigeria, with figures as high as 76 per cent.[249]

The practice of child marriage is a regular practice in Nigeria. In many parts of Nigeria, particularly in the north, the girl child is betrothed at birth or at a very young age to a much older man she may not even know. According to Islamic jurists, 'experiencing wet dream' as stated in the Quran in relation to age of marriage means the age of maturity for both males and females.[250] A girl can therefore lawfully enter a marriage once she has attained the age of puberty. In *Labinjo v Labake*,[251] the court stated that the contractual capacity begins at puberty under customary law. In *Folata v Dawomo*,[252] it was held that under Muslim law, maturity is determined by physical maturity, or a declaration of the youth in question, or failing this, by reaching the age of lunar month.

The practice of child marriage is also prevalent within the Igbo culture. According to Akpan, 'the girl in the Igbo culture is forced to live and grow with a man she does not know, and upon the demise of the man, she is still denied the right to inherit his property.'[253] Justifications for this practice include, among others, preservation of the girl's virginity, and economic reasons. According to Erulkar and Muthengi, child marriage is advantageous to poor families in rural areas, because marrying the girls at a young age relieves parents of the costs and responsibilities of raising a girl.[254] Secondly, it is believed that marrying girls off before they reach the age of puberty will help preserve the virtue of the girls, ensure they do not engage in promiscuous sexual relations, and preserve family honour.[255]

Regardless of the several reasons adduced for the practice of child marriage, strong evidence abound that the disastrous effect of this practice far outweighs its seemingly conceived advantages. Firstly, child marriage denies young girls of school age their right to education,[256] which results in their inability to work

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Girls in Northern Nigeria.' The study is a collaboration between the Population Council and Adolescent Health and Information Projects (AHIP) Kano, Nigeria (publication of Population Council 2007).

[248] Ibid.

[249] Girls not Brides 'Child marriage around the world: Nigeria; (2014) Accessed 05-11-2020.

[250] Annabel S. Erulkar and Mairo Bello, 'The Experience of Married Adolescent Girls in Northern Nigeria.' The study is a collaboration between the Population Council and Adolescent Health and Information Projects (AHIP) Kano, Nigeria (publication of Population Council 2007).

[251] (1924) 5 NLR 33.

[252] (1970) NWLR 105.

[253] Akpan E 'Early Marriage in Eastern Nigeria and the Health Consequences of vesicovaginal fistula (VVF) among mothers' (2003) *Gender and Development*, 11 (2, 70-76.

[254] Erulkar A and Muthengi E 'Evaluation of Behane Hewan: A programme to delay child marriage in rural Ethiopia', *http://www.guttmacher.org/pubs/journals/3500609.html* accessed 05-11-2020.

[255] Akpan op cit note 253.

[256] Article 12(1)(a) Protocol.

due to lack of basic education. This is evident in the higher level of illiteracy that can be seen among women in northern Nigeria than in other parts of the country.[257]

Another disastrous effect of child marriage in young girls is the development of vesicovaginal fistula caused by the combination of a young girl having sex, getting pregnant and going through childbirth when her body is not prepared enough.[258] Vesicovaginal fistula is an abnormal opening between the vaginal wall and the bladder, which causes urine to constantly leak from the bladder to the vagina. It could also prevent the control of urination and cause infection. According to a study carried out by Ijaiya et al, it was revealed that there was a high prevalence of vesicovaginal fistula in northern Nigeria. In Kano State specifically, 120 vesicovaginal fistula patients were admitted in two months. In Maiduguri, there were 241 vesicovaginal fistula patients in two years, and Jos and Sokoto had 932 in seven-and-a-half years and 31 cases in one year respectively.[259] In addition, the likelihood of the baby of a girl under 18 years dying is 60 per cent, and girls under 15 are five times more likely to die in childbirth than women in their twenties.[260]

Studies also reveal that children who marry early are at risk of contracting sexually transmitted diseases, including HIV/AIDS.[261] The young girls are arguably further exposed to domestic violence and marital rape due to the unequal negotiating powers that exist between the parties in such marriages. Child marriage could additionally inhibit young girls from making independent decisions about marriage, which may arguably lead to their emotional, physical and psychological harm. [262]

Several human rights issues are discernible from the practice of child marriage. First, child marriage infringes the rights of girls to informed choices of marriage partners as provided for under the Protocol to the African Charter on the Rights of Women in Africa (hereinafter referred to as the Protocol).[263] Children below 18 years arguably lack the requisite mental capacity and life experiences to make informed choices about their marriage partners.[264] However, Diala observes that informed consent is disregarded when cultural demands negate it, or when parents regard marrying off their children as a solution to their financial needs.[265] Secondly, child marriage infringes on the right to consensual sex in cases where the concerned girl child was forced into the marriage.[266] Thirdly, child marriage arguably violates the girl child's right to human dignity, given that it hampers on her capacity to determine her own life and make informed choices

[257] Nigeria Demographic and Health Survey, 2008.
[258] Braimah op cit note 40 at24.
[259] Ibid.
[260] 'The global partnership to end child marriage' Girls Not Brides *http://www.girlsnotbrides.org/themes/health.*
[261] Karlyn A et al *Adolescent Early Marriage in Northern Nigeria: Evidence to Effective Programmatic Intervention* (2007).
[262] Charlotte Bunch The intolerable status quo: Violence against women and Girls (1997) 1 *The Progress of Nations* 40-49 at 41-45.
[263] Article 6(a) 'no marriage shall take place without the free and full consent of both parties'.
[264] Ashworth G, 'Of Violence and Violation: Women and Human Rights' (1986) *Change International Reports.*
[265] Jane C Diala and Antony C Diala, 'Child Marriage, Bride Wealth and Legal Pluralism in Africa' 4(2) (2017) *Journal of Comparative Law in Africa* 81.
[266] Article 4(2)(a) Protocol.

when she attains adulthood.[267] The Nigerian Child Rights Act (CRA)[268] prohibits child marriages,[269] but most northern states in Nigeria have refused to adopt the CRA, while the strongest opposition to the CRA by Islamic leaders pertains to the age of marriage.[270]

(ii) Female Genital Mutilation/Female Circumcision

The World Health Organisation (WHO) defines FGM/FC as 'all procedures that involve partial or total removal of the female external genitalia and or injury to the female genital organs for cultural or any other non-therapeutic reason'. It is the cultural practice within most Nigerian communities that young girls between ages 0 to 15 are forced to experience.[271] FGM/FC is sometimes practiced in secret in some communities, and openly with fanfare in other communities.[272] FGM/FC has also been described as one major factor for the sustained oppression of women and girls in Nigeria.[273]

In Nigeria alone, 20 million women and girls have been circumcised, which is 10 per cent of the global total.[274] The WHO shows Nigeria to be the country with the third highest rate of FGM/FC in practice, following Ethiopia and Egypt. According to WHO statistics, one in every four Nigerian women between the ages of 15 and 49 have been subjected to FGM. FGM/FC takes place in both urban and rural communities, and it is a practice that is most prevalent in the south-western (Yoruba-speaking region) and south-eastern (Igbo-speaking region) parts of Nigeria at 47.5 per cent and 49 per cent respectively. The states with the highest prevalence of the practice are Osun (76.6 per cent) and Ebonyi (74.2 per cent). FGM/FC is actually illegal in Nigeria and while on paper FGM/FC is acknowledged as a form of the oppression of women and girls, in reality many women and men value the tradition.[275] The Protocol specifically names the practice of FGM/FC and prohibits all forms of the practice, and all other forms of harmful practices which negatively affect the human rights of women, and which are contrary to recognised international standards.[276]

Female genital mutilation is done in four ways namely, the excision of the prepuce, with or without an excision of part of or the entire clitoris; excision of the prepuce and clitoris together with partial or total excision of the labia minora; excision of part or all of the external genitalia and the stitching or narrowing of the vaginal opening; pricking, piercing or incising, stretching of the clitoris and scraping of the vaginal

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[267] Article 3 Protocol. M Ouattara, P Sen and M Thomson 'Forced Marriage, Forced sex: The Perils of Childhood for Girls' (1998) 6(3) *Gender and Development* 27-33 at 28.
[268] Child's Rights Act No. 26 of 2003 *https://www.refworld.org/docid/5568201f4.html* accessed 15-11-2020.
[269] Section 21.
[270] Child Marriage in the Islamic World *http://97.74.65.51/readArticle.aspx?ARTID+36336* accessed 15-11-2020.
[271] Ankita op cit note 52.
[272] Otinche and Nnabuenyi op cit note 215, p 38.
[273] Ugwu Somtochukwu Nnamdi 'Female Genital Mutilation in Nigeria: Combative Legislation and the Issue's Impact on the Economic Growth of Women' *https://impakter.com/female-genital-mutilation-in-nigeria-combative-legislation-and-the-issues-impact-on-the-economic-growth-of-women/* accessed 03-12-2020.
[274] Ibid.
[275] Onyinye Edeh 'It's tradition: Female genital mutilation in Nigeria' 20 September 2017, Institute of Current World Affairs. *https://icwa.org/its-tradition-female-genital-mutilation-in-nigeria/* accessed 03-12-2020.
[276] Article 5(b) Protocol.

orifice or cutting of the vagina; introduction of corrosive substance or herbs into the vagina to either cause bleeding, or tighten or narrow the vagina.[277]

In May 2015, the then President Goodluck Ebele Jonathan signed a federal law banning FGM/FC.[278] Despite this official ban, the practice continues in many cultures in Nigeria, particularly among people living in the rural areas who also exert undue pressure of its compliance on those living within the urban areas. The practicing societies see it as an integral part of their traditional practices and cultural identity.[279] Due to immense social pressure and fear of exclusion from the community, families conform to the cultural requirements of girls' circumcision. Girls who have not gone through FGM/FC are consequently considered unmarriageable, unclean, and a social taboo.[280] Most of the girls themselves desire to conform to peer as well as societal pressure out of the fear of stigmatisation and rejection by their own community.[281] They thus accept the practice of FGM/FC as a necessary and normal part of life. In the majority of cases, the perpetrators of FGM/FC are family members such as the mothers and grandmothers of the girls.[282] Often older women are the gatekeepers in favour of FGM/FC to justify their own experience of genital cutting and tend to see any effort to eliminate the practice as a threat to their culture.[283]

Several reasons are adduced for the continued practice of FGM/FC in Nigeria, namely, it ensures chastity and virginity before marriage, increases the sexual pleasure of the husband,[284] safeguards fidelity, and increases the ability to procreate, and the survival of any child born to a circumcised mother.[285]

The age of female circumcision varies among societies in Nigeria, ranging from age 3 to 25. Among the Borum people in Boli Local Government Area in Cross River State, for example, female genital mutilation is carried out on adult women who are of marriageable age. All girls who attain the age of adulthood within a year in the community are circumcised together on the same day.[286] They are confined to a room for about seven days, and on the ceremonial day their public area is covered in leaves, a cloth is wrapped around the breast, and a reddish powder made from the camwood tree is smeared all over their body.[287]

This cultural rite of female circumcision is perceived as significant because of the foundation it lays for fruitfulness in marriage. A failure to participate in this rite of circumcision is believed to attract infertility

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[277] Edeh op cit note 275.
[278]Goldberg Eleanor 'Nigeria Bans Female Genital Mutilation, But Advocates Say There's Still More Work to Do' (2015-06-08) The Huffington Post.
[279] Ankita op cit note 52.
[280] Ibid.
[281] Ankita op cit note 52.
[282] Agusioba Benedicta 'Education of the Girl-Child in Nigeria for A Just, Peaceful, Harmonious Society and Sustainable Development (04-10-2018) *International Online Journal of Education and Teaching.*
[283] Ibid.
[284] Ankita op cit note 52.
[285] Ankita op cit note 52.
[286] Ankita op cit note 52.
[287] Ankita op cit note 52.

or ability to bear children in marriage.[288] This frightening consequence has caused parents to compel their young daughters to submit themselves to circumcision without considering the risk factors associated with it.[289]

Despite comprehensive international and national legislations and policies that prohibit discrimination and inequality on the grounds of sex/gender, another discrimination suffered by women in Nigeria is in the systematic denial and marginalisation of the rights of women to inherit properties. This denial of the female right of inheritance of property is arguably founded on the patriarchal standards and structures existing within the different cultures in Nigeria and is discussed below.

(iii) Female Inheritance of Property

The narratives around the inheritance of property by women in Nigeria are replete with accounts of denial and marginalisation.[290] Numerous factors are attributed to the violation of women's rights to property. Some scholars assert that patriarchal systems and institutions are the underlying causes of the denial and discrimination that women experience with respect to their rights to property and inheritance in general,[291] while others opine, more specifically, that religion as a causal factor in the violation of women's rights cannot be over-emphasised.[292] Patriarchal customs and traditions, both cultural and religious, appear to be recurring factors that unify the experiences of the female population.[293]

In some communities, women cannot own land or other immovable property except through the intervention of male relatives.[294] Even where a woman purchases the land, she is expected to obtain her husband's consent before making any decision about the property.[295] The female children are usually

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[288] Otinche and Nnabuenyi op cit 215 at 38.
[289] Otinche and Nnabuenyi, Op cit 215 at 38.
[290] Ajayi M and Olotuah A'Violation of women's property rights within the family' (2005) 1(66) *In Agenda: Empowering women for gender equity. Gender Based Violence Trilogy* 58-63.
[291] Akinola A 'Women, culture and Africa's land reform Agenda' 9 (2018) Frontiers in Psycholog 22-34 *https://doi.org/10.3389/fpsyg.2018.02234 accessed 12-08-2020; D* Le Beau, E Iipinge and M Conteh 'Women's property and inheritance rights in Namibia (2004) University of Namibia, Gender Training and Research Programme. Tayo O George *Widowhood and Property Inheritance among the Awori of Ogun State, Nigeria* (unpublished PhD thesis, Covenant University, Ota, Nigeria, 2010).
[292]Obioha E *Inheritance rights, access to property and deepening poverty situation among women in Igboland, Southeast Nigeria* (2013) (Paper presentation) A sub-regional conference on gender and poverty organised by centre for gender and social policy, Ile Ife, Nigeria: Obafemi Awolowo University M Benschop 'Women's right to land and property' (2004) I Women in human settlements development: Challenges and opportunities. Commission on Sustainable Development, UN-Habitat, 1-7. George, T., Olokoyo, F., Osabuohien, E., Efobi, U., and Beecroft, I., *'Women's access to land and economic empowerment in selected Nigerian communities'* (2015).
[293] Ekhator E '*Protection and promotion of women's rights in Nigeria: Constraints and prospects'* (2018) In Women and minority rights law: African approaches and perspectives to inclusive development (forthcoming) 17-35; A Engineer 'The rights of women in Islam' (2008).
[294] Ibid. Oyelade O 'Women's right in Africa: Myth or reality' (2006) University of Benin Law Journal, 9(1). *http://www.nigerianlawguru.com.articles/human%20rights%20law/WOMEN%92S%20RIGHTS%20IN%20africa,%20myth%20or%20REALITY.pdf* accessed 05-12-2020.
[295] Udoh O *'International Treaties on the Elimination of Gender-based Discrimination and Women's Property Rights in Ogun State, Nigeria* (unpublished PhD thesis, Covenant University, Ota, Nigeria, 2010).

discriminated against in terms of inheritance after the demise of their father. Among the Igbo and some subcultures within the Yoruba ethnic group, girls are not entitled to have a share in inheritance at all.[296]

Under Igbo customary law, land and property devolve only to male children, to the exclusion of female children and wives. Wives and daughters cannot inherit their deceased husbands' and father' property.[297] This custom that prevents female children and women within the Igbo culture from inheritance of property has received judicial approval by a superior court in Nigeria in the 1972 case of *Ejiamike v Ejiamike*.[298] Here the Court held that a widow has no right to her late husband's property.[299] However, in the much-acclaimed case of *Onyibor Anekwe and Anor v Mrs. Maria Nweke*,[300] heard decades later, the Supreme Court of Nigeria found that any custom that denies women, particularly widows, their inheritance, is repugnant to natural justice, equity and good conscience and is condemned by the Supreme Court. In *Ukeje v Ukeje*,[301] the Nigerian Supreme Court had already in a unanimous decision confirmed that the Igbo customary law of inheritance, which excludes female children from inheriting the property of their deceased fathers, conflicted with the non-discrimination provisions of the Nigerian Constitution of 1999 and was therefore void. The decisions in these two cases[302] are significant steps in the protection of women's property rights and gender equality. Nevertheless, the decisions have not filtered down to the grassroots level, and the customary practices continue. Furthermore, the fact that women are accustomed to perceive this practice as a way of life has resulted in many cases not being reported or are only being adjudicated on by the traditional leaders.

Among the Yoruba generally, children of a deceased father all have equal rights to inherit the properties of their deceased father.[303] Notwithstanding, this inheritance under Yoruba customary law is also not women-friendly and regards the male child to be superior to the girl child at all times. Though the male and female children can both have access to the estate of their father, the eldest son is responsible for the management of the estate.[304] Furthermore, women can inherit from their father's property but cannot have access to their husbands' property.[305] However, the portion of land allotted to her by her father remains her

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[296] Ajayi M and Olotuah A 'Violation of women's property rights within the family' (2005) 1(66) In Agenda: Empowering women for gender equity. Gender Based Violence Trilogy 58-63.

[297] Ajabor Ifeanyi Esq & Ovreme Olika Aforkoghene Esq 'The Female Right of Succession under The Igbo Customary Law : A Critique' (Jan-Mar 2019) International Journal of Innovative Legal & Political Studies, p 64 available at https://seahipaj.org/journals-ci/mar-2019/IJILPS/full/IJILPS-M-7-2019.pdf accessed 15-12-2020.

[298] *Ejiamike v Ejiamike (*1972) 2 ECSLR 11. See also *Romanus Ihejiobi v Grace Ihejiobi* (2013) LPELR-21957 (CA) 23 and *Maduike Ezeibe v Adaku Ezeibe* (2013) LPELR-21907 (CA).

[299] Article 21 of the Protocol.

[300] *Onyibor Anekwe and Anor v Mrs Maria Nweke* (2013) SC 129.

[301] *Mrs. Lois Chituru Ukeje and Enyinaya Lazarus Ukeje v Mrs Gladys Ada Ukeje*, (2004) SC. 224.

[302] *Onyibor Anekwe and Anor v Mrs. Maria Nweke and Ukeje v Ukeje*.

[303] Mojekwu-Chikezie N M *African Women: Sentenced by Tradition* (2012) 123.

[304] Dr Babatunde Adetunji Oni « Discriminatory Property Inheritance Rights under the Yoruba and Igbo Customary Law in Nigeria: The Need For Reforms (Feb 2014) Journal of Humanities And Social Science, Volume 19, Issue 2, pp 30-43, at pg 34.

[305] Imasogie Mosunmola 'Cultural Impediments to the Domestication of Women's Rights Instruments in Nigeria' (2014) *The IAFOR North American Conference on the Social Sciences, Official Conference Proceedings.*

father's family property which she cannot devise to her children or husband upon her death.[306] As observed by Jibowu FJ in *Suberu v Sunmonu,* [307] it is a rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is, like a chattel to be inherited by a relative of her deceased husband.[308] Also, in the earlier case of *Sogunro-Davies v Sogunro-Davies*[309], Beckley J opined that Yoruba native law and custom deprived wives of inheritance rights in their deceased husbands' estates because devolution of property follows the blood line relationship.

The Hausa/Fulani follow Shari'ah law operative within the northern states of Nigeria, which gives twice the daughter's portion to her brother. A widow also inherits one-eighth of her husband's property in accordance with Shari'ah law.[310] It is worthy of note, nonetheless, that although Shari'ah law allows women to own property, it appears that Muslim women in northern Nigeria do not possess this right due to the cultural norm that men are responsible for the care of women.[311] Among the Hausa/Fulani tribes in Nigeria, if a woman is childless, she is denied the right to inheritance after the death of her husband. This practice conflicts with Islamic law which states that the widow should not be denied a portion of the inheritance.[312] In other cases, the woman and all she owns are considered the man's property to be administered whichever way he deems.[313]

A widow is usually denied full access to her late husband's property in most Nigerian communities. Married women are not customarily permitted to inherit their husbands' properties and they cannot claim any right to the property even if they had been in possession of it before the husbands' demise.[314] Married women only have a right of occupation which ceased upon the husbands' demise or divorce.[315] Widowhood in Nigeria brings with it several other levels of discriminations. Apart from their being denied their husbands' properties, widows are also compelled to undergo several degrading and inhuman customary practices.

(iv) Widowhood rites and rituals

Ordinarily by law of nature and spirituality across religions, widowhood ought to evoke sympathy, empathy and support from others. However, the situation of widows in Nigeria is disturbing due to the harrowing experiences they encounter. In addition to the experience of loss, they have to put up with other challenges

[306] Umeh, Odoh & Okoro 'Females' Succession Rights under the Native Laws and Customs of Nigerian Societies: An Affront to Justice' (2021) MUNFLJ (7) 92 *https://www.journals.ezenwaohaetorc.org/index.php/MUNFOLLJ/article/viewFile/1815/*1846 accessed 13-11-2022.
[307] (1957) 12 FSC 33.
[308] Mojekwu-Chikezie op cit note 303.
[309] (1928) 8 NLR 79.
[310] Oluwakemi D. Udoh et al, op cit note 183.
[311] Olomojobi Y *Human Rights on Gender, Sex and the Law in Nigeria* (2013) 64.
[312] Qur'an 4 verse 7.
[313] Ajayi & Olotuah op cit note 311.
[314] *Nezianya v Okagbue* (1963) All N.L.R 300.
[315] *Chinwe v Masi* (1989) N.W.L.R 270.

such as deprivation and helplessness brought about by harmful cultural practices.[316] Widows in most tribes in Nigeria are subject to all manner of degrading treatment.

Widowhood practices are observed in various degrees among the different cultural and ethnic groups in Nigeria. The duration of the mourning period and the nature of the rites/rituals to be performed may differ from one ethnic group to another. These rites/rituals range from widow cleansing, shaving of the widow's hair, drinking from the water used in bathing the deceased spouse, sleeping on the bare floor throughout the mourning period, crying at intervals, restriction of her movement, and sometimes her confinement in a secluded area and being forbidden to see the sunlight for a period of time prescribed by custom.[317]

Among the Igbos, it is believed that the woman is responsible for the death of the husband; hence, the practices are designed to elicit remorse and determine her innocence, to impose punishment, and to purify the widow.[318] In addition, a widow is expected to use sticks to scratch her body from time to time during the mourning period; and she is restrained from washing herself. These rites are performed not only to mourn the dead but also to ensure that the link between the dead and the living remains intact. It is argued that widowhood practices are necessary in order to ward off the evil spirits of the deceased from intruding.[319] Obiageli argues that 'long confinement and isolation are necessary in order to subject the body of the widow and test her endurance in a time of mourning'.[320]

Among the Yorubas, widowhood 'is an enduring period of deep-rooted agony, exclusion, anxiety, as well as a period of restriction, isolation, trauma, insecurity and pain'.[321] The rites include wearing of dark clothes, the weaving or cutting of hair, refraining from taking baths and wailing, and their duration ranges from a week to a year.[322] In some communities, Yoruba widows are compelled to drink the water used in bathing the corpses of their deceased spouses.[323] The Yoruba widow is asked to refrain from sexual relations and must not remarry while mourning her departed husband. She also could be inherited as the wife of her husband's sibling or relative, and she is forbidden from attending social functions and can wear no adornment of any kind during the mourning period.[324] In contemporary times, the practice of wife inheritance is on the decline due to modernity and the influence of the Christian religious ethos.[325] There is,

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[316] Ebenezer Durojaye 'Woman but Not Human: Widowhood Practices and Human Rights Violations in Nigeria', 27 *International Journal of Law, Policy and Family*, (May 2013) 177.
[317] Izuako Obiageli 'Obnoxious widowhood rites in Nigeria: looking through Gender Lens' (2003*) Under the BAOBAB Tree*, pg 180. Durojaye op cit note 316, 331.
[318] George Akwaya Genyi *Widowhood and Nigerian Womanhood: Another Context of Gendered Poverty in Nigeria'* (2013) 3 (7) *Research on Humanities and Social Science* at 69; P U Okoye 'Widowhood: A National or Cultural Tragedy' (1995)
[319] AM Okorie *African Widowhood Practices: The Igbo Mourning Experience*, available at *https://biblicalstudies.org.uk/pdf/ajet/14-2_079.pdf*, accessed on 11 November 2020.
[320] Obiageli op cit note 332 at 181–182.
[321] George Akwaya Genyi 'Widowhood and Nigerian Womanhood: Another Context of Gendered Poverty in Nigeria' (2013) *Research on Humanities and Social Sciences*, Vol. 3, No. 7, p 70.
[322] Ibid.
[323] Genyi op cit note 321.
[324] Ibid.
[325] Akumadu,T U *Beasts of Burden: A Study of Women's Legal Status and Reproductive Health Rights in Nigeria* (1998), available at *https://searchworks.stanford.edu/view/4100377* accessed on 11 November 2020.

however, arguably, no specific mourning period for a widower. He may remarry shortly after the death of his wife on the grounds of need for his domestic care or that of the children left by the deceased wife. For the woman, the widow is expected to remarry a relative of her late husband after the allotted mourning period.

Among the Hausa/Fulani, Muslim widows in the north undergo a four-month mourning period, and observe a number of days in seclusion.[326] While the widow is restricted at all levels, the widower is free to move around and interact at different levels.[327] Upon the death of a husband, widows may be sent out of their matrimonial homes and are dispossessed of their agricultural land and other assets.[328]

This, however, is not the case when a man loses his wife. As shown above, in *Onyibor Anekwe and Anor v Mrs Maria Nweke*[329] a purported widow was to be disinherited by her late husbands' relatives because she did not have a male child. Supreme Court Justice Ngwuta ruled that the custom of the Awka people of Anambra State of Nigeria to disinherit widows was repugnant to natural justice, equity and good conscience, and ought to be abolished. A similar decision as to the constitutionality of customary law was reached by the Supreme Court in the case of *Mrs Lois Chituru Ukeje and Anor v. Mrs Gladys Ada Ukeje*.[330] The court determined whether the Igbo customary law/practice which deprives children born out of wedlock from sharing the proceeds or benefits of their father's estate is unconstitutional. The Supreme Court held that no matter the circumstances of the birth of a child, such a child is entitled to an inheritance from their late father's estate. The court relied on the non-discrimination/equality provisions of the Constitution as the basis for its judgment. The Igbo customary law which disentitles a female child from partaking in a share of her deceased father's estate was found to be in breach of ss 42(1)[331] and (2)[332] of the Constitution, a fundamental rights provision guaranteed to every Nigeria. Unfortunately, there has not been a recorded impact of these cases on the rights of women to inherit properties in Nigeria, and as earlier argued, the majority of these cases are not reported because of the lack of consciousness in the women of their rights.

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[326] Genyi op cit note 321 at 69.
[327] Genyi op cit note 321 at70.
[328] Afolayan, Gbenga, 'Widowhood Practices and the Rights of Women: The Case of South-Western Nigeria' (2011) Master's thesis, Graduate School of Development Studies, The Hague, 336. Available at *https://www.researchgate.net/publication/280573442_Widowhood_Practices_and_the_Rights_of_Women_The_Case_of_South-Western_Nigeria*. Accessed 11 November 2020.
[329] (2014) All FWLR (Pt 739) 1154.
[330] *Ukeje v Ukeje* (2014) LPELR – 22724 (SC) Electronic Law Reports.
[331] Section 42(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected wither expressly by, or in the practice of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are made subject; or be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.
[332] Section 42(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

V CONCLUSION

Culture, as explained in the sections above, plays an important role in the lives of individuals in Nigeria and in the society as a whole. Nigeria boasts a rich cultural heritage but is also home to several cultural practices and traditions that continue to impede the rights of the girl child and women. This chapter, however, focuses on the cultural practices of child/forced marriage, female circumcision/female genital mutilation, widowhood practices and the denial of female inheritance of properties.

Across the world, gender inequality remains the norm, and religious doctrines and cultural practices constitute two forces that form the bedrock of overwhelming denial of women's human rights.[333] Culture is often used as a tool for justifying the violation of women's rights, reflecting deep-seated patriarchal structures and harmful gender stereotypes. Women suffer discrimination as a result of religious and cultural practices. Both are competing challenges that are often invoked as a justification for the violation of women's rights, and more often than not, it is difficult to separate both factors.[334]

Nigerian society is patriarchal in nature, and its structures facilitate discrimination against women. These discriminations against women tend to seek justification in cultural beliefs and practices, and women remain voiceless because customs and traditions are highly revered and seen as 'sacred' among the various ethnic groups in the country.[335]

Contrary to several authors, and as argued above, although discriminations against women in Nigeria was not introduced by colonialism, it arguably reinforced the structures that were already in place. The Nigerian woman has always been considered to have a lower status than men. The dilemma is exacerbated by patriarchal systems that reinforce the daily cultural practices and religious belief systems of the people. The raison d'etre behind the domestication of the Protocol to the African Charter on the Rights of Women in Africa is to effect a transformational religio-cultural change that would accommodate the promotion of the rights of women in Nigeria.[336]

Chapters three and four have attempted to show that the various religious beliefs and cultural practices and norms existing in Nigeria defend patriarchy and enable inequality, oppression and differential treatment between men and women. The historical accounts of a majority of authors, in addition to recent studies on the position of women within Nigerian culture and religion, have equally not demonstrated any significant improvement on their rights, welfare, and status. The next chapter explores the data obtained from adherents of the three main religions in Nigeria, namely, African Traditional Religion, Christianity, and Islam, as well as members of the country's three main cultural groups (Hausa/Fulani, Igbo and Yoruba).

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[333] Abdulla, M. 'Culture, religion, and freedom of religion or belief' (2018) The Review of Faith and International Affairs, 16(4), 102-115 *https://doi.org/10.1080/15570274.2018.1535033* accessed 11-11-2020.
[334] Udoh et al, op cit note 167.
[335] Abara, op cit note 1, 4.
[336] United Nations Office of the High Commissioner on Human Rights, 'Women's rights in Africa' (2016) *https://www.ohchr.org/Documents/Issues/Women/WRGS/WomensRightsinAfrica_singlepages.pdf.*

The chapter aims to present in some detail the perceptions of the women and men in Nigeria on factors that may exist to promote discrimination against women in Nigeria, particularly with respect to some identified cultural and religious practices. Proposed solutions to such discriminations are also suggested.

CHAPTER FIVE

FIELD FINDINGS ON RELIGIOUS BELIEFS AND CULTURAL PRACTICES HINDERING WOMEN'S RIGHTS IN NIGERIA

I INTRODUCTION

This chapter provides an analysis and interpretation of responses given by 554 participants to whom questionnaires were administered and 50 interviews conducted on the perceived influence of religion and culture on the rights of women within the three main religions (African Traditional Religion, Christianity, and Islam) and cultures (Hausa/Fulani, Igbo, and Yoruba) Nigeria. The chapter provides answers to Research Question (RQ) 4: What are the perceived religio-cultural factors in Nigeria hindering the rights of women as enshrined in the Protocol to the African Charter on the Rights of Women in Africa (hereinafter the Protocol)?

The factors that constitute discrimination against women within the three main religions and cultures are reported and analysed in this chapter from the perception of women, men, and religious leaders. A grid of common factors of discrimination is offered in this chapter from the perceptions received, and a list of responses and tables are used to present each case for data organisation and summary. Even though women constitute the main target of the research as explained in Chapter Two, the perception of men are also relevant since Nigeria is a patriarchal society. Men therefore form a small but significant portion of the case study.

The chapter is divided into two sections. Section one presents findings and analysis of the religious practices and belief systems prevalent within the three main religions in Nigeria, while section two present findings, analysis, and interpretations of the perceived factors of discrimination within the three main cultures under review. The findings and analysis presented in each section specifically respond to the perceived influence of religion and culture respectively. There are, however, certain overlaps in the findings and analysis from the three main religions and cultures, but it is necessary to deal with them separately in the sections below to allow for a better narrative of the distinct differences.

SECTION ONE

II FACTORS OF RELIGIOUS BELIEFS AND SYSTEMS HINDERING THE RIGHTS OF WOMEN IN NIGERIA

To provide answers to Research Question 4, above, two groups of respondents were interviewed, these being religious leaders comprising Christian pastors, Islamic imams, and African traditional leaders, and select

women and men from the three main religions in Nigeria. The Christian religion, in this research, refers to all denominations, sects and movements that fall under the general umbrella of Christianity in Nigeria. Thus, the focus is on the common factors within Nigerian Christianity. Significant contradictory opinions observed within the various Christian religious denominations (Protestantism, Orthodoxy and Catholicism) and sects are clearly referenced. The Islamic religion on the other hand refers to the practice of Islam in the Hausa/Fulani and Yoruba cultures. Clear descriptions are provided where there are variances in cultural interpretations.

As outlined in Chapter Two under 'fieldwork', the questionnaires[1] and interviews[2] explore the possibilities of positions of leadership available for women within the various religions. Questions were asked about whether women can occupy the same position of authority as men within the various religious groups, and what the rights and responsibilities of wives and husbands are in marriage and family life.[3] Perceptions were obtained on what constitutes the different religious beliefs on child marriage, female genital mutilation, widowhood rites/rituals, female inheritance of property, as well as if women could have recourse to justice where there are cases of abuse within the marriage.[4]

The age range of religious respondents comprised adults from 21 to 70 years, and respondents were made up of women and men living within the urban areas. The difference in number of respondents[5] between the various religions was because of the effect of the Covid-19 pandemic, which hindered access to certain respondents and the researcher's ability to conduct extensive travels at the time. However, respondents were sufficiently representative of the three main religions in Nigeria – African Traditional Religion, Christianity, and Islam. As stated in Chapter Two, this is an emic (insider) research, and the reports and analysis are based on the perceptions of women and men within the various religions under study. The table below presents a graphical overview of the number of respondents that formed this study, and the number accessible from the various religions. As was explained in the previous chapters, the practice of the African Traditional Religion influenced Christianity and Islam, with many African Traditional Religion respondents now identifying as Christians or Muslims. However, a few respondents as shown in table 1 below still uphold the tenets of African Traditional Religion. Furthermore, and as mentioned earlier, more female respondents than men were interviewed because the perception of women form the crux of this research.

[1] See Section B of Questionnaires. As indicated in the methodology of this thesis, one set of questionnaires was administered to women and men representing the three main religions and cultures in Nigeria. Section A of the questionnaires provides general information on the respondents, Section B provides responses on their cultural perspective, while Section C provides responses on their religious perspectives.
[2] This includes responses received from interviews for women and men within the select cultural groups and religious organisations in Nigeria, and interviews for select religious leaders in Nigeria.
[3] See Appendix A, B and C.
[4] See Interview questions 5 to 11 in Appendix 3.
[5] See Table 1.

RELIGIONS	FEMALE	MALE	TOTAL
Islam	122	56	178
Christians	230	90	320
African Traditional Religion	42	14	56
TOTAL	**394**	**160**	**554**

Table 1: Number of Religious Respondents to the Questionnaire and Interviews Administered

Questions 36 to 45 of the questionnaire administered were analysed along with select religious leaders' interview questions 5 to 11[6] and general interview questions B1–B7.[7] One type of questionnaire was administered to all the respondents in this study. The questionnaires particularly sought answers to the questions about positions that women can hold within the various religions, the minimum age for marriage, the role of the wife in marriage, women's right to divorce, widow's rights and female inheritance of properties. The interview questions analysed the available leadership positions for women within the various religions, the status and role of women in marriage, the various religions' responses to child marriage, female genital mutilation, widowhood rites and female inheritance of property. The data analysis of the questionnaires and interviews identifies the factors that constitute discrimination against women within the three main religious groups in Nigeria and captures the views of the respondents on the perceived rights and status of women. Caution was exercised to note opinions that should be quoted verbatim or paraphrased. The goal was to ensure that the voices of the people would not be lost in the description and analysis of the prevalent religious factors that impede the promotion of the rights of women in Nigeria as provided for in the Protocol.

The next section discusses the research findings on the various perceived religious factors that act as contributors to the subsistence of discrimination against women within the three main religions in Nigeria. Table 2 provides a graphic overview on the various perceived religious factors that discriminate against women, while Table 3 provides a percentage of the level of awareness and sensitisation within the various religious groups to seeking justice in cases of abuse within the marriage.

(a) Grid of common religious factors hindering the promotion of the rights of women in Nigeria

Responses from the fieldwork show that there are five common factors within the three main religions in Nigeria that propel discrimination against women.[8] As shown in Table 2 below, these factors include: absence of top leadership positions for women, inequality of husband and wife in marriage, demeaning widows' rites and rituals, discriminatory devolution of properties, and absence of recourse to justice. The effects of these factors within the three main religions under review are discussed below.

[6] Appendix A (Section C) and Appendix C.
[7] Appendix B (Section B).
[8] See Table 2.

	ISLAM	CHRISTIANITY	ATR
Absence of top leadership positions for women	✓	✓	✓
Inequality of husband and wife in marriage	✓	✓	✓
Demeaning widows' rites and rituals	✓	✓	✓
Discriminatory devolution of properties	✓	✓	✓
Absence of recourse to justice	✓	✓	✓

Table 2: Grid of Factors of Religious Hindrances to the Rights of Women

(i) Absence of top leadership positions for women

The Protocol, which is the crux of this thesis, provides for the elimination of all forms of discrimination against women, including all forms of practices that are based on the idea of inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.[9] Findings from the field work reveal that women within the various religions in Nigeria are portrayed as inferior to men. Religion in Nigeria continues to fuel and promote patriarchy and differential treatment between men and women. As opined by Sibani, and as earlier noted in Chapter Four, the organisational structures of religious institutions in Nigeria and the doctrines from interpreting religious books greatly influenced the level of regard accorded women.[10] The practice of all religions in Nigeria– African Traditional Religion, Christianity, and Islam — reflex varying levels of discrimination against women.

African Traditional Religion (ATR) on the one hand is described by Mbiti as 'a religion guided by the dictates of patriarchal patterns, customs and belief systems handed to them by their traditional leaders, which also discriminate against women.'[11] He describes ATR as a religion that is deeply rooted in culture and has great influence on the perceptions and responses within the Christian and Islamic religious groups in Nigeria. A total of 56 respondents indicated that they practiced ATR; these consisted of 40 women and 16 men. The respondents were mostly from the Yoruba and Igbo tribe. 100 per cent of respondents describe ATR as a set of religious beliefs and rules founded on culture and taught and observed from one generation to the next.[12] Majority of respondents explained that the religious beliefs and rules were influenced by a higher personality, a divine power that must be revered, obeyed, and not questioned.[13] As one male traditional leader observed:

[9] Article 2(1) 'States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures." Article 2(2) "States 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 sexes, or on stereotyped roles for women and men.'

[10] Sibani CM 'The Politics of gender and power in Nigeria: The Christian analysis' (2013) *Journal of Theology, Religion and Cultural Studies*, 1 (1), 432-449.

[11] Mbiti J *Introduction to African religion and Philosophy* (Heineman, 1990) 105.i

[12] Respondents 499-554.

[13] See Respondents 503, 511-522, 534-550,

> ATR is the foundation of our culture. They are religious rules that have been in existence before our forefathers were born, and it is our duty to obey these religious rules and ensure that every member of our family follow the rules. These religious laws clearly tell us that men are the rulers over women and women must obey and reverence men at all times. It is therefore not possible for women to hold leadership positions over men in any area, whether socially, maritally, religiously or economically.[14]

A female trader also noted:

> ATR are divine laws we were born into, and we have never had to ask questions but obey these laws as our culture and leaders' demand. Women are taught and expected to submit and obey their husbands and men generally, that is the only way women can live peacefully in their homes in the society generally.[15]

A few other respondents explained further that the practice of ATR was handed to them by their parents as the only true religion, and even though they believe that some of ATR prescripts may be outdated, many people are still forced to comply with its dictates, while still practicing other religions of their choice.[16] In this regard, a female banker stated:

> We do not actually practice ATR in our family, but I am aware that religion and culture demands that women submit, and I teach that to my daughters as well. Whatever I do or achieve as a woman must be permitted by my husband, and therefore even though I am educated and understand I have a right to work, I must not allow this privilege to make me feel above my husband at any time. This also applies to the way I relate with other men within my larger family, in my office and in the society at large. Whether I agree with this religious rule and belief or not, the reality is that women cannot assume leadership positions over men.[17]

It was also observed from the responses received that tradition greatly influenced the Christian and Islamic religions, and most of their adherents still practice some aspects of ATR under the ambit of Christianity or Islam. A female housewife advised:

> In recent times, though you may not see people in the cities that acknowledge that they practice ATR, ATR is the foundation of the Christian religion, particularly as practiced within the Orthodox Christian sect. That is why Christianity is sometimes silent on some cultural practices such as widows' rites, while the rules of ATR supersede.[18]

Other respondents stated emphatically that ATR was passed down from generations immemorial, and it is their duty to pass it on to the generations after them.[19]

All 56 ATR respondents stated that women could only occupy complementary positions to men within their religion.[20] While women could contest the religious space with their male counterpart, they could only occupy lesser positions to those available to men. Within the ATR, men are considered superior to women, and to some extent, in control of women.[21] Some Yoruba respondents explained that women usually play active roles especially when rituals are performed, such as the Osun/Osogbo festival described

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[14] Respondent 526.
[15] Respondent 502.
[16] Respondents 512-525.
[17] Respondent 157.
[18] Respondent 158
[19] Respondents 510-554.
[20] Respondents 499-554.
[21] Respondents 499-554. The role played by women during the Osun/Osogbo festival by the Yoruba is cited as an example of the complementary role played by women in religion. The practice is discussed in detail in Chapter Four.

in Chapter Four.[22] However, Kilson describes the roles played by women during rituals as subordinate such as 'suppliants, ritual assistants, and mediums.'[23]

Respondents from within the Christian religion provided differing perceptions about the positions of women within the church. A total of 320 Christian adherents from different denominations (Orthodox, Catholic, and Protestant) or sects or movements within them were sampled, consisting of 230 females and 90 males.[24] 110 respondents stated that women within their form of Christianity were allowed to occupy the same leadership positions as men.[25] One argued that 'selection of leaders was not based on gender, but more about competence and leading of the Spirit.'[26] A male religious leader within the Pentecostal movement explained:

> Within the Christian sect, it is evident that women are allowed to hold positions of authority within the church. We have women who are leaders of local churches, and these women are allowed to function as men. Women in some Pentecostal Christian sects can therefore become overall leaders of their churches and can lead other men. However, women are taught to give a level of regard to men, and a woman conferred with this honourable position within the church, would not be seen trying to rule over men, but will lead in submission.[27]

Another male religious leader within the Pentecostal Christian movement noted:

> [W]omen can be leaders within the church. Women go through the same selection process as men and if they qualify, they are ordained. Women must nevertheless be married and obtain the consent of their husband to occupy a position of leadership in church.[28]

Another female religious leader affirmed that 'women could occupy positions of leadership in churches, but few women actually qualify for this position.'[29] On the other hand 145 respondents confirmed that while there were leadership positions available for women within the church, the positions were not the same as those available to men.[30] Women can lead only women, they cannot attain the position of overall leadership of the church, and they are not allowed to be involved in major decisions of the church. The justification for these approaches is based on the biblical indication that 'women are weaker vessels and should not be allowed to speak in church.'[31] Women could therefore occupy the highest available leadership position in relation to women affairs within the church. An Orthodox Christian sect expressed disagreement about women holding leadership positions within the church.[32] Respondents from this sect state that according to the Bible, women were not allowed to lead men, 'but should submit to the leadership of men at

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[22] Ibid. See also page 94; Emeka E. Okonkwo 'Pilgrimage circuit of Osun Osogbo sacred grove and shrine, Osun State, Nigeria' (2020) *International Journal of Religious Tourism and Pilgrimage* 8 (4); Respondents 515-530.
[23] Marion Kilson 'Women in African Traditional Religion' (1976 8 (2) *Journal of Religion in Africa* at 138.
[24] Respondents 1-320.
[25] Respondents 144-254, particularly within the Pentecostal sect.
[26] Ibid.
[27] Respondent 192.
[28] Respondent 85.
[29] Respondent 110.
[30] Respondents consist of adherents of the Pentecostal, Catholic and Protestant sects of the Christian religion.
[31] 1 Corinthians 14:34.
[32] Respondents 255-320.

all times.'[33] A female respondent noted 'it is against the divine purpose of God for women to be in positions of authority over men. Women should always be in submission and should not talk in church.'[34] There was consensus that women are not equal to men and consequently experience a level of differentiation because of their gender. A religious leader from the Orthodox Christian sect described women as:

> Fellow heirs of the grace of salvation with the man, but women are not supposed to usurp authority over a man as the Scriptures has said. She can do every other thing except being in the position of authority in the church.[35]

Another Christian religious leader from an Orthodox Christian sect state: 'Women cannot occupy the same positions of authority as men because the Bible commands her to be under authority.'[36] He explained further that if women were allowed to lead the church there will be chaos because according to the Bible, women always made wrong decisions from the time of Creation and led man to sin.[37]

The general perception of the majority of Christian respondents nonetheless was that despite the privilege of leadership given to some women to lead the church, there are still restrictions that women face due to the influence of culture and the expected roles of women to remain in submission to men.[38] This position reaffirms the arguments made by Hackett that:

> Even though women in Nigeria are able to acquire the status of a prophetess within the church, their upward mobility within church structures are limited. While female church founders of churches are renowned, they are rare, and even when a woman founds a church, her successor is often male.[39]

Responses show that within the Islamic religion in Nigeria women are considered inferior to men.[40] A total of 178 respondents participated in the study comprising 122 females and 56 males.[41] 102 respondents mainly from the northern states of Nigeria insist that women have no position within the Islamic faith, while 76 respondents stated that there were leadership positions available for women within the Islamic religion but only to lead other women.[42] An Islamic respondent explained that 'there are available positions for women to lead other women, women groups exist within the Islamic religion and women can exercise leadership within such groups.'[43] Women are nonetheless not allowed to hold positions of leadership in respect of the general affairs of the mosque, especially on matters that include the male gender. As explained by an Islamic scholar from Kebbi State:

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[33] Ibid.
[34] Respondent 256.
[35] Respondent 251.
[36] Respondent 310.
[37] Ibid.
[38] Respondent 310.
[39] Rosalind I J Hackett 'Women, Rights Talk, and African Pentecostalism' (Religious *Studies and Theology*, Vol. 36, No. 2. 209 and 257 *https://journals.equinoxpub.com/RST/article/view/35161 accessed* on 05-05-2021.
[40] Leo Igwe 'Women's Rights in Traditional African Practices and Islam' (Feb 5, 2012) Institute for Ethics and Emerging Technologies, available at *https://ieet.org/index.php/IEET2/more/igew20120203* accessed 08-09-2019.
[41] Respondents 321-498.
[42] Respondents 321-397.
[43] Respondent 421.

> Within the Islamic religion, right from the days of the Prophet, it is only men that are allowed to lead. If you want to pray, it is a man that can lead the prayer. When the Prophet was alive, we used to call him leader of the Muslim. A similar thing is the place we put the Sultan. It is not meant for a woman. I am not saying a woman does not have a leadership position; they have a very important role to play at home and in areas of other women.[44]

Echoing the same sentiment, an Islamic leader (*Imam*) in Lagos said:

> Women cannot occupy the same position as men within my religion. She is expected to have children, take care of the family, and can coordinate other women. A woman cannot preach in the mosque; it is only a man that can preach to men and women.[45]

Six respondents, consisting of male Islamic adherents, on the other hand stated that the positions held by women within the Islamic religion cannot be said to be inferior to that of men because the positions of men and women are prepared and ordained by God; and when a child is born, he or she is expected to grow to appreciate the roles assigned to them.[46] It was their view that men are not superior to women; women are simply required to care for the home and the children. Another participant, an Islamic leader, stated further that recently:

> Islamic women are being offered positions within the secular domain and are excelling well. This however does not preclude them from playing the roles assigned to them within the mosque and at home.[47]

From the above, it is clear that the beliefs, teachings, and practices of the three main religions in Nigeria do not generally permit women to hold the same positions of authority as men. While Christian and Islamic religious adherents permit some level of leadership to women, the available leadership positions are restricted to women affairs. Although a small fraction of the Christian adherents permits women to lead other men, such leadership is not without restrictions. As discussed above, these restrictions include the perceived biblical understanding that women were made to be submissive to men, hence their inability to lead men. The leadership therefore granted to women require that she remain submissive to men. In contrast, respondents from the ATR religion indicated that women could only occupy complementary roles to men.

(ii) Inequality of husband and wife in marriage

The Protocol comprehensively addresses the rights of women within a marriage and provides that women and men shall enjoy equal rights and shall be regarded as equal partners in marriage.[48] Other protections afforded women in marriage by the Protocol include the right to free and full consent to enter a marriage,[49] freedom to choose a matrimonial regime and place of residence,[50] and equal rights to the children.[51]

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[44]Respondent 390.
[45] Respondent 450.
[46] Respondents 491-496.
[47] Respondent 493.
[48] Article 6 of the Protocol.
[49] Article 6(a) of the Protocol.
[50] Article 6(e) of the Protocol.
[51] Article 7(c) of the Protocol.

In contrast to the rights provided by the Protocol, the study of the three main religions in Nigeria undertaken during the fieldwork reveals various prescriptions on the role and status of women in marriage. The responses show that there is a religious consensus that women and men do not have equal rights in marriage.

Within the African Traditional Religion, for example, all 56 respondents agree that men are superior to women. A female Igbo traditional religious practitioner in Owerri, Imo State, said: 'Marriage is more favourable for men than for women, and women, most times, suffer abuse from their husbands but cannot speak out.'[52] Holding the same view, a fellow female traditional Igbo practitioner from Onitsha in Anambra State, opined:

> Because culture requires that the man be saddled with the financial responsibilities of the home, the wife must at all times obey and respect him. The wife's duty on the other hand is restricted to the care of the home and the children, which she does under the guidance and leadership of her husband.[53]

A male Yoruba chieftaincy title holder at Ibadan, Oyo State, argued:

> While men are allowed to marry more than one wife, women could not enjoy the same right and freedom, and to therefore insist on equality of role and rights is not only a taboo to religion but a practical impossibility in culture.[54]

Within the Christian religion, women are perceived to be created subordinate to men, while wives are commanded by the Bible to remain unconditionally submissive to their husbands.[55] Majority of Christian respondents comprising 304 male and female Christian respondents align the Creation story with the divine plan of God for a wife and a husband, arguing that wives can never be equal to their husbands. A woman leader in a leading Orthodox church in Lagos Metropolis, repeats Ashu's[56] argument that women are perceived within the Christian religion to have been made for the man's pleasure.[57] In the respondent's words:

> Wives are created in the divine plan to be help-meet for their husbands, and wives are always expected to submit. It is not the divine plan of God for a wife to be equal the husband, but the husband must always remain the head of the wife.[58]

A male church elder describes a husband as a 'god' to his wife, and women should reverence and serve their husbands always.[59] He said:

> The Bible states that as Christ is to the church, so is a man to a woman. Similar to how the church is under Christ authority, a wife should remain under the authority of her husband. A man and a woman were not created at the same time and for the same purpose and a wife can never be equal to her husband.[60]

A few female respondents who identified themselves as educated women, explained further that inequality in marriages in Nigeria account for the existence of and silence surrounding cases of forced

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[52] Respondent 501.
[53] Respondent 214.
[54] Respondent 532.
[55] Ephesians 5:22-24.
[56] Comfort Ashu Eneke '*The Cultural Emancipation of a Woman from a Christian Perspective'* (The African Example) (2000) 21.
[57] Respondent 9, See also 1 Corinthians 14:34-35.
[58] Respondent 9.
[59] Respondent 3.
[60] Ibid.

sexual intercourse, intimate partner abuse, and marital rape in Nigeria.[61] In the words of one of the female respondents:

> The reality is that regardless of what the Bible or any cleric says, women have never been and will never be seen as equal to men, and this situation is worse in marriage. The wife is expected to always please her husband whether it is convenient for her or not. Unfortunately, in many marriages, women endure a lot and are forced to have sexual intercourse with their husbands, some even get wounded in the process and they cannot tell anyone about it or risk losing their marriage.[62]

Another female respondent explained:

> The bible says that the wives' body belongs to the husband and consequently she must not deny whenever he wants it. Unfortunately, this biblical injunction has translated to mean that once married, a wife's consent is not required before sexual intercourse.[63]

The majority of female and male respondents nonetheless declared that they have no knowledge of marital rape.[64] They claim that rape cannot exist within a Christian marriage because the Bible gives the husband authority over his wife's body.[65] While a critical review of the biblical doctrine relied on in 1 Corinthians 7:4 implies that both the husband and the wife have a right to each other's body[66] the responses and perceptions of almost all Christian respondents clearly indicate otherwise. The general belief is that only the husbands have a right to the wife's body. A male cleric expressed shock at the mention of marital rape. In his words:

> How can there be rape in a marriage? The fact that the union has been legalised means that consent has been given for all forms of sexual intercourse. Rape is a word that originated from non-Christians and should never be mentioned among Christians. A woman should always give her husband his due benevolence. Yes, there may be times when the husband will insist to have sexual intercourse with his wife, but it is better that he insists than give way to adultery. A husband cannot rape his wife, it is simply unheard of.[67]

A female respondent also stated:

> It is not possible for a husband to rape his wife; this is abomination, and a woman should not destroy the reputation of her husband by saying a thing like that outside. It is out of love a man has intercourse with his wife, because there are many women out there. A wife must do everything to satisfy her husband, and once she is being a virtuous wife, the husband will not have to force to have intercourse with her.[68]

Nevertheless, other responses confirmed that women do experience forced sexual intercourse by their husbands.[69] A female respondent explained:

> The truth is that men have more sexual urge than women and many women do not remember their responsibility to their husbands' and this could provoke the man. It has happened many times to me in my marriage, but I know it is because my husband loves me that is why it happens. The truth is that it is only a

[61] 16 female respondents (Respondents 5-10, 16, 17, 40-45, 118-121.)
[62] Respondent 42.
[63] Respondent 120.
[64] 304 respondents.
[65] 1 Corinthians 7:4 'The wife hath no power of her own body, but the husband: and likewise, also the husband hath not power of his own body, but the wife.'
[66] Ibid.
[67] Respondent 28.
[68] Respondent 8.
[69] Respondent 11, 19, 26, 29, 32, 50-59, 106,115, 123-137.

> husband that loves his wife that will force to have sexual intercourse with her. Therefore, a woman should keep asking God for grace and strength to be able to satisfy her husband at all that. That grace is available.[70]

However, all the respondents insist that cases of forced sexual intercourse in a marriage are purely a private matter which the Christian wife must endure to preserve the dignity of her marriage.[71] As a female respondent suggested:

> Only a foolish woman would expose the nakedness of her husband outside. If she is experiencing such in her marriage, she should pray to God and her husband will change. No woman should expose her husband in such manner.[72]

Another respondent observed:

> It must be the bad behaviour of the wife that would make her husband behave in such manner. If my daughter came to me with such complaint, I would tell her to go back home and obey and submit to her husband, be of good behaviour and her husband will surely change. There is nothing new under the sun.[73]

An Islamic scholar describe Islam as one that promotes equality between men and women.[74] However, in Tucker's view, although Islam promotes women's rights, the reverse is the case in practice.[75] Corroborating the above argument, Amien contends that Muslim marriages are usually entered into and terminated on an unequal basis, and women are usually required to bear burdens that are not borne by men.[76] All Islamic respondents affirm that wives within the Islamic religion are inferior to men,[77] and that men are in charge of women because 'Allah has made one to excel the other.[78] In a male respondent's view:[79]

> Someone has to be superior over the other in a marriage, and Allah has prescribed that the man should lead. A good wife and devout Muslim woman would understand this and know that she cannot be equal to her husband. She should respect and obey him at all times, and this will make the man love and care for her more.

In the words of a Muslim cleric 'good Muslims know their rightful place and role in a marriage, and should not even be a topic of discussion'.[80] The consensus among Islamic leaders is that wives are primarily charged with the responsibility of the proper upbringing of children, and must provide spiritual, moral, and emotional support to their husbands.[81] Another Muslim cleric noted: 'While it is the husband's responsibility to financially provide for his family, the wife must teach the children and support them to grow morally upright'.[82] The perception among all Muslims sampled was that 'a man is in charge of the

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[70] Respondent 57.
[71] Ibid.
[72] Respondent 129.
[73] Respondent 130.
[74] Respondent 392.
[75] Judith E Tucker *Women, Family and Gender in Islamic Law* (2008) 12–13. Right to live and respect of human life Qur'an 5:32; Right to Justice Qur'an 5:8; Right to equality of human beings and freedom from discrimination Qur'an 49:13; Right to freedom from slavery and inhuman treatment Qur'an 5:2; Right to own and dispose property Qur'an 4:40.
[76] Waheeda Amien *A Consideration of the Conflict between Women's Right to Equality and Freedom of Religion when Muslim Family Law is Assimilated, Accommodated or Integrated into Multicultural Constitutional Jurisdictions* (unpublished PhD thesis, University of Ghent, 2011) at 54.
[77] Respondents no 321 – 498.
[78] Qur'an 4:34
[79] Respondent 487.
[80] Respondent 392.
[81] Respondents 392, 393.
[82] Respondent 393.

marriage, and the woman must follow his leading'.[83] Furthermore, respondents noted that the wife occupies the second position to run the house under her husband.[84] In the words of a male Islamic adherent, wives have their ordained position within the marriage, and it is the wife's duty to ensure that the children are properly trained, and manage the affairs of the home'.[85]

The practice of polygamy in Nigeria was reported by a majority of female respondents to promote inequality between men and women. Men are reported to have permission to marry more than one wife, while women are not allowed to have more than one husband.[86] A Muslim cleric provided clarification that 'it is divine intent that a woman should be married to one man at a time. If a woman is not satisfied in her marriage, she should apply for a divorce. Islam forbids polyandry.'[87]

In the words of a female Muslim respondent:

> The religion only permits men to marry more than one wife with the condition that he must love the wives equally. But in practice it is very difficult to see the husband love his wives equally. Unfortunately, women are not given the same right to marry more than one husband. I know my husband one day can decide to marry another wife and there is nothing I can do even though I do not like it.

As mentioned above, another example of discrimination and inequality against women within the practice of Islam in Nigeria includes the practice of purdah (seclusion).[88] The practice of Purdah is where Hausa women are put in seclusion immediately after marriage if their husbands can afford to maintain them. Within this practice, women particularly in the northern states of Nigeria are secluded and excluded from social, economic, and political activities going on in the society.[89] A Hausa female respondent confirmed:

> Hausa women are forced to stay in seclusion and have no contact with men except their relatives, while their public movements are strictly regulated. Married women in *Purdah* are required to stay in seclusion without interaction with other male acquaintances.[90]

Another Hausa female respondent observed that 'women in the northern states of Nigeria are usually not allowed to leave the house, they do not go to market and are not allowed to be seen in public.'[91] Within the spirit of the Protocol, the restriction placed on women's movement and social interactions within the northern states of Nigeria could be interpreted as a case of discrimination against women and constitutes a social and cultural pattern based on stereotyped roles for women and men.[92]

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[83] Respondents 321-498.
[84] Respondent 394.
[85] Respondent 410.
[86] *https://www.alislam.org/question/polygamy-in-islam/,* accessed on 8 July 2020.
[87] Respondent 368.
[88] Hauwa'u Evelyn Yusuf Purdah: A religious practice or an instrument of exclusion, seclusion and isolation of women in a typical Islamic setting of Northern Nigeria' (2014) 4 (1) American *International Journal of Contemporary Research,* available at *https://www.semanticscholar.org/paper/Purdah%3A-A-Religious-Practice-or-an-Instrument-of-of-Yusuf/187c24b303a78da2afe872b91b444587a305bce1*, accessed on 8 July, 2020.
[89] Ibid.
[90] Respondent 392.
[91] Respondent 472.
[92] Article 2(2) Protocol to the African Charter on the Rights of Women in Africa.

The practice of child marriage is another religious practice that fuels inequalities within a marriage. Child marriage is prevalent within Muslim marriages particularly in the northern region of Nigeria, where girls younger than 15 years are forced into marriages with much older men. A report from Save the Children International showed that 48 per cent of girls in northern Nigeria are married before the age of 15.[93] The practice of child marriage violates the minimum age requirement for marriage as prescribed by the Protocol.[94] However, many respondents applauded the practice for its seeming benefits to young girls. According to a female respondent in northern Nigeria:

> A girl can get married once she is experiencing her monthly cycle, and the older the man is the better. The man is required to be matured and able to properly take care of the young bride. It is a cultural and religious requirement for Hausa girls to marry early to preserve their virginity and the good name of the family.[95]

A male respondent explained:

> My two girls were all betrothed at a very young age of 13 and I do not regret my decision. They are currently mothers, and I am proud that they are good wives and I am a grandfather. They may not have gone to school, but they are better than many of the morally rough girls you see around now.[96]

A Muslim cleric affirmed:

> It will not be possible that the young girls will be equal to the men they are married to and who has the responsibility of taking care of them. The young girls must be always respectful and obedient to their husband. Our prophet married a young girl too and there was never a case of inequality because everyone knew their role and position in the marriage.[97]

A further practice that promotes inequality within Islamic marriages in Nigeria is the preclusion of women, as opposed to men, to file for divorce. In contravention of Article 7(b) of the Protocol,[98] an Islamic cleric in Lagos metropolis gave his perception on divorce in Muslim marriages:

> Although divorce, also known as *'Talaq,'* is possible for a woman, it is more difficult for a wife to sue for divorce than a husband. Unlike a husband who can exercise his right to divorce at any time, Muslim wives may require the consent of their husband or that of a judicial authority before she can be released from the marriage, or show fault in their husband, or buy their way out of the marriage.[99]

The inability of women to file for divorce arguably results in numerous women staying in abusive marriages without complaint as expressed by several female respondents. Corroborating this view, a leading Imam in one of Ibadan central mosques insists:

> Even if a man is beating his wife in a marriage, according to Islamic religion a woman cannot divorce her husband; only a man can divorce his wife. However, she can report to her parents and other leaders, but I don't think there is anything under Islamic religion that allows her to divorce her husband.[100]

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[93] Victoria Edeme '48% of girls in northern Nigeria marry before 15-Report Punch Newspaper'(13t November 2021), available at *https://punchng.com/48-of-girls-in-northern-nigeria-marry-before-age-15-report/,* accessed 10 – August, 2020.
[94] Article 6(b) *States Parties shall enact appropriate national legislative measures to guarantee that the minimum age of marriage for women shall be 18 years.*
[95] Respondent 328.
[96] Respondent 401.
[97] Respondent 416.
[98] Article 7, 'States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that women and men shall have the same rights to seek separation, divorce or annulment of a marriage.'
[99] Respondent 492.
[100] Respondent 327.

Varying levels of inequalities exist within marriages in Nigeria and religious beliefs and practices continue to promote the subsistence of those inequalities. Evident from the responses received, as noted above, is the fact that women themselves are indoctrinated to perceive and accept gendered inequalities as a way of life. Until efforts are geared towards educating them and achieving their total change in perception, these inequalities will continue to persist in Nigeria.

Another type of inequality experienced by women occurs upon the death of their husbands, which requires a series of rites and rituals that women are forced to endure. These are discussed next.

(iii) Demeaning widow's rites and rituals

The Protocol prescribes explicitly the rights available to widows, which includes an automatic right of guardianship and custody of her children after the death of her husband,[101] the right to remarry a person of her choice,[102] the right to an equitable share in the inheritance of the property of her husband,[103] and the prohibition of all forms of inhuman, humiliating or degrading treatment.[104] The Protocol provides that every woman is entitled to respect for her life and the integrity of her person, and is free from undergoing any form of physical harm.[105] States Parties are required to prohibit, through legislative measures backed by sanctions, all forms and practices inimical to female health and well-being, without making provision for a cultural defence of practices to the contrary.[106]

Across religions sampled, the respondents described the practice of widows' rites as significant, because they provide the only opportunity for the widow to pay her last respects to her deceased husband. A Christian businesswoman in Lagos particularly states that 'a widow must endure whatever hardship she finds as a sign of love and sacrifice for her deceased husband'.[107] The field research also revealed that women are the promoters of the practice of widows' rites, as they view the practice as a social obligation and a lived reality that they must adhere to in ensuring community and social acceptance.[108] According to a female domiciled in Lagos state:

> Widows' rites is a compulsory ritual that every widow must experience. It is an old ritual, and it is the responsibility of the elderly women within the community to ensure that every widow undergo the cleansing ritual.[109]

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[101] Article 20(b) 'States Parties shall take appropriate legal measures to ensure that widows shall automatically become the guardian and custodian of her children after the death of her husband, unless this is contrary to the interests and welfare of the children.'

[102] Article 20(c) 'States Parties shall take appropriate legal measures to ensure that widows shall have the right to remarry, and in that event, to marry the person of her choice.'

[103] Article 21 'A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.'

[104] Article 20(a) 'States Parties shall take appropriate legal measures to ensure that widows are not subjected to inhuman, humiliating or degrading treatment.'

[105] Article 4(1) Protocol.

[106] Article 5(b) Protocol.

[107] Respondent 27.

[108] This is the general view of all female respondents across all religions.

[109] Respondent 517.

Responses received show that within the Igbo version of African Traditional Religion, the practice of widows' rites and rituals sometimes view women as the first suspect responsible for their husbands' death when their husbands die (expectedly or even after an illness) and are compelled to undergo several dehumanising rituals to prove their innocence.[110] An elderly woman explains that 'the rites performed on widows are very beneficial and an act of love and sacrifice for her deceased husband.'[111] Another woman adds that:

> Widows must undergo these rituals to cleanse themselves from the spirit of the deceased. The rites and rituals performed on widows include sleeping with the corpse, drinking the water used to wash the corpse, and being kept in an isolated room with the corpse.[112]

Other rites and rituals include restricting the widows' movement, cutting the widows' hair without her permission, her having to sleep with the corpse in a secluded room, and forcing the widow to dress only in black clothing for a specified period of time.[113]

The Christian religion is perceived to be silent on the practice of widows' rites and rituals. The general perception of 60 per cent Christian respondents consisting of 160 women and 48 men is that widows' rites and rituals are governed by culture, and women are expected to comply with the dictates of culture.[114]

A female trader explains, 'we are part of a culture and must follow the requirement of culture when it comes to rites and rituals. This is the only way a woman can cleanse herself of any evil associated with the death of her husband.'[115] In the words of another woman 'the rites a widow goes through is a sign of honour to her late husband and her last obligation him.

Another woman however bitterly describes the treatment she was made to endure when her husband died as inhumane.[116] In her words:

> I will never forget the hell I went through when my husband died. I was labelled a murderer, was locked up in a dark room for several days with no good food. My church members could not visit me and I had to endure all the ill treatments for the stipulated period. However, when I came out of seclusion and returned home, the church was there for me and provided for me financially, materially and emotionally.[117]

A Christian cleric is of the opinion that 'the church will usually not interfere in matters of culture, but will always ensure that some level of succour, such as financial and material assistance, is provided for the widow.'[118] Another Christian cleric notes that 'most churches now have programmes specifically designed

[110] Respondents 502-535.
[111] Respondent 510.
[112] Respondent 500.
[113] Respondents 521-554.
[114] Respondents 1 – 208.
[115] Respondent 175.
[116] Respondent 176.
[117] Respondent 176.
[118] Respondent 85.

to help widows, because the church is aware of the unavoidable hardships that widows are made to endure in Nigeria.'[119]

Women within the Islamic religion perceived the practice of widows' rites and rituals as a sign of respect and honour for a deceased husband. The practice ranged from seclusion of the widow, shaving of the widow's hair, restricting her movement, wearing black or white cloth for a period of time, and being denied access to her late husbands' properties. An *Alhaja*[120] in Lagos describes the mourning period as *iddah.*[121] According to her:

> widows during the mourning period may only be allowed to plait her hair once or twice throughout the mourning period, she may only take her bath occasionally, and on the last day of her *iddah* she is expected to use ashes to cover her private part.[122]

It is also believed that widows' rites will prevent a deceased husband from visiting his wife after death.[123] In the words of another *Alhaja*, a respondent in Kebbi State:

> Widows are expected to undergo some customary rituals to prove their innocence with respect to the death of their husbands. Usually, water will be given to the wife to take an oath, and if her hands are clean, then nothing will happen to her.[124]

A similar position is echoed by an Islamic Hausa trader, a respondent in Lagos State who said: 'When a husband dies, his wife is expected to stay confined within the late husband's house for a minimum period of three months to respect her husband.'[125] Another female respondent, who is a well-renowned *Alhaja* in Kebbi State, described the practice within the Islamic religion in Northern Nigeria as *Takaba*. According to her:

> *Takaba* is the name for the traditional Islamic mourning period in Hausa language. When my husband died, I was forced to stay in a secluded room for four months and 10 days. Women are usually secluded in this manner so as to determine if the woman is pregnant, and to ensure that the woman does not pass the pregnancy to another man.[126]

Another female respondent added that widowers are not subjected to these rites and rituals but are more often comforted and assisted with getting a new wife as soon as possible.[127]

Also related to the practice of widows' rites and rituals is the deprivation of widows from an equal share in the properties of their deceased husbands and the resulting economic challenges usually faced by widows. According to an Islamic leader in Ibadan, Oyo State:

> A man can have four wives, and he can divide his properties into eight, giving each wife a portion, while the remaining portion belongs to the children. But if there are no children in the marriage, the property will be

[119] Respondentt 9
[120] A title for a woman who is a Muslim and who has completed the Islamic journey to Mecca.
[121] Respondent 402.
[122] Ibid.
[123] Rafatu AbdulHamid 'Islam and cultural interferences in the lives of the Nigerian women' (2014) 4 (7) 4 (17) *Research in Humanities and Social Sciences* at 77.
[124] Respondent 413.
[125] Respondent 411.
[126] Respondent 391.
[127] Respondent 472.

> divided into four and one part will be given to the woman, with the remaining three parts given to the man's family.[128]

In the same vein, Amien and Abduroaf argue that though the Qur'an provides for a 'fixed heir' aimed at ensuring that the wife or wives of the deceased are not precluded from inheritance, the sharing formula is not equal between the male and the female.[129]

Practices of widows' rites and rituals cut across the three main tribes in Nigeria (Hausa/Fulani, Igbo and Yoruba). The practice is in various forms and is perceived as obligatory. Despite the negative aspects and impact of the culture on women, such as health risks when drinking water used to wash the corpse of the deceased husbands, or the discomfort experienced by the widows when confined in a room without food, or the restriction of a widow's movements, they continue to feel obligated to comply with these practices as symbols of paying their last respect and honour to their deceased husband. This calls for finding a balance between respecting and upholding the values of culture with respect to honouring the dead and protecting women from the harm and inequalities experienced because of this practice.

Another factor of discrimination identified within the various religions in Nigeria was in the devolution of property. While the African Traditional Religion had clear prescripts on how family property should be shared and the Islamic religion provides for how properties of a deceased husband should be divested, Christianity again appears silent and allows the dictates of culture to prevail.

(iv) Discriminatory devolution of property

The Protocol provides that women and men shall have the right to inherit their parents' properties in equitable shares.[130] However, devolution of property within the African Traditional Religion is perceived to discriminate against women, and from the account of all the respondents within the ATR, women within the Yoruba traditional religion are only entitled to inherit a portion of the property from their fathers but cannot inherit from their husbands. Within the Igbo traditional religion, women have no right of inheritance to their father's property or to their husbands' properties. A female Igbo trader from Enugu State said:

> Women in Igbo traditional religion and culture cannot inherit properties from their fathers or husbands. We are born to know that it is a man that has this right, and when a woman marries, her husband has a duty to take care of his wife and the children. This is because the properties must be kept within the family lineage from generation to generation. But if the property is given to women, they will end up passing the property to their husbands when they get married. Many times, the husband also sponsors the wife's education if he wants to.[131]

A Lagos-based male Igbo traditional religion adherent explained:

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[128] Respondent 492.

[129] For the husband, fixed portion is ½ if the deceased left no children; ¼ if the deceased left children. For the wife, ¼ if deceased left no children, and $^1/_8$ if deceased left children. Waheeda Amien 'The viability for women's rights of incorporating Islamic inheritance laws into the South African legal system' (2014) *Acta Juridica* at 198; Muneer Abduroaf 'An analysis of the rationale behind the distribution of shares in terms of the Islamic law of intestate succession (2020) 53(1) *De Jure Law Journal*, available a*thttp://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602020000100008&lng=en&nrm=iso&tlng=en, accessed on December 2020.*

[130] Article 2(2) 'Women and men shall have the right to inherit, in equitable shares, their parents' properties.'

[131] Respondent 542.

> The reason why women cannot inherit properties within the Igbo culture is because men are the custodians of tradition, and landed properties are part of the acquired possessions of every family. All family lands are named and described with specific family names. It would be impossible to grant that right to women because women will eventually adopt a new family name when they get married.[132]

Another Igbo traditional leader resident in Enugu State explained further:

> A married woman according to the Igbo culture is the full responsibility of her husband. The husband is expected to take care of his wife and her children, and she belongs to him. The properties also belong to him, and as a good man he will give the woman access to what she needs. He is the head of the family, and all rights to properties remain in his name.[133]

The Islamic religion on the other hand grants women a specific share in the family inheritance. According to a female respondent within the Islamic religion, an *Alhaja* domiciled in Lagos State:

> Islam grants the woman a share in the inheritance of the family and warns against depriving her of the said inheritance. Women are entitled to half of the male counterpart's share in the inheritance. For instance, if the deceased is survived by a son and a daughter, the son will inherit twice as much as the daughter. Similarly, if the deceased is survived by a brother and a sister, the sister will inherit half as much as her brother.[134]

Another female respondent, who is an *Alhaja* and banker, affirmed that:

> Property is not usually distributed in an equitable manner between the female and male children of the deceased. A woman can inherit property within the Islamic religion, but she can only collect one-third of the property, while the boy takes two-thirds.[135]

Within the Christian religion, responses received from the majority of respondents reveal the central role of culture in the perception held by respondents on devolution of property. All Christian respondents agree that the Christian religion has no stated principles on devolution of property, and that Christian adherents mostly resort to the dictate of their respective cultures.[136] Female inheritance of property within the various cultures under review is discussed in greater detail in Chapter Four. Some Christian religious leaders explained that in practice, the church endeavours to provide some level of comfort and succour to widows when the need arises.[137] According to a Christian pastor:

> Most Pentecostal Christian denominations now have outreaches designed to assist and empower widows financially and provide them with a source of livelihood. During the mourning period, the church would usually assign some women to spend time with the widow and provide her with some level of comfort. The church understands the difficult position that these widows face in the hand of culture, and though the church may not be able to influence or change the cultural mindset of people, action can be taken to provide a better life for the widow and her children.[138]

A woman leader within the Catholic Church also notes, 'regular financial contributions are now made into a specified purse within the church for use towards supporting and starting up a business for widows who are disenfranchised by their various families'.[139]

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[132] Respondent 551.
[133] Respondent 553.
[134] Respondent 502.
[135] Respondent 506.
[136] The practice of female inheritance of property is discussed in detail in Chapter Four.
[137] Respondents 248, 249, 251 and 310.
[138] Respondent 249.
[139] Respondent 310.

Women evidently continue to experience a series of discriminations in devolution of property due to the cultural laws and practices in place within the three main cultures in Nigeria. Religion in this respect is greatly influenced by the dictates of culture, which are governed by the patriarchal norms and values prevalent in Nigeria. Men are seen as custodians of culture and consequently beneficiaries and custodians of family property. A change of perception and cultural reorientation of cultural leaders and men would therefore be required to achieve inequality for women in this respect.

Another practice influenced by religious beliefs, which continues to subsist in Nigeria, is female genital mutilation / female circumcision, which is discussed next.

(v) Female genital mutilation/female circumcision

Female genital mutilation/female circumcision (FGM/FC) remains a major ravage on the life and well-being of girls and women in Nigeria. According to the World Health Organisation, one in four Nigerian women, between the ages of 15 and 49 years' experience FGM/FC, making Nigeria number three in the world with a high prevalence rate of FGM/FC.[140] Article 5(b) of the Protocol addresses this health and life-threatening practice by prohibiting all forms of female genital mutilation, and all harmful practices which negatively affect the human rights of women, and are contrary to recognised international standards.[141]

The practice of female genital mutilation/female circumcision (FGM/FC) is reported by female respondents to be deeply rooted in Nigerian society, especially among the Yoruba of the southwest region and the Hausa/Fulani of the northern region.[142] Most Hausa/Fulani women who were interviewed stated that the practice is required to ensure the sanctity of the woman and her virginity.[143] The practice is justified within the ATR to preserve the purity of the young girls and consequently ensure that the girls marry as virgins. A Yoruba woman based in Ibadan Oyo State said:

> Circumcising girls is very important under the Yoruba traditional religion. It helps preserve their purity, and it is a practice that I was born to meet. I was circumcised and I also circumcised all my daughters; and I will make sure all my granddaughters are also circumcised.[144]

Another Yoruba woman based in Ibadan, Oyo State stated:

> Female circumcision as practiced within the Yoruba tradition is what helps Yoruba women to remain faithful to their husbands and be good wives. Many women today are unfaithful and behaving badly because the requirements of circumcision are no more followed strictly.[145]

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[140] *Nigeria: Female Genital Mutilation – Recalling the Agonising Pain,* available at *http://allafrica.com/stories/201603250153.html*, accessed on 3 February 2021.

[141] Article 5(b) of the Protocol provides: 'States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, sacrification, medicalisation and para-medicalisation of female genital mutilation and all other practice sin order to eradicate them.'

[142] Respondents 365-412.

[143] Ibid.

[144] Respondent 526.

[145] Respondent 542.

A Fulani woman based in Lagos states that 'the Islamic religion as practiced by my culture encourages the circumcision of female children in the same way that boys are circumcised.'[146]

Several Islamic respondents from both the Yoruba and the Hausa/Fulani cultures state that Islam sanctions the practice of FGM.[147] In the view of an author, Dr Lanre Badmus Yusuf:

> Female circumcision is an injunction from Prophet Mohammed, and Prophet Mohammed met circumcision during his time and enjoined women to be circumcised. The act of female circumcision is therefore a "noble deal for women," and circumcision is compulsory for both male and female under the Islamic religion.[148]

Several differing opinions to those of Dr Lanre Badmus Yusuf exist; these claim that circumcision is not compulsory in Islam because it is not explicitly mentioned in the Qur'an. It is argued that many issues in Islamic Shari'ah law rely not on the Qur'an but on Hadith teachings.[149] However, within the practice of Islam in Nigeria, circumcision is seen as an important ritual aimed at improving cleanliness for the boys and ensuring the piety of the girls. Christianity is nevertheless silent on the practise of FGM/FC.

The analysis of the responses received establishes that the practice of FGM/FC has more to do with tradition/culture than religion in Nigeria, except for the Islamic religion in Nigeria. FGM/FC is still practiced in Nigeria and more evident within the Hausa/Fulani culture and the Yoruba culture. This practice is discussed in greater detail in Chapter Four. The resultant effect of FGM/FC on the health and lives of young girls as discussed in Chapter Four, continues unabated due to women's refusal or inability to seek justice against the perpetrators and ensure a complete eradication of the practice. More challenging however, and as also discussed in Chapter Four, is the fact that the perpetrators of FGM/FC are women, who have over the years been compelled to abide by cultural dictates in a bid to enjoy their cultural identities.

(vi) Absence of recourse to justice

According to the consensus from respondents and as evidenced in Table 3 below, women in Nigeria usually do not resort to submitting a formal complaint against their husbands, even in cases of serious abuse and domestic violence. The majority of respondents across all religions state that the law and its institutions are not the preferred routes for resolution of disputes in the event of discrimination, abuse and violence within the marriage. All the religions advocated for settlement of disputes by seeking parental counselling and intervention, the intervention of religious leaders, and of family heads.

As shown in Table 3 below, 50 adherents of Islam and 78 practitioners of the Christian faith hold the view that whatever happens within marriages should be kept private. These responses suggest that women

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[146] Respondent 392.
[147] Respondents 421-433, 460-472.
[148] 'Islamic scholars disagree on female circumcision' (1 August 1999) First National Conference of the Islamic Medical Association of Nigeria (IMAN) in a discussion on the spread of HIV/AIDS, *The Guardian*, Lagos in Immigration and Refugee Board of Canada *Nigeria: Whether a Person Can Be Forced to Convert to Islam and, If So, Whether Circumcision or Female Genital Mutilation (FGM) Would Be Part of the Conversion (January 1999 – August 2000*), available at , accessed 12 April 2021.
[149] Hossein Dabbagh 'Is circumcision "necessary" in Islam? A philosophical argument based on peer disagreement' (2022) *Journal of Religion and Health*, available at https://link.springer.com/article/10.1007/s10943-022-01635-0, accessed on April 2021.

should not resort to justice when faced with discriminations or abuse within the marriage. Women are described as bearing the greater responsibility in ensuring that a marriage is successful and would most often opt to 'endure' the marriage and avoid family disgrace and embarrassment because of divorce.

RELIGION	Religious Leaders and Institutional Codes	Family Heads and Institutions	Police/ Arbitration Panels	No Recourse
ISLAM	63 (36%)	52 (29%)	13 (7%)	50 (28%)
CHRISTIANITY	120 (38%)	108 (34%)	14 (4%)	78 (24%)
AFRICAN TRAD. R.	8 (14%)	42 (75%)	0	6 (11%)

Table 3: Percentage of Respondents on Recourse to Justice over Marital Abuses in Religions

A majority of respondents from ATR explained that marriage is sacred, and a woman should not report her husband to anyone. They explained that in the event where there a grievance in the marriage that cannot be resolved, the family heads and traditional rulers are the only persons to resort to.[150]

A Christian female respondent in Lagos explained that women are usually advised to continue to exercise patience, pray for their husbands, and bear whatever happens within the marriage with the hope that the husband will change soon.[151] Muslim respondent domiciled in Lagos said that:

> It is the woman's responsibility to submit to her husband, and if the husband is being violent with his wife, then the wife should speak to family heads or other family members to help resolve the problem. Reporting your husband should be a last resort because reporting brings shame to your family. Fervent prayers and patience will change any man.[152]

A female trader explained:

> According to the bible, women are the ones saddled with the responsibility to build her home, and if the marriage fails it is usually tagged as the fault of the wife. Therefore, a woman should endure whatever she faces in her marriage, she will not be the first to endure.[153]

Corroborating the above position, another female respondent added:

> Reporting and taking legal action against one's husband, or divorce is not an option in a good Christian marriage. Civilisation has made our women think they have options, but the ideal is that a woman must stay in her marriage, endure and trust God for a change. I have three daughters who are married, if for any reason they come back to my house on grounds of separating from their husband, I will ensure they move back to their husbands' house. If a wife shows her husband love, respect, and devotion, he will not beat her. If he is beating her, it is because the wife is also misbehaving.[154]

Religious leaders interviewed are also of the opinion that exploring legal options is not a preferred route to resolving conflicts in marriage. A Christian cleric held the view that "counselling and prayer could

[150] Respondents 502-525.
[151] Respondent 15.
[152] Respondent 350.
[153] Respondent 353.
[154] Respondent 358.

solve any problem."[155] An Islamic leader equally said: "A good wife will never report her husband to any authority but will find a good time to speak to her husband and resolve their issues."[156] Furthermore, religious leaders expressed their outright condemnation of divorce. An Islamic cleric explained:

> Where there are problems within the marriage, all available means of resolution should be explored within the family, while ensuring that the woman preserves her marriage with or without abusive tendencies from the husband. It is wrong for a woman to go report her husband to third parties or even to law courts.[157]

Another group of respondents, comprising women only and representative of the three religions and cultural groups under review, believe that the culture of silence is most preferable in responding to the discriminations women suffer because of the prevalence of religious beliefs in Nigeria. In their view, these practices have existed from time of their forefathers, and nothing can be done to stop it now. Only a handful of respondents, consisting of literate women from the various Christian and Islamic religions, said they would love to explore legal protection from discrimination and abuse within their marriages, but they are quick to add that they may not do so to protect the integrity and respect of their families. A female civil servant in Lagos state said:

> I am aware of several Non-Governmental Organisations that are set up now to protect the rights of women in abusive relationships and marriages. I hear that anyone woman can go there to report, but I have not really seen anyone that went there. On my part, I may not go there to report my husband because it would just be opening a door for shame and ridicule to my family.[158]

Another female respondent added:

> I have been forced to approach one of these women organisations when I was suffering a lot of abuse from my husband and in laws. The organisation tried to intervene, but at the end I worse off with my family and in laws who got angry with me. I do not think it is good for a woman to report her husband.[159]

Responses from the questionnaires and interviews also show that culture plays a major role in perceptions on the rights of women, and the reason for the subsistence of the cultural practices of child/early marriage, widows' rites and rituals, the absence of female right to inherit properties, female genital mutilation/female circumcision, and the absence of recourse to justice. The next section will, therefore, address the impact of culture on women's rights in Nigeria. Wife beating, forced sexual intercourse, the absence of women's right to divorce, denial of custody of under aged children, and wife inheritance are also discussed in the section below, as culturally induced discriminatory practices that subsist within the three main tribes in Nigeria.

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[155] Respondent 310.
[156] Respondent 450.
[157] Respondent 502.
[158] Respondent 178.
[159] Respondent 185.

SECTION TWO

III CULTURAL NORMS AND PRACTICES HINDERING THE RIGHTS OF WOMEN IN NIGERIA

As stated in Chapter Two, a total of 50 interviews were conducted between December 2020 and April 2021, consisting of 35 women and 15 men, nearly evenly distributed among the three cultural groups under review (Hausa/Fulani, Igbo and Yoruba culture).[160] The interview particularly inquired about women and men's perceptions regarding cultural practices that affect women. Questions were asked about what age a girl is expected to marry and if the age differs in the case of a boy.[161] Cultural positions were obtained about female inheritance of property, divorce instituted by a woman, and available rights for widows. Perceptions were obtained on the practice of female genital mutilation/circumcision, wife beating, forced sexual intercourse in a marriage, as well as possible recourse to justice where there is abuse within the marriage.[162]

The interviews helped build a narrative of how cultural norms and practices influence discrimination against women in Nigeria. As earlier stated, the goal of the fieldwork was to ensure that the voices of people would not be lost in the description and analysis of the cultural factors that impede the promotion of the rights of women in Nigeria as provided for in the Protocol. Data analysis is thus presented using overarching themes of cultural practices that would reflect the perceptions of the research participants. The overarching themes include female circumcision, demeaning widow rites and rituals, wife beating, wife inheritance, forced sexual intercourse/marital rape no custody of under-aged children, denial of female inheritance of property, child marriage, absence of women's right to divorce, and absence of recourse to justice.

Questionnaires were developed and distributed among 554 respondents consisting of 394 women and 160 men living within selected States' metropolises of Lagos, Kebbi, Enugu, and Ibadan (Oyo State) of Nigeria.[163] As depicted in table 4 below, respondents consisted of 153 Hausa/Fulani (120 females and 33 males), 204 Igbo (150 females and 54 males) and 197 Yoruba (150 females and 47 males).[164] The age range of participants comprised young adults from 21 to 70 years, and respondents were made up of women and men.

CULTURAL GROUPS	**FEMALE**	**MALE**	**TOTAL**
Hausa/Fulani	120	33	153
Igbo	150	54	204
Yoruba	150	47	197
TOTAL	**420**	**134**	**554**

[160] See Appendix B.
[161] See Questionnaire questions 13-35, analysed alongside interview questions A1-A13.
[162] See interview questions A1-A13 in Appendix 2.
[163] See Appendix A.
[164] See Table 4.

Table 4: Number of Cultural Group Respondents to Questionnaires

(a) Grid of common cultural factors hindering the promotion of the rights of women in Nigeria

The responses from the fieldwork show that there are 10 cultural factors within the various cultures under review that enable discrimination against women.[165] As shown in Table 5 below, these cultural factors/practices include: female genital mutilation/circumcision, demeaning widow rites and rituals, wife beating, marital rape, denial of the female right to the inheritance of property, child/forced marriage, absence of women's right to divorce, denial of custody of under-aged children, wife inheritance, and absence of recourse to justice. The effect of these factors within the three main cultural groups under review will be discussed in detail in the subsections below.

CULTURAL HINDRANCES	**HAUSA/FULANI**	**YORUBA**	**IGBO**
Female Circumcision	✓	✓	✓
Demeaning Widow Rites and Rituals	✓	✓	✓
Wife Beating	✓	✓	✓
Wife Inheritance		✓	
Forced Sexual Intercourse/Marital Rape	✓	✓	✓
No Custody of Under-age Children	✓		
Denial of Female Inheritance of Properties	✓		
Child Marriage	✓		✓
Absence of Women's Right to Divorce	✓		✓
Absence of Recourse to Justice	✓	✓	✓

Table 5: Grid of factors of Cultural Hindrances to the Rights of Women amongst the three main cultural groups in Nigeria

(i) Female genital mutilation/female circumcision

A total of 153 Hausa/Fulani indigenes were sampled, consisting of 120 women and 33 men, and they all confirm the existence of the practice of FGM/FC within their culture. The practice is described by some respondents as a normal part of life which must be observed, while others describe the practice as sanctioned by the Islamic religion and must be carried out to prevent promiscuity by the young girls. A female trader resident in Lagos explained:

> A woman is not complete if she does not undergo genital cutting. Girls whose genitals are not cut are very promiscuous and many of them face challenges in childbirth. Every mother should therefore ensure that their daughters are circumcised to preserve their fertility.[166]

Sixty per cent of female respondents confirmed that they were circumcised and would not hesitate to circumcise their daughters to give them 'a healthy sexual life'.[167] According to a female trader:

[165] See Table 5
[166] Respondent 315.

> I was circumcised and I circumcised all my daughters. Recently, I also circumcised my granddaughter. I see the benefit in my marriage and in the marriages of my daughters, and I will not hesitate to circumcise any other grand or great grandchildren that are given birth to in my family.[168]

The remaining 40 per cent of female respondents consisting mainly of educated women perceive the practice as a deprivation of women's right to their sexuality and called for its complete abolition. In the words of a female respondent:

> The practice of FGM/FC is barbaric, and its usually not performed in a very hygienic way. Unfortunately, there is little women can do about this if the cultural perceptions are not changed. Circumcision does not make a woman less promiscuous, and people need to understand that.[169]

Another female banker opined:

> I understand that there are women laws that abolish the practice of FGM, but I wonder why its impact is not felt in practice. Maybe more education should be given to the public about the health dangers of this practice.

A female doctor resident in Kebbi added:

> The high rate of young girls admitted in the hospital within the Northern states of Nigeria as a result of the negative effect of FGM/FC on the young girls, is quite alarming. However, their mothers still send their girls to be circumcised in compliance with the dictates of culture.

A female representative of a leading rights advocacy group in Kebbi State particularly wonders 'why the health authority in the nation and in the regions turned a blind eye on the concomitant health hazards associated with FMG/FC, together with its possibility of engendering lifelong infection and infertility'.[170]

FGM/FC is also widely practiced among the Yoruba cultural group. It is described as a compulsory practice to ensure the well-being and welfare of the girl child.[171] Top on the list of the benefits that some claim to support FGM/FC is that it helps to preserve the virtue of young girls and prevent sexual promiscuity in married women. Arguments made in favour of the practice include preserving the virtue of young girls, sanitising the female genitals, easing childbirth, preventing certain types of genital infections, and reducing promiscuity in the girl child. A female trader resident in Lagos stated that 'female circumcision is very important as it helps the woman not to be promiscuous and she is well respected by her husband when he marries her as virgin'.[172] Another female civil servant in Lagos explained that:

> Female circumcision helps to open the private area of girls, and this helps them to deliver easily. It also helps to clean and sanitise the female genitals. I was circumcised and I recommend it for every young girl."[173]

Responses from the Igbo cultural group confirm the high prevalence of the practice of FGM/FC also in the Igbo community. In the words of a young female graduate in Enugu State:

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[167] Some female respondents from the three main cultures under review include respondent 10, 15, 28, 62, 210, 266, 310, 315, 366, 410, 422, 510, 516, 522, 548,
[168] Respondent 318.
[169] Respondent 319.
[170] Respondent 492.
[171] Respondents 52-100, 193-197.
[172] Respondent 55.
[173] Respondent 83.

> Female circumcision happens in my culture, and it is carried out the same way it is done for boys. The prevalence level has reduced, because people are beginning to condemn the practice on grounds that it affects the girls, causes them to bleed, and closes the female genitals. I actually don't believe in that, but this is a practice that I met.[174]

An elderly female retiree, resident in Owerri, Imo State, explained:

> A girl is supposed to be circumcised before she is allowed to get married, and even if she gets married before circumcision, she must still ensure that she does it before delivering a baby. Circumcision helps to open up the woman's private part, and makes childbirth easier, and she won't need to do operation during childbirth.[175]

Responses received reveal that the Igbo culture does not coerce, but rather encourages women to undergo FGM/FC; and it is usually performed at an early age, preferably a few days after birth, while in some communities it is done at puberty.[176] A female civil servant in Enugu explained:

> I do not see anything wrong with this practice. Just like the boy child is circumcised, the girl child should also be circumcised. It is better done when she is young to reduce the pain that the girl would endure'.[177]

The operation is always performed by elderly women, who sometimes do not have any training or a medical background.[178]

A few educated women particularly from the Igbo and Yoruba cultural groups, expressed their desire to see the practice abolished.[179] In their view, the negative effects of the practice on the health of the girl child far outweigh its benefits. An Igbo businesswoman in Lagos said:

> It is my wish to see the practice of female circumcision stopped. These days we hear a lot of stories of girls that bleed and suffer infections, because sometimes the circumcision is done when the girls have reached puberty. Unfortunately, there is not much we women can do about this because it's a practice we met, and women that are not circumcised are usually considered promiscuous. [180]

A Yoruba housewife based in Ibadan, Oyo State explained:

> I am aware of some of the negative effects of this practice if it is not properly done. But it is our prayer that the women properly cut the girls when they need to, because women need to get circumcised. Failure to circumcise girls is what has resulted in the high level of immorality within our society now.[181]

Another Yoruba educationist also expressed her desire to see the practice abolished:

> Female circumcision is still a very common practice within the Yoruba tradition, and a lot of reasons are given for the practice. But I think the negative impact of the practice on the young girls is more than the advantages. Unfortunately, not much has been done to change this practice, despite the much work done by non-governmental organisations to sensitise women about the dangers of the practice.[182]

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[174] Respondent 199.
[175] Respondent 215.
[176] Respondents 115-215.
[177] Respondent 200.
[178] Respondent 215.
[179] Respondents 200-215.
[180] Respondent 203.
[181] Respondent 45.
[182] Respondent 56.

Ukoha in her analysis of FGM/FC, outlines several negative effects of FGM/FC to include severe bleeding, genital tissue damage, vaginal discharge and itching, genital infections and cysts.[183] Despite the negative effects on the girl child, and despite the on-going global campaign to end the practice, the practice is yet to be abolished in Nigeria.

FGM/FC continues to be a reality within the various Nigerian cultures despite the promulgations against FGM/FC in domestic, regional and international human rights instruments.[184] Having these laws in place is therefore arguably not enough to eradicate FGM/FC. It is evident from some of the responses that the perceived benefits of FGM/FC and cultural obligations are what continue to drive its subsistence in Nigeria. An approach that would target not just enacting enabling laws, but possibly expunging the negative aspects of the cultural practice of female circumcision is required, while proffering safer and healthier ways of preserving the cultural ideals that promote the subsistence of female circumcision.

Another cultural practice evident within the three cultural groups are the rites and rituals imposed on widows, which is discussed next.

(ii) Demeaning widow's rites and rituals

Within the Hausa/Fulani culture, widows' rites and rituals are described by 108 indigenes of Kebbi in Kebbi State as an obligatory traditional purification of the widow to release her from her earlier marital vows.[185] The cleansing is a requirement in the event where a woman wishes to remarry in future.[186] As explained in section one, the practice of widow rites and rituals is called *Takaba* within the Hausa/Fulani culture. A Hausa woman described the practice as 'an important cultural practice that signifies the purification of a widow and symbolises an end to her earlier marital bond'.[187] While widows are expected to be culture compliant and love to be, a Hausa women's rights activist argues that the practice is discriminatory, as 'widows are forced to go through the culture-imposed trauma while widowers are expected to be comforted, and in most cases, are provided with a new wife to expedite such comfort'.[188]

Within the Yoruba culture, 100 per cent respondents, consisting of 150 women and 47 men, described widows' rites and rituals as a display of honour for a deceased husband. The practice is reported to include seclusion of widows for about four months, wearing of black clothes, restriction of widow's movement, and abstinence from any form of social interactions. A female respondent explains:

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[183] Dorothy Ebere Ukoha *Female Genital Mutilation/Circumcision: Culture and Sexual Health in Igbo Women in Dallas-Fort Worth, Texas* (Published PhD dissertation Walden University, 2015), , available at *https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=3047&context=dissertations* accessed 23 May 2021.
[184] For example Violence against Persons (Prohibition) Act 2015 which criminalises FGM in some states in Nigeria, Committee on the Elimination of Discrimination against Women (CEDAW).
[185] Respondents 321-429.
[186] Respondents 321 to 429.
[187] Respondent 401.
[188] Respondent 390.

> widows are expected to continue living within the family of the deceased husband, to procreate with the deceased brother or relative, and to continue the lineage of their deceased husbands.[189]

This cultural practice is required especially where the deceased husband had no child.[190] The widows are expected to remarry the deceased younger brother or any of his close relatives chosen by the family.[191] Another female respondent domiciled in Ibadan said:

> when my husband died, I automatically had to marry his younger brother so as to continue to family lineage. My husband was the first son of the family, and it is expected that his lineage is preserved.[192]

The compliance with widows' rites and rituals are also compulsory within the Yoruba culture. A businesswoman based in Ibadan, Oyo State said: Widows are left with no option in this regard, while the widower on the other hand is not subjected to any rites and rituals and is free to remarry any other woman of choice."[193] Another female respondent based in Lagos said:

> Some women, particularly the educated ones, consider this practice as a clear case of discrimination between a man and a woman. This is contrary to the view of the uneducated women, who continue to promote and compel their fellow women to comply with the prescribed rites and rituals within their cultures.[194]

Several uneducated women respondents, however, noted that widows' rites is an obligation on every woman, which must be endured. In their words, 'widows cannot opt out of this cultural requirement, but can only pray for strength to bear it'.[195]

The Igbo respondents described the cultural practice of widows' rites and rituals as a sign of honour for a deceased husband. In the words of an Igbo housewife:

> The rites and ritual widows undergo is a form of respect and a show of love to her deceased husband. The rites and rituals generally prepare the widow spiritually and typically for the life she would live after her husband's demise. It also is a clear indication to the world that the widow had no hand in the death of her husband.[196]

A widow is expected to cut her hair and stay isolated in a room for some time. A popular Igbo businesswoman in Enugu State observed:

> Widows suffer worse fate particularly where they are suspected to have had a hand in the death of their husbands. A suspected widow will be required to drink the water used to wash the corpse of her husband and forced to take an oath. Some other women are required to dress only in white attire, cut their hair, and stay isolated for a period of about two to three weeks. This is a cultural practice that I was born to meet, and I don't know the reason why it happens that way, and why a man is not expected to carry out the same rituals.[197]

A female lecturer based in Owerri, Imo State further condemned the practice outright because in her view '[t]he rites and rituals imposed on widows restricts the movement of the widow. The practice is

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[189] Respondent 128.
[190] Taiwo Odumosu & Fatima Opebiyi 'Opo-sisu (Levirate marriage): To what extent has the Yoruba culture survived neo-liberalism of the 20th century? (2021) 3 *Journal of Commonwealth Law* at 108.
[191] Respondent 129.
[192] Respondent 232.
[193] Respondent 130.
[194] Respondent 131.
[195] Respondent 127.
[196] Respondent 215.
[197] Respondent 210.

discriminatory because widowers are not subjected to similar rites and rituals.'[198] Sharing a similar view, a fellow Igbo medical doctor based in Lagos passionately challenges the practice and said, '[w]idows rites and rituals is very barbaric and destructive to the health and welfare of widows. There is need for an urgent response towards the eradication of the practice, which continues unfettered.'[199]

Wives within the Hausa/Fulani, Igbo and Yoruba cultures also said they experience several levels of beating from their husbands within their marriage. Unfortunately, this practice goes unnoticed or unaddressed due to cultural requirements that demand that women remain in submission to their husbands. Wife beating as a cultural practice within the three aforementioned cultural groups is discussed next.

(iii) Wife Beating

Findings from respondents (educated and uneducated) within the Hausa/Fulani, Igbo and Yoruba cultures, establish that women in Nigeria are subjected to beatings by their husbands within the marriage. Some of the women interviewed described the practice as common, and mostly occur because of provocation from the wife.[200] According to one of the female respondent:

> husbands beat their wife due to provocation. It is common notice that many times women are very rude when they speak to their husbands and thus can provoke him. Where a woman is humble and respectful, it will be hard for her husband to beat her.[201]

Within the Hausa/Fulani culture, wife beating is described as a regular occurrence within marriages. Research findings show that because girls marry at a young age to much older husbands, the young girls are unable to defend themselves from being beaten by their husbands. A Hausa trader recounts her experience in her over 20-year marriage that:

> Because I was very young when I got married, there was not much I could do. Everyone always told me to endure and be more respectful when I report my experiences of beating.[202]

An educated woman in Kebbi acknowledged:

> I have always been a victim of battery in her marriage, and i think this practice persists because of the lack of education and knowledge of the young girls who get married in Northern Nigeria.[203]

Wife beating is described as widely practiced within the Yoruba culture and considered as 'normal' behaviour.[204] About 65 per cent of respondents, consisting of women and men, argued that the high prevalence of wife beating within the Yoruba culture is 'because of wives' misconduct'.[205] Some women on

[198] Respondent 301.
[199] Respondent 315.
[200] Respondent 525.
[201] Respondent 223.
[202] Respondent 401.
[203] Respondent 430.
[204] See Ose N Aihie 'Prevalence of domestic violence in Nigeria: Implications for counseling' (2009) 2(1) *Edo Journal of Counseling* at 1–8; Oyediran K A & Isiugo-Abanihe U C 'Perceptions of Nigeria women on domestic violence: Evidence from 2003 Nigerian demographic and health survey' (2005) 9 (2) *African Journal of Reproductive Health* at 38–53.
[205]Some respondents include respondent 10, 73, 95, 223, 270, 301.

the other hand describe wife beating as a sign and expression of love.[206] Cases of wife beating remain a 'family matter', and women are expected to handle and settle such matters in private, either through the help of a family leader, or a religious leader. A Yoruba female civil servant noted that 'wife beating is on the increase in marriages in Nigeria and is as a result of women becoming more educated and failing to respect their husbands.'[207] Another female trader noted:

> Wife beating is not new, it happens in every marriage. A wise woman must never report her husband in public, but if the beating is very serious, she can report to the family heads to speak to their husbands.

Within the Igbo culture, a male trader described wife beating as 'the consequence of the wife's misbehaviour. When a wife respects and always obeys her husband, the husband will not beat her.'[208] Another Igbo businessman stated categorically that:

> Women are subject to men and would need to be corrected for them to do the right thing. Igbo men provide for their wives financially and in every way and the wives must respect them.[209]

An Igbo lawyer on the other hand maintains that wife beating is unacceptable. She insisted:

> We have "*Igwe*"[210] to whom issues like these are reported, and they handle such cases with much urgency. However, most times women do not report these cases, for fear of losing their children, and in some other cases, they keep hoping that their husbands will change.[211]

A few Yoruba women expressed displeasure about the practice of wife beating but added that they endured the practice for several reasons.[212] For example, a Yoruba trader in Lagos State stated "I had to endure being beaten by her husband for many years so as to protect and safeguard the welfare and wellbeing of her children."[213] Another Yoruba businesswoman based in Ibadan explained:

> It would be shameful for my married daughters to separate/divorce their husbands because of beating. I would encourage them to stay on in the marriage even in the face of constant beating by their husbands. I believe that good behaviour from my daughters would result in a change of attitude in their husbands.[214]

Other reasons why women remain in abusive marriages hinge on the cultural tendency of blaming women for the breakdown of the marriage.[215] Men therefore continue to escape liability for wife beating, while an undue burden for change is placed on the women. This cultural attitude is evident in the perceived response by law enforcement agencies when cases of abuse are reported. According to a Yoruba women's rights activist based in Ibadan, Oyo State:

> Women would not report cases of beating and abuse in the home to the Police because the Police do not take such matters serious. Women are expected to resolve their family matters privately and must ensure good

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[206] See also Mayaki V O V & Choji R 'Nigeria: Wife battering (6 August 2011*) The Leadership, Nigeria*, available at leadership.ng.
[207] Respondent 527.
[208] Respondent 287.
[209] Respondent 288.
[210] An Igbo traditional leader.
[211] Respondent 286.
[212] 12 respondents.
[213] Respondent 481.
[214] Respondent 482.
[215] Nwosu P 'An overview of domestic violence and homicide in Nigerian marriages' (14 April 2014) *The Leader News Online*, available at *http://www.theleaderassumpta.com*, accessed on 4 February 2021.

> behaviour to avoid being beaten by their husband. It is only in cases of death that the Police would intervene.[216]

A female trader described wife beating as:

> [A]n internal family matter that should be resolved privately. A woman would be putting her family to shame if she reports her abusive husband to a pastor or to the court or police. It is unheard of. Patience, lots of prayer and obedience from the wife would change the husband.[217]

Another female respondent in Ibadan added:

> When you report to the police that your husband is beating you, the police will always tell you to go back and resolve the matter at home. I remember once I made the mistake to go and report at the police station, and the police sent me back. They said that I had no case, and that the issue was a private matter. I was told that if I behave myself and respect my husband, he will stop beating me.[218]

Another female respondent based in Lagos described her experience as follows:

> My husband always slaps and hit me whenever he liked. I complained to my family, and I was told to endure and keep praying. One day when it was very bad, I went to report at the police station, but they collected my husband's number and the police called him to come and pick me up. My husband reported me to my family and threatened to divorce me if I continue reporting him. The family warned me to learn to keep my family matters private. Unfortunately, I did not have money to take the matter to a lawyer. I have been enduring his beating since and pray he does not kill me one day.[219]

It is evident from the responses received that most women are neither aware of nor do they have the financial resources to exercise their legal rights against an abusive husband. Consequently, lack of awareness of the rights available to young girls and women, and their inability to enforce their rights, are arguably factors that force women to remain in abusive relationships. Cultural perceptions that categorise cases of wife beating as" private" also deter women from seeking help from law enforcement agencies such as the police.[220]

Other reasons advanced by respondents for the prevalence of wife beating is the imbalance in negotiating power between women and men in marriage due most times to cultural understanding, disparity in age and/or economic differences.[221] In the words of an Igbo female respondent:

> Many times, when my husband is angry, he beats me and there is nothing I can do. If I leave him, how do I survive with my children? I cannot go back to my father's house. He will collect the business he opened for me and for my family and we will be left with nothing. A wife most times must endure for the benefit of her extended family.[222]

A change in perception and response to cases of wife beating seems a viable solution to resolving the prevalence of wife beating in Nigeria. A change in perception is, however, only possible through a revolution and reorientation of the status and place of women within Nigerian cultures, as explained in detail in Chapter Six. Another form of discrimination that women are subjected to within the Hausa/Fulani, Igbo and Yoruba cultures is forced sexual intercourse and marital rape, as discussed below.

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[216] Respondent 150.
[217] Respondent 121.
[218] Respondent 138.
[219] Respondent 140.
[220] Respondent 138.
[221] Respondent 62, 89, 144, 197, 211, 302, 331, 328.
[222] Respondent 138.

(iv) Forced sexual intercourse and marital rape

Research findings show that 99 per cent of respondents from the three cultures under review (Hausa/Fulani, Igbo, Yoruba) are oblivious of the term 'marital rape'. Most respondents do not understand or agree that that there can be a case of forced sexual intercourse/marital rape in marriage. In the words of a female respondent:

> Sexual intercourse is the obligation of the wife and the right of a husband. A wife must not deny her husband, while the husband has a right to demand for sex in marriage. A wife cannot complain of her husband's unfaithfulness or misbehaviour towards her if she does not regularly satisfy her husband sexually.[223]

Respondents argue that a man cannot rape his wife. According to a Yoruba male respondent:

> Yoruba culture demands that the wife remains in total submission to her husband in all things, and once two people get married, they have a right to each other's body whenever they wish. It is therefore not possible for a man to rape his wife, and vice versa.[224]

A Yoruba female respondent also said:

> It is unheard of or unthinkable that a man will rape his wife. How can you rape what is yours? If the man uses force, it is because the woman refused to grant him his right. A well trained and submissive wife must never refuse her husband sex.[225]

An Igbo businessman holds the opinion that 'wives should not complain when their husbands engage in forced sexual intercourse with them. The man is simply making her submit.'[226] Another Igbo male respondent said:

> How can it be possible that a man will rape his wife? He has married her and paid the bride price on her. So culturally she is now his own and she cannot refuse him sexual intercourse when he wants it.[227]

A dissenting opinion was nonetheless expressed by a Yoruba nurse based in Lagos State:

> Yes, it is possible for a man to rape his wife. I believe that in marriage, a woman is expected to take whatever she finds in the marriage, but if the husband does it often and feels it is right, then the woman can report to the police or take the matter to court.[228]

Another young female respondent explained:

> Forced sexual intercourse in marriage is a common thing and most times women must endure it. You cannot report to your family because they will not understand or even support it. Wives most times have to endure it. Sex in marriage is perceived as husbands' rights, and a wife must always comply.[229]

The practice of forced sexual intercourse and marital rape contradicts Article 4(2)(a) of the Protocol which prohibits 'all forms of violence against women, including unwanted or forced sex whether the violence takes place in private or public'. While the notion of marital rape and forced sexual intercourse was found to be novel to most of the respondents and also found to be culturally impossible, a few female

[223] Respondent 172
[224] Respondent 167.
[225] Respondent 142.
[226] Respondent 118.
[227] Respondent 122.
[228] Respondent 271.
[229] Respondent 127.

respondents attest to having suffered a series of sexual molestations from their husbands.[230] However, such cases are never brought to the attention of enforcement agencies because culture generally regards such matters as private, which could not be shared with a third party.

In the next subsection, the denial of equal opportunity between women and the girl child vis-à-vis their male counterparts to inheritance of property in the Hausa/Fulani, Igbo and Yoruba cultures is discussed.

(v) Denial of female inheritance

Article 21 of the Protocol grants a widow the right to an equitable interest in the property of her deceased husband as well as the right to continue to live in the matrimonial home. A Hajia[231] from the Hausa culture and domiciled in Kebbi State stated that 'women have limited inheritance rights'.[232] According to Shari'ah law, a female is entitled to only half of what the male child is entitled to.[233] Shari'ah law also stipulates that a widow can only inherit one eighth of the deceased husband's property.[234] In the event where the woman is childless, she is denied the right to inheritance after the death of her husband. At other times, women are sometimes considered as the man's property, meant to be administered whichever way he deems fit.[235]

Female inheritance of property within the Yoruba culture is described as 'partial', because women can only inherit properties from their parents, brothers, or sisters, and not from their husband.[236] The general cultural presumption is that all substantial property, including land, belongs to the husband, and women cannot inherit from their husbands. A female lecturer in Ibadan, Oyo State, said:

> There is no concept of co-ownership of property between couples in Yoruba culture. A woman may only be able to access property from her father, or personally purchase her property. Recently women are getting more education and working to earn their own personal property.[237]

Therefore, as also outlined by Mba, 'women cannot lay claim to their husband's properties'.[238] Several respondents consisting of educated women expressed their frustration and displeasure about the absence of women's rights to inherit properties from their husbands. In the words of a legal practitioner based in Ibadan, Oyo State:

> A woman's contribution to a marriage, whether in cash or kind, should be taken into consideration, and women should be allowed to share in the property of their deceased husbands. Recently, more women are seen working and contributing financially to the home and should consequently be rewarded.[239]

In the Igbo custom, a daughter or widow is reported to have no right of inheritance to her father's or husband's movable or immovable property upon his death intestate.[240] As observed by Obioha, '[m]arried

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[230] Ibid.
[231] A hajia is a title given to a Muslim woman who has successfully completed the Hajj to Mecca.
[232] Respondent 332.
[233] Oluwakemi D Udoh, Sheriff. Folarin & Victor A Isumonah The influence of religion and culture on women's rights to property in Nigeria' (2020) *Cogent Arts and Humanities* at *https://www.tandfonline.com/doi/full/10.1080/23311983.2020.1750244*. Accessed 06-01-2021.
[234] Ibid.
[235] Ibid.
[236] Respondents 218-221.
[237] Respondent 18.
[238] Emma Nina Mba *Nigerian Women Mobilised: Women's Political Activity in Southern Nigeria, 1900-1965* (1982) at 36.
[239] Respondents 23, 31, 72, 81-91, 335-341.

women customarily enjoy what belongs to their husbands while they are alive, and the reverse becomes the case when they die'.[241] Ezeilo explains further that 'wives do not inherit because of the customary notion that they are properties and, therefore, objects of inheritance'.[242] According to an Igbo businesswoman, 'a girl cannot inherit from her father, only a male child can, and even though civilization has influenced this practice a bit, it is still being practiced'.[243] Another Igbo housewife noted further that:

> The only exception when a daughter can be considered to inherit from her father is when a father has no male child before he dies. In that situation, a daughter can be allowed to inherit from her father's estate. She must however live unmarried in her father's house and raise children within her father's family to continue the lineage of her father.[244]

Inheritance of property within the Igbo culture is evidently reserved for the male children, because it is a general belief that it is the man's right to inherit everything from his father.

Another culturally induced practice identified within the Hausa/Fulani and Igbo cultures is the practice of child/forced marriage, which is described below.

(vi) Child/forced marriage

The practice of child marriage is perceived as an acceptable practice within the Hausa/Fulani cultural group, and this was affirmed by 153 respondents, comprising 120 females and 33 males. Ninety-six per cent of respondents stated that a girl is expected to marry between the ages of nine and 15 years, or after her first menstruation, whichever date is earlier.[245] According to an Alhaja from Kebbi state:

> Girls within the Hausa/Fulani culture are ripe for marriage once they begin to see their monthly circle. Boys, on the other hand, are expected to become mature and acquire financial independence before getting married. Usually, because the girls are very young, the choice of husbands is made by their parents whose major consideration is economic, with the girls being forced to accept the marriage.[246]

Responses received from the Hausa/Fulani culture show that the high percentage of child marriages in northern Nigeria can be attributed mostly to the fact that the practice of Islam in the region supports child marriage.[247] Islamic leaders' response on the issue of age of marriage was based on the interpretations of the Qu'ran.[248] A male Islamic leader, siding with the majority view of 90 per cent of the male respondents, affirmed:

> A child "experiencing wet dream" or "experiencing monthly course" as stated in the Qu'ran in relation to the age of marriage, indicates the age of maturity for males and females.[249]

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[240] 'Obioha *Inheritance Rights, Access to Property and Deepening Poverty Situation among Women in Igboland, Southeast Nigeria* (2013).
[241] Ibid; Bruno Obialo Igwe 'Overcoming cultural, traditional and religious beliefs and practices in understanding and combating domestic violence in Nigeria' (2015) 4 (13) *International Journal of Innovative Research and Development* at 120.
[242] Ezeilo J N 'Law and practices relating to women's inheritance rights in Nigeria: An overview' (1998–9) 7 *Nigerian Juridical Review* at 139.
[243] Respondent 312.
[244] Respondent 302.
[245] Respondents 231-474.
[246] Respondent 241.
[247] Tim S Braimah 'Child marriage in 14 (2)' *African Human Rights Law Journal,* 18.
[248] Respondent 498.
[249] Ibid.

Another male Muslim stated that:

> It is lawful under Shari'ah law, as practiced in the Northern states of Nigeria, for a girl who has attained the age of puberty to enter into marriage.[250]

Wondering why such a practice should continue in the twenty-first century, respondents adduce a number of reasons. First is the reasoning that girls mature faster than boys and so need to be liberated early from parental care and provision.[251] A Hajai in Kebbi State explains:

> girls mature quickly and its better they are in their husband house early to save the honour of the family. The care of children is also very expensive, but as is usual within the Hausa/Fulani culture, once the young girl gets married, her are becomes the responsibility of her husband.

Secondly, the earlier a girl-child is betrothed, the greater the certainty of her safeguard against sexual promiscuity.[252]A male respondent based in Kebbi noted that:

> The earlier a young girl gets married, the better for her family. Girls that marry before they start facing the temptations of puberty end up being good wives with high moral standards and will not bring shame to their family.[253]

Braimah notes that 'child marriage within the Hausa/Fulani culture is seen and used as a method for the preservation of the virtue of girls, and for the preservation of the family's honour'.[254] A female Fulani respondent also emphasised that 'the practice of child marriage has helped the female to understand how to respect her husband within the Hausa/Fulani culture'.[255] Expressing a dissenting view, a female Hausa teacher observe:

> Child marriage is child slavery and the girls that are found in such marital formula have either no right or full right as a wife within such marriages. Rather, the practice places the young girls in vulnerable positions seeing they are usually too young to negotiate sex and do end up subjected to other forms of marital abuse such as forced sexual intercourse.[256]

A negative medical effect of child marriage, according to some Hausa female respondents, includes vesicovaginal fistula, which is an abnormal duct between the vaginal wall and bladder or urethra. In the words of a Hausa nurse:

> Sokoto State is currently witnessing a high rate of young girls suffering from vesicovaginal fistula. Many of the girls even lose their lives during childbirth, while some get infected with several sexually transmitted diseases.[257]

She further claims that the Sokoto Sanni Abacha Hospital dedicated to the treatment of affected teenage wives keeps overflowing every year in terms of bed space.[258] In her words:

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[250] Respondent 496.
[251] Respondent 420.
[252] Respondent 452.
[253] Respondent 453.
[254] Braimah op cit note 248.
[255] Respondent 360.
[256] Respondent 385.
[257] Respondent 461.
[258] Ibid.

> If you visit the Sanni Abacha Hospital in Sokoto now you will see a lot of these young girls in very bad medical condition. Many of them are awaiting surgical intervention and do not even know when such help will come.[259]

Child marriage is also reported as a common practice within the Igbo culture. All 100 per cent of respondents, made up of 150 women and 54 men, affirmed that the practice of child marriage is prevalent within it. From the age of 12 years, or sometimes upon completion of secondary school education, a girl is expected to get married. Several reasons are adduced for the prevalence of this practice: first, for economic reasons, and secondly, to preserve the virginity of the girl, amongst others. A female teacher from Enugu State explained:

> I don't think there is a minimum age for a girl to get married within my culture. Girls can get married from 12 years of age, and this is most of the times based on the financial need of a girl's family. Most girls agree to child marriage so as to help remove their family from poverty by marrying a rich man.[260]

The economic benefit from both the dowry the fiancée pays and subsequent multiplier effects if the bridegroom is rich and well-connected are arguably what drives the continued practice of child marriage within the Igbo culture. An Igbo male respondent explained:

> The bride price paid on Igbo girls is very substantial, and every father look forward to this. Therefore, picking the right suitor for your daughter is very important, because his financial capability will always help improve the economic status of the girls' family too.[261]

A female Igbo respondent also said:

> My husband is much older than me, but he was chosen for me because he was financially stable. He set up a business for my family and also trained myself and my younger brother in school.[262]

A female civil servant from Owerri, Imo State, expressed other reasons for the practice:

> Girls in Igbo culture are forced to get married at the age of 10 or 11 years, and this is due to superstitious beliefs that her spirit is demanding that she should have a husband. Education has however influenced the minimum age of marriage of young Igbo girls, and many girls now marry at adolescent age. Nevertheless, the decision to marry a girl at a young age remains at the exclusive discretion of her father.[263]

Another female respondent note further that "boys are not compelled or even encouraged to marry early, until they have attained physical and financial maturity."[264]

The practice of child marriage contradicts section 6(b) of the Protocol,[265] which states that the minimum age for marriage for women shall be 18 years and above, while the practice further infringes on the right of the girl-child to education, to informed choice of marriage partner, and to human dignity.[266] The

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[259] Respondent 461.
[260] Respondent 272.
[261] Respondent 274.
[262] Respondent 278
[263] Respondent 273.
[264] Respondent 275.
[265] Article 6(b) Protocol 'the minimum age of marriage for women shall be 18 years.'
[266] Article 3(1) 'Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.; Article 6(a) 'no marriage shall take place without the free and full consent of both parties' Article 12(1)(a)'States Parties shall take all appropriate measures to eliminate all forms of discrimination against women; and guarantee equal opportunity and access in the sphere of education and training.'

right to file for divorce is another right said to be absent and unavailable to women within the Hausa/Fulani, Igbo and Yoruba cultures, which is discussed below.

(vii) Absence of women's right to divorce

The right to sue for divorce is evidently absent within the Hausa/Fulani and Igbo cultures. Contrary to Article 7 of the Protocol, women in these cultures do not enjoy the same right to opt for divorce or separation as is the case for men.[267] The right to divorce as provided for by the Protocol includes reciprocal rights and responsibilities towards the parties' children, and an equitable sharing of the joint properties deriving from the marriage.[268]

Within the Hausa/Fulani culture, 83 per cent of female respondents assert that they were not aware of a woman's right to file for a divorce. A female respondent complained:

> Hausa/Fulani women in abusive relationships would not file for a divorce, but only have the option to report to family heads or religious leaders, and most times, the women are only encouraged to exercise patience and pray for a change in their marriages. The men on the other hand have the authority under Islam to file for divorce.

According to one of the male Muslim leaders: 'Men are the ones who give "*Sadaki*"[269] and are therefore permitted by the Qu'ran to file for a divorce.'[270]

Within the Igbo culture, an application for divorce at the instance of a wife is viewed as a taboo. Such women are described as promiscuous and lack home training. Respondents also reported that women who opt for divorce are not entitled to the properties of the husband, and the woman is expected to vacate her matrimonial home.[271] In the words of a female respondent:

> If a woman ever considers divorcing her husband, she must be ready to leave her husband's house and she goes with nothing, not even with her children. Her family is also expected to refund the bride price which was paid on her, and she will instantly be considered an outcast.[272]

Upon a divorce, women are also reported not to have a right to the custody of their under-aged children. Respondents explain that most cultures in Nigeria believe that children born in marriage belong to the man, and a woman can only have the right to care for the children within the marriage. Where she chooses to leave the marriage or decides to remarry someone else, the custody of the children would revert to the husband or the husband's family.

(viii) Denial of custody of under-aged children

According to Article 7 of the Protocol, women are guaranteed reciprocal rights over their children in the case of a divorce. However, in practice, women under the Hausa/Fulani culture are deprived of the right to the custody of their children upon a divorce. According to 85 per cent of Hausa/Fulani respondents, female

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[267] Article 7 of the Protocol which states that 'women and men shall enjoy the same rights in a case of separation, divorce or annulment of marriage'.

[268] 'Article 7 (c)States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children.'

[269] Payment of dowry is known as *Sadaki* in the Hausa tradition, which is the duty of the husband.

[270] Respondent 325.

[271] Respondent 129.

[272] Respondent 134.

custody of under-aged children is rare, and most times the decision is at the discretion of individual families.[273] A Hausa female respondent explained:

> It is rare to see a Hausa wife divorce her husband. However, if that happens, the male heads of the family will have to decide what happens to the children. Most times, Hausa women do not have the financial capability to train their children because most of them have no education and are full housewives. Therefore, the probability of the family giving the wife custody of the children may be rare. But if there are sucking children involved, an arrangement will be made for the woman to nurse the baby till the baby is of age.[274]

Wife inheritance is another practice reported within the Yoruba culture that continues to discriminate against women. The next sub-section explains the impact of this discrimination on Nigerian women.

(ix) Wife inheritance

It is a settled rule of native law and custom of the Yoruba people, evident from the responses analysed above under female inheritance of property and from available literature, that a wife cannot inherit her husband's property.[275] Wives are instead regarded as chattels who are supposed to be inherited by a relative of her deceased husband.[276] While the prevalence of wife inheritance is reported to be lower in recent times, reports from the respondents confirm that the practice still exists under 'a culture of silence' that compels compliance from the widows.[277] An elderly Yoruba woman explained:

> When my husband died, I was required to marry his younger brother so that I can continue to bear children for the family. I had no choice but to comply as it is a tradition I was born to meet.

Another Yoruba female trader domiciled in Ibadan affirmed:

> Yoruba tradition required a woman to stay within the family even when her husband dies. It is normal for a husband relative to inherit the widow. This is an unsaid or unwritten tradition that Yoruba women must comply with.

Despite the series of discriminations and abuse suffered by women as a result of cultural dictates and belief systems, women insist that family issues should not be reported or discussed with a third party. Women believe that the success or otherwise of their homes lies in their hands and it would be a shame to report her husband.

(x) Absence of recourse to justice

As indicated in Table 6 below, another factor that influences discrimination against women within the Hausa/Fulani, Igbo and Yoruba cultures is a woman's inability and/or unwillingness to seek legal recourse in the face of discrimination and abuse suffered within the marriage and family. Varying responses were received from female and male respondents on the willingness to submit cases of gender discrimination and inequalities to a formal institution for resolution. From the responses received and as shown in table 6 below, the majority of women would endure the discrimination or abuse in marriage, or as a last resort seek help from family heads and cultural institutions for the resolution. Several respondents also demonstrated

[273] Respondents 344-498.
[274] Respondent 461.
[275] Aderanti op cit note at 90.
[276] Igwe op cit note 41 at 57.
[277] Respondent 525.

their utmost faith in the capacity of religious leaders and institutions to intervene and resolve their family problems, while a small fraction of respondents, consisting mainly of the younger and educated women would resort to the police, arbitration panel or non-governmental organisations to resolve cases of discrimination and abuse within the marriage.

CULTURAL GROUPS	Consult Religious Leaders and Institutions	Submit to Family Heads and Institutions	Report to Police/ Arbitration Panels/Non - governmental Organisations	Seek No Recourse
Hausa/Fulani	5 (5%)	73 (72%)	5 (5%)	18 (18%)
Yoruba	59 (30%)	78 (40%)	13 (7%)	47 (24%)
Igbo	53 (26%)	104 (51%)	31 (15%)	16 (8%)
TOTAL	**117**	**205**	**69**	**113**

Table 6: Percentage of Respondents on Recourse to Justice over Marital Abuses in Cultural Groups

Within the Hausa/Fulani culture, 72 per cent of male and female respondents claimed that women can only apply to family heads and institutions for the resolution of marital abuse and domestic violence. A Hausa woman based in Lagos state explained:

> Women in the Hausa culture are trained not to take family problems to discuss with outsiders. It is rare to see women report their husbands, most times if there are problems in her marriage, she would tell other senior female members of the family. Most times she would be encouraged to endure and trust Allah to change her husband.[278]

Another Hausa woman explained:

> It is very rare occasions that Hausa/Fulani women are seen reporting issues in their marriages. And when there are problems, it is usually resolved by family heads and not outsiders.

A Muslim male cleric said:

> Good home training and religious understanding would forbid a woman from reporting her private family matters to people but she must always bow to the will of Allah. Sooner than she realises, her husband will change, and if he does not change, she should keep being prayerful.[279]

The Yoruba appear more liberal, as 40 per cent of respondents viewed the family institution as a provider of justice and a restorer of the rights of women. A female civil servant based in Ibadan outlined the importance of family leaders in providing justice for women. She, however, added that 'women still do not get enough justice from the family heads because most times a woman is blamed for the problems and breakdown in her marriage.'[280] A female trader added:

> most women are beginning to know their rights. And unlike before, women would now report cases of extreme abuse in their marriage. She nonetheless adds that whether the allegations made by the woman against her husband would receive the necessary attention and resolution is not guaranteed.[281]

[278] Respondent 391.
[279] Respondent 365.
[280] Respondent 220.
[281] Rsspondent 19.

Some 30 per cent of Yoruba respondents indicated that consultation could be made with religious leaders and institutions in the case of a search for a dispute resolution, while 24 per cent advised that seeking justice is futile. Rather, the situation should be endured, and victims should remain silent.

The Igbos on the other hand believe that their family heads are in a better position to handle every family related matter. A few Igbo women mentioned seeking help with their religious leaders, while a small percentage of women insist that a woman should never report her husband. In the words of a female respondent:

> [M]arriage is a sacred institution, and a woman should accept whatever she finds in the marriage. It is the woman's responsibility to keep praying and one day her husband will change. If he does not change, then she must accept and endure whatever situation she finds in the marriage as her cross.

From the responses in table 6 above, no culture favours a legal approach to resolve cases of discrimination and inequality suffered by women in Nigeria. Many women affirm that they would not resort to the police and or an arbitration panel but will rather opt to endure whatever discrimination they suffer. A small percentage of respondents, comprising mostly young and educated women, affirm that they will seek justice with the police, court or non-governmental organisations, but would nonetheless exercise caution in doing so due to the cultural and religious systems prevalent in Nigeria.

IV CONCLUSION

In this chapter a detailed analysis and review of responses from the fieldwork undertaken was presented. This presented evidence that there are discriminatory practices against women within the three main religions (African Traditional Religion, Christianity, and Islam) and cultures (Hausa/Fulani, Igbo, Yoruba) in Nigeria. The identified discriminations include female genital mutilation, child/forced marriage, demeaning widows' rites and practices, absence of female right of inheritance of property, wife beating, denial of custody of under-aged children, absence of women's right to divorce, absence of recourse to justice, wife inheritance, and absence of leadership positions for women. Several justifications were given for the subsistence of these practices, with strong cultural and religious beliefs given as the reasons for their prevalence.

The chapter also notes that there is no culture in Nigeria that is totally oblivious to the discriminations suffered by women at the hands of culture and religion. However, righting the wrongs require addressing the systems that enable these discriminations as would a reorientation of the religious and cultural institutions and structures that promote them. It has also been shown in the previous sections that not only have women actively promoted the continuance of these discriminations meted out to fellow women, but they also remain the force behind the continuance of these practices.

It is also evident from previous sections in this chapter that belief systems are primarily the force behind the perceptions on the rights, place and role of women and men; consequently, most women and men

alike have been accustomed to perceiving some of these discriminations against women as a way of life. From religious texts to cultural practices that have been in existence from time immemorial, women and men have come to accept discrimination as a way of life. While education and exposure has enabled a small fraction of women to start questioning some of the lived realities of women in Nigeria, most women and men believe it is the life women must endure. Consequently, a change cannot be recorded without primarily focusing on influencing a change in perceptions of not only men but women also who are the victims of inequalities, discriminations, and abuse.

Religious systems and cultural institutions should be approached with a view of reorienting their leaders towards interpreting the various religious laws and cultural practices in a manner that consider the status and well-being of the girl child and women. The Protocol has arguably addressed and attempted a balance between culture and religion and the internal human rights of women in Nigeria, but the Protocol face a series of oppositions to its implementation. As stated in the aims and objectives in Chapter One of this thesis, a domestication model is necessary to enable the effective implementation of the Protocol within the Nigerian cultural values and belief systems. Any achievement of an effective domestication of the Protocol within Nigeria would require a comprehensive consideration of how religious beliefs and systems and cultural practices and institutions promote discrimination against women. This would involve primarily the reorientation of religious and cultural leaders and establishing them as partners in the proposed domestication process. The next chapter offers a proposed model for the domestication of the Protocol for women's rights. As demonstrated in it, the reorientation process would also positively influence the perceptions, values and mental maps of the reality of the women and men in Nigeria with respect to the rights of women.

CHAPTER SIX

PROPOSED MODEL FOR THE DOMESTICATION OF THE MAPUTO PROTOCOL

I INTRODUCTION

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) is clear on what constitutes the rights of women in Africa. The Protocol requires that States Parties promulgate laws and ensure the enforcement of the rights of women within the states' constitutions as fundamental and non-negotiable rights. These rights include the prohibition of female genital mutilation,[1] the prevention of child/forced marriage,[2] the promotion of inheritance rights for women,[3] equal rights for women in marriage,[4] the protection of widows' rights,[5] the elimination of discrimination against women,[6] the elimination of harmful practices,[7] and the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.[8]

The analysis of the current legal framework in Nigeria discussed in Chapter Three, and the findings from the field research in Chapter Five, show that there are some religio-cultural factors challenging the rights of women in Nigeria which are common among Nigeria's three main cultures, Hausa/Fulani, Igbo, and Yoruba, and the three main religions, African Traditional Religion, Christianity, and Islam. Furthermore, as illustrated in Chapter Three, the laws in Nigeria that address the rights of women particularly regarding cultural practices, are poorly framed and do not provide comprehensive protection for the rights of women. Many of those laws, as shown in Chapter Three, create more hardship for the women they aim to protect, and thus further perpetuate discriminations against women. Chapters four and five have equally established the strong and undeniable influence of culture and religion on the perceived status of women in Nigeria. It was evident from the responses analysed in Chapter Five that several discriminatory practices such as widows' rites and rituals and child marriage in Nigeria are imposed by women on fellow women due to a long-standing belief system, and for the purpose of cultural, religious and social acceptance. Responses analysed in Chapter five show that women within the various religious groups are perceived as inferior to men and are many times not able to attain equal positions of leadership with men. This absence of

[1] Article 5(b) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (hereinafter Protocol).
[2] Article 6(b) Protocol.
[3] Article 21(2) Protocol.
[4] Article 6 Protocol.
[5] Article 20 Protocol.
[6] Article 2 Protocol.
[7] Article 5 Protocol.
[8] Article 17(1) Protocol.

leadership positions for women in religious and cultural institutions in Nigeria arguably deprives Nigerian women of opportunities to influence or effect the needed change in their lives and position. Furthermore, religious leaders as described in Chapter Five are key players in the interpretation of the perceived rights and status of women. Many of the religious leaders affirmed that their belief system is based on their perceived understanding and interpretations of religious texts which require women to submit to men.

The Domestication Model proposed in this thesis for the domestication of the Protocol in Nigeria, therefore, aims to fill the gaps in the Nigerian legal system that have been identified in Chapter Three and also to address the religio-cultural hindrances to women's rights identified in Chapters Four and Five. Otherwise, the Protocol will only remain an additional instrument on the rights of women ratified by Nigeria with no legal application or enforceability within Nigeria.

Table 7 below is a visual reminder of the ten common religio-cultural factors of discrimination against women, identified from respondents during the field work analysis. These ten religio-cultural factors are present within the various religious and cultural groups impede the effective domestication of the Protocol in Nigeria

Factors Hindering Rights Of Women	**Islam**	**Christianity**	**ATR**	**Hausa/ Fulani**	**Yoruba**	**Igbo**
1. Practice of Female Circumcision/Female Genital Mutilation	✓	✓	✓	✓		✓
2. Demeaning Widowood Rites and Rituals	✓	✓	✓	✓	✓	✓
3. Culture of Wife Beating				✓	✓	✓
4. Forced Sexual Intercourse/ Marital Rape	✓	✓	✓	✓	✓	✓
5. Subdued Leadership Position for Women	✓	✓	✓	✓	✓	✓
6. Superior Position of Husband over Wife in Marriage	✓	✓	✓	✓	✓	✓
7. Absence of Women's Right to Divorce	✓	✓	✓	✓	✓	✓

8. Denial of Female Rights to Inheritance of Properties	✓	✓	✓	✓	✓	✓
9. Child/Forced Marriage	✓			✓		✓
10. Absence of Recourse to Justice	✓	✓	✓	✓	✓	✓

Table 7 Critical Religio-Cultural Factors Hindering the Promotion of Women's Rights in Nigeria

As indicated in Table 7 above, there are five common factors inhibiting the rights of women in Nigeria and found in all three cultural groups and religions. These are female genital mutilation/circumcision, demeaning widows' rites and rituals, marital rape, denial of a female's right to inheritance of properties, and an absence of recourse to justice. Five additional factors are also seen to be present within specific cultures. These include wife beating, the absence of leadership positions for women in the various religious structures, the superior position of husbands over wives in marriage, the absence of women's right to divorce, and child/forced marriage. Wife beating, for example, although denied and not officially supported within the three religions, is a common practice among the Hausa/Fulani, Yoruba, and Igbo cultures. This is arguably due to the cultural interpretation of male supremacy within a marriage. The practice of child/forced marriage is only present within the Islamic religion, and prevalent within the Igbo and Hausa/Fulani cultures. Furthermore, respondents' responses discussed in Chapter Four show that the presence of some of these religio-cultural factors of discrimination enable the likelihood of further discriminations against women. For example, as explained in Chapter Five, child marriage enables wife beating, while the superior positions accorded to husbands in marriages enable forced sexual intercourse/marital rape.[9] Therefore, the ten factors of discrimination against women that are noted in Table 7 and discussed in greater detail in Chapter Five exist in Nigeria, and those factors continue to enable further discriminations against women.[10] This situation affirms the need for the Protocol to be domesticated via an appropriate model that would enable and influence its enforcement in Nigeria.

As earlier mentioned in Chapter One, the proposed model is a legal one aimed at addressing the religio-cultural hindrances to the Protocol in Nigeria and thereby facilitating its domestication. To achieve the purpose of domesticating the Protocol in Nigeria, the Domestication Model comprises seven features, namely, enacting enabling laws on the rights of women in Nigeria; abrogating discriminatory laws and institutions; guaranteeing women's rights and access to justice; enforcing gendered positions within religious organisations via the Corporate Affairs Commission; promoting a socio-cultural revolution;

[9] See Chapter 5.
[10] See Table 7.

institutionalising the political evolution of women; and reorientating the value of the girl child and of girl child education across all cultures.[11]

This chapter commences with a broad overview of the proposed Domestication Model followed by a more detailed discussion of its features.

II THE DOMESTICATION MODEL

As indicated at the beginning of this chapter, the seven main features of the Domestication Model include the following[12]

First, there should be the enactment of enabling laws to protect the rights of women in Nigeria. These laws should aim to provide comprehensive protections for women against the various cultural and religious practices identified in the previous chapters. One example of this is the inclusion of a substantive provision on gender equality in the Nigerian Constitution.

Secondly, women's rights and access to justice should be guaranteed through increased education and, enabling them to become sensitised about the rights made available to women by the Ministry of Women Affairs and Social Development, in partnership with the various gender specific non-governmental organisations and women representatives within the various cultural and religious groups. This would create the knowledge in and give confidence to women as to their available rights. Its aim would be to enable them to speak up so as to reduce and ultimately eliminate the culture of silence that surrounds these discriminatory practices that they experience.

Thirdly, compulsory leadership positions for women within religious and cultural organisations should be enforced through the Corporate Affairs Commission (CAC). This includes the legal provision of a quota for women within the leadership of religious and cultural organisations as a condition precedent to registration as a legal entity with the Corporate Affairs Commission of Nigeria. This would allow for the inclusion of women in the leadership hierarchy in Christian, Islamic and traditional religious structures.

Fourth, gender discriminatory laws and institutions that exist in Nigeria should be repealed.

Fifth, is the need for a socio-cultural and religious revolution which would include a reorientation regarding the status and rights of women across cultures in Nigeria in partnership with enforcement agencies. This revolution will take an intra-cultural approach (including a revamp of social studies in high schools) to educate women and men on the need to eliminate stereotyped roles of subordination of women.

[11] See Figure 2 below.
[12] Ibid.

Sixth, is the compulsory inclusion of women in the various legislative arms of government in Nigeria, through the review of the current required quota for women and enforcement of a gender quota for political parties.

Seventh, is a reorientation of the value given to the girl child in Nigeria and the promotion of girl child education across cultures in Nigeria. Compulsory education of the girl child should be enforced within all cultures, and academic literature containing gender stereotypes should be withdrawn from institutions of learning.

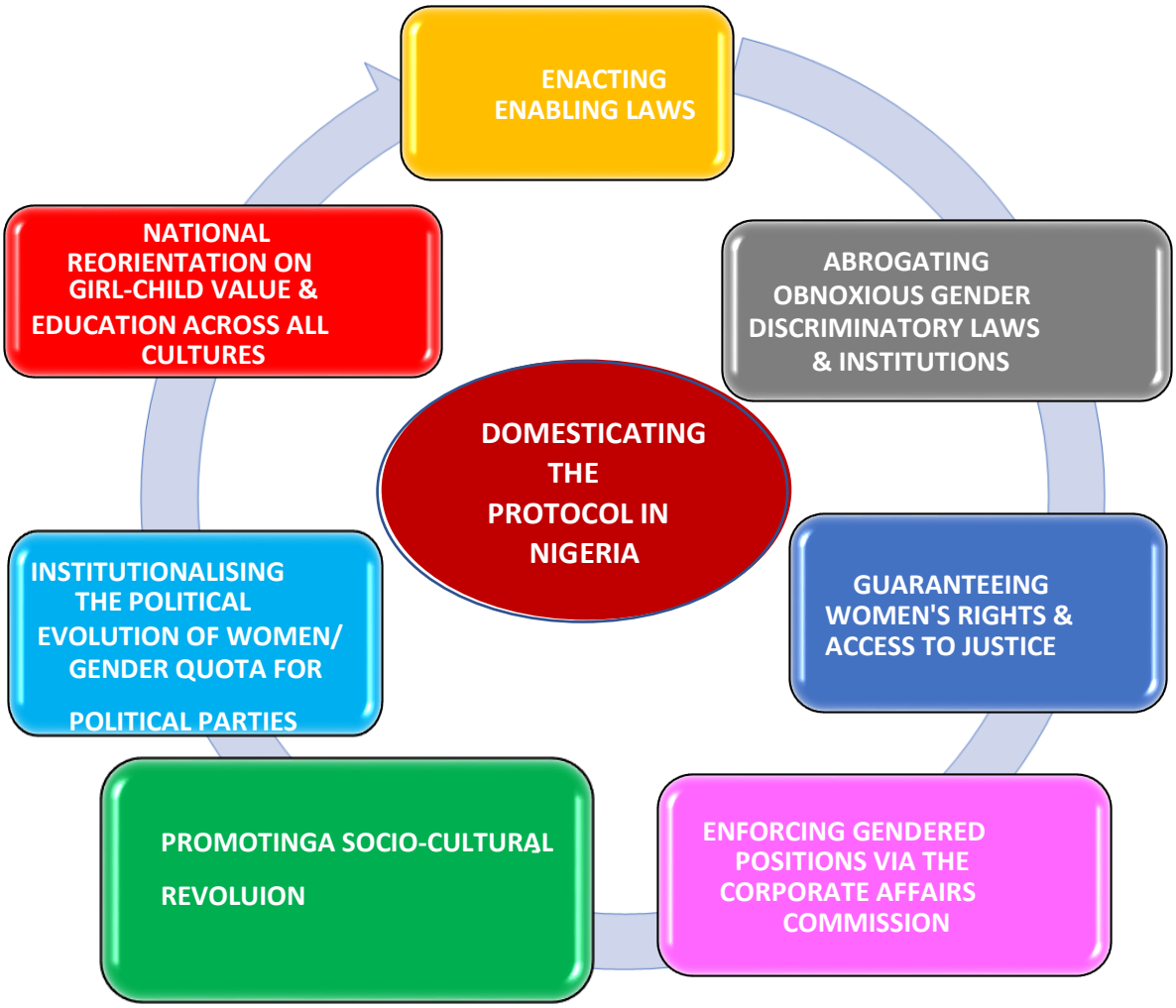

Figure 2: The Seven Features that Constitute the Domestication Model of the Protocol in Nigeria

(a) Enacting enabling laws on the rights of women

While Nigeria boasts of a robust legal system, Chapter Three demonstrates that Nigerian laws enable discrimination and abuse against women and continue to pose hardship for the rights of women. These laws include the 1999 Constitution of the Federal Republic of Nigeria,[13] the Violence against Persons (Prohibition) Act,[14] the Child Rights Act,[15] the Marriage Act,[16] the Criminal Code,[17] the Penal Code,[18] and

[13] Act No. 24, 5 May 1999.
[14] 2015.
[15] 2003.

customary law. As illustrated in Chapter Three, these laws provide inadequate or insufficient protection for women and uphold patriarchal standards and practices in Nigeria that discriminate against women.

The following section reiterates some of the inadequacies and gaps in the laws that purport to protect the rights of women in Nigeria, as discussed in Chapter Three. Proposals are then offered for a review of the laws by the National Assembly with a view to enabling them to respond adequately to the current discriminations suffered by Nigerian women at the hands of culture and the dictates of the religious belief systems practises.

Some of these inadequacies and gaps include first the Constitution's failure to provide comprehensive provisions on gender equality. The Constitution contains no adequate provision for the elimination of violence against women including harmful traditional practices that affect the life and health of young girls and women in Nigeria. Secondly, there are contradictory provisions on the legal age for marriage in Nigeria which leaves room for misinterpretation. The Marriage Act, which is the principal legislation on marriage in Nigeria, recognises monogamous marriages as the only legal form of marriage. This approach by the Marriage Act to recognise only monogamous marriages ignores the current situation in Nigeria where numerous polygamous marriages are contacted under customary law and Islamic law. Thirdly, the Child Rights Act which comprehensively deals with the rights of a child in Nigeria is not automatically enforceable within the 36 states of Nigeria but depends on each State to pass it into law to become enforceable. Fourth, the criminal and penal codes fail to provide adequate protection for women against violence in Nigeria, such as marital rape and wife beating. Fifth, the Violence against Persons (Prohibition) Act 2015 which is aimed at eliminating violence against women in private and public life has met with resistance and is only enforceable within 19 out of the 36 states of the federation. Sixth, customary laws also propel discriminations against women particularly with respect to marriage and inheritance of property.

(i) The 1999 Constitution

As argued in Chapter Three, some provisions of the Nigerian Constitution enable the subsistence of a patriarchal culture[19] by failing to provide clear and distinct protections for the equality of women in Nigeria.[20] For example, the Constitution contains no substantive provisions on equality for women. As a potential solution, the Nigerian Constitution can, for example, be aligned with the Constitution of the

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[16] Chapter 218 Volume xi, Laws of the Federation of Nigeria 1990.
[17] Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990.
[18] Penal Code (Northern States) Federal Provisions Act (No. 25 of 1960).
[19] For example, according to s 26 of the Constitution, while Nigerian men can confer citizenship on their foreign wives, Nigerian women cannot confer citizenship on their foreign husbands; Rita Ozoemena & Michelo Hansungule 'Development as a right in Africa: Changing attitude for the realisation of women's substantive citizenship'. (2014) 18 *Law Democracy & Development* at 224–239, available at *saflii.org/za/journals/LDD/2014/13.pdf*. accessed on 21 March 2021.
[20] For example, only one provision in the Constitution specifically mentions the word 'equality' while other provisions of the Constitution only provide general protections for women, ss. 33-43 of the 1999 Constitution.

Republic of South Africa of 1996 which contains elaborate and explicit provisions on equality.[21] In particular, it provides a framework for the promotion of gender equality and contains several provisions that advance gender equality.[22] In particular, the South African Bill of Rights proscribes unfair discrimination on the basis of among others, sex and gender.[23]

Additionally, the Nigerian Constitution should clearly address the contradictory legal positions in Nigeria on the legal age for marriage, which arguably promotes the practice of child marriage.[24] Currently, the Constitution does not provide a minimum age for marriage but stipulates in s 29 (4)(a) that 'full age means the age of eighteen years and above' and further provides in s 29(4)(b) that 'any woman who is married shall be deemed to be of full age. The above constitutional provision arguably allows for the diverse interpretation on the legal age of marriage in Nigeria.

Female genital mutilation/female circumcision, as discussed in chapters four and five, is a major cultural/religious practice still widely practiced in Nigeria and is one of the causes of major health defects and even death in the lives of young girls within the various cultures in Nigeria. This cultural/religious practice also continues to infringe on the rights to life, health and well-being of the girl child as provided for in the Child Rights Act and international laws on the right of the child.[25] FGM/FC should consequently be categorised and expressly named as a discriminatory practice of national importance in the Nigerian Constitution. It is not enough for the Constitution to provide generally for gender equality in its preamble, there is the need to specifically name and address cultural and religious practices that affect the rights of women in Nigeria. Currently, the Constitution does not expressly ban the practice of FGM/FC in Nigeria. An example of a constitution that addresses harmful traditional practices such FGM/FC is the Ghanaian Constitution. Article 39(2)(b) of the Ghanaian Constitution states 'traditional practices that are injurious to a person's health and well-being are abolished'**.**[26] Similarly, the President of the Central African Republic in 1996 issued an ordinance prohibiting FGM/FC throughout the country, and this Ordinance has the force of national law. In light of the above, the Nigerian Constitution should go further to prohibit traditional and religious practices that are injurious to the life, health and well-being of the girl child and woman. Consequently, national laws specifically addressing traditional practices such as female genital mutilation/female circumcision and widows' rites would be easily enforceable.

[21] See s 9 of the Constitution of the Republic of South Africa, 1996.
[22] Section 9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. 9(2) Equality includes the full and equal enjoyment of all rights and freedom.
[23] Section 9(3) No person or the State may directly or indirectly unfairly discriminate against any one on one or more grounds. These grounds include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. 9(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3) National legislation must be enacted in order to prevent or prohibit unfair discrimination.
[24] Section 29(4)(a)(b) of the Nigerian Constitution.
[25] The Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
[26] See *https://2001-2009.state.gov/g/wi/rls/rep/9303.htm*, accessed 21-03-2021.

(ii) The Child Rights Act

The Child Rights Act (CRA)[27] addresses the problem of child marriage in Nigeria by providing for 18 years as the minimum age for marriage and criminalises any marriage to a girl younger than 18 years.[28] However the CRA was not automatically enacted into law within all the 36 states of Nigeria. Although the CRA was passed at the federal level, it is only effective if state assemblies codify the law. Each state in Nigeria must enact the Child Rights Act under its own state laws before it is enforceable.[29] Therefore, though the CRA criminalises child marriage, it remains ineffective in the states where it has not been codified and is not enforceable.[30] For example, states applying the Islamic legal system have refused to adopt the CRA or implement the minimum age of 18 years to contract a valid marriage. Likewise, some non-Islamic states which have adopted the CRA have failed to implement the CRA and to put punitive measures in place to enforce compliance with the provisions of the CRA. Hence the need to prohibit the practice of child marriage promptly through the uniform application of 18 years as the minimum age for contracting a valid marriage, as provided for in the CRA. The CRA should be codified and made applicable within all the states of Nigeria, while enforcement mechanisms should be put in place within the various states of the Federation.

As earlier mentioned in Chapter Three, there is an urgent need for a critical review of the dualistic approach to the domestication and application of laws operating in Nigeria. Currently, matters that are not under the exclusive legislative list are outside the purview of the federal government, and state governments have the exclusive power to legislative over such matters. In Nigeria, customary and Islamic laws are not included in the exclusive legislative list, thus giving states exclusive power to legislate on marriage related matters. There is also an urgent need to harmonise the laws operative in Nigeria to conform to international legal standards and protect young girls from child marriage**.**[31]

(iii) Violence Against Persons (Prohibition) Act (VAPP) Act

The provisions of the Violence Against Persons (Prohibition) Act (VAPP Act)[32] needs to be reviewed to provide adequate protections for gender-specific discriminations and violence faced by women in Nigeria because of religious prescriptions and harmful traditional practices. Practices such as widows' rites and rituals, wife beating, and marital rape should also be addressed. Stiffer penalties should be introduced by the VAPP in the event of any breach of its provisions. Presently, the VAP provides that any person who subjects

[27] Child Rights Act 2003.

[28] Part III Child Rights Act s21 'No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.' Section 22 of the Child Rights Act, 'No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.'

[29] Currently only 19 out of 36 states have passed the CRA into law in their state.

[30] Enugu, Kaduna, Kano, Sokoto, Kebbi, Borno, Yobe, Gombe, Adamawa, Bauchi, Katsina and Zamfara states.

[31] Article 21 African Charter on the Rights and Welfare of the Child, 1990, Article 16(1) Universal Declaration of Human Rights, General Assembly Resolution 217 a (iiiiI) 1948, Article 6(b) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

[32] 2015.

a widow to a harmful cultural practice shall be liable on conviction to a term of imprisonment not exceeding 1 year or a fine not exceeding N500,000 or both.[33]

(iv) Customary Laws of Inheritance

Customary laws of inheritance should be reviewed to enable women married under customary laws to have full access to their deceased husbands' properties.[34] Nigeria is a developing country and therefore, as seen in Chapter Three, categorising valid marriages as only those contracted under the Marriage Act in a marriage registry will work to the disadvantage of many women in Nigeria who are domiciled in rural areas and continue to contract informal marriages. Therefore, traditional marriages should be given as much validity as are marriages contracted under the Marriage Act, which will then enable women married under customary law to have access to property as do women married under the Marriage Act. Following the responses received during the field analysis in Chapter Five it is evident that women in most cultures are not eligible to inherit their father's properties or properties of their deceased husband, including properties acquired during the subsistence of their marriage. Specific provisions should therefore be included in the inheritance laws to account for the financial and non-financial contribution of women to the properties acquired during the subsistence of the. marriage. This will enable women to enjoy an equitable share in the family property.

(b) Repealing Gender Discriminatory Laws and Institutions

The Criminal Code[35] and the Penal Code, [36] as discussed in Chapter Three, contain several provisions that can interpreted to encourage and promote violence against women.[37] The Criminal Code, for example, provides that an assault on a man is a felony, which results in a maximum sentence of three years' imprisonment,[38] while an assault on a girl or woman is a misdemeanour, which results in a maximum sentence of two years' imprisonment.[39] The Penal Code also promotes violence against women by not making it an offence if a husband hits his wife, provided such abuse is for the purpose of correcting her when she misbehaves, and there is no evidence of his causing her grievous harm.[40] Furthermore, the Penal Code is unequal in the way it applies to women in adultery cases. For example, a man can only be convicted of adultery if he was caught in the act by four independent witnesses, whereas a woman needs to be

[33] S. 15(1) Violence Against Persons (Prohibition) Act.
[34] Itua P O 'Legitimacy, legitimation and succession in Nigeria: An appraisal of section 42(2) of the Constitution of the Federal Republic of Nigeria as amended on the rights of inheritance' (2012) 4 *Journal of Law and Conflict Resolution* at 36.
[35] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2010.
[36] The Penal Code Act, Federal Republic of Nigeria, CAP 53 LFN 2004.
[37] Onyeka C Okongwu 'Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria (2020) 21 (1) *International Journal of Discrimination and the Law*, available at *https://journals.sagepub.com/doi/full/10.1177/1358229120978915* , accessed on 20 April 2023..
[38] Section 353 of the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 1990 (Criminal Code Act).
[39] Section 360 of the Criminal Code Act.
[40] Section 55(10) of the Penal Code, 'nothing is an offence which does not amount to the infliction of grievous harm upon a person and which is done by a husband for the purpose of correcting his wife.' Section 241 of the Penal Code 'grievous hurt includes emasculation, permanent loss of sight, ability to hear or speak, deprivation of any member or joint, destruction or permanent impairing of the powers of any member or joint, facial disfigurement, bone fracture or tooth dislocation'.

convicted only on grounds of pregnancy.[41] These laws clearly discriminate against the rights of women and promote acts of violence against women. Equal grounds of convictions and punishment should be imposed on both the man and woman in cases of adultery, while there should be no acceptable ground under which a man is allowed to physically assault his wife in any manner.

The above discriminatory provisions of the Criminal Code and the Penal Code should therefore be abrogated by the National Assembly, while specific provisions should be incorporated in the Criminal and code and Penal code to criminalise wife beating and all acts of discrimination and abuse against women that are presently considered as 'private and family matters' by the criminal and penal codes .as discussed in chapter four above. There is also need for an increased awareness among the legislators of the injustice suffered by women because of the application of these provisions of the Criminal Code and the Penal Code. The National Assembly and the Nigerian judicial council should criminalise marital rape and every form of domestic abuse and violence against women within the marriage in Nigeria. Criminalising marital rape and domestic abuse would consequently align Nigeria with its domestic, regional and international obligations.[42] Women specific non-governmental organisations (NGOs) in Nigeria should be empowered by the Ministry of Women Affairs in Nigeria, to spear head the education of women and men alike on the negative effect of these laws and practices on the lives and well-being of women. These sensitisation and education interventions should also target cultural and religious leaders, whose influence can play a critical role in effecting change in the perception and practice of marital rape and domestic violence (wife beating) in Nigeria.

(c) Guaranteeing women's rights and access to justice

In Chapter Five, respondents described marriage and family related matters as 'private' and should be resolved accordingly. Women are expected to put up with whatever situation they experience within the marriage, exercise patience and should rather not report their husbands so as to preserve the respect and dignity of their homes and be accepted within their carious cultures and religions. In some cases, women are even blamed for the discriminations and abuse they suffer within their marriages, and for the dissolution of their marriage. Women would rather continue to suffer from acts of abuse, domestic violence and discrimination within the marriage and family circle with no opportunity or willingness to seek formal justice from the police, arbitration tribunals and the court. Women would endure marital rape, child marriage, wife beating, female genital mutilation and other kinds of violence that occur within a marriage. Only in rare and extreme cases would women report to family heads, traditional leaders, and religious leaders for resolution and these women are still told to return to their husbands, respect them and put up with whatever abuse they may be experiencing at the hands of their husbands. This is arguably the situation

[41] Tertsakian C 'Political *Sharia?* Human Rights and Islamic Law in Northern Nigeria: Human Rights Violation under Sharia in Northern Nigeria' available at *http://www.hrw.org/reports/2004/nigeria0904/index.htm*, accessed on 24 April 2023.
[42] United Nations Universal Declaration on Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women. (1979).

women have to contend with because the religious and traditional leaders they resort to for resolution are the very custodians and promoters of the structures and beliefs that discriminate against women in Nigeria.[43]

Consequently, in addition to the review of existing laws recommended above, there needs to be a change in individual attitudes and understanding of gender bias reflected within the various cultures and religions. Women should know their rights to access a relief from abuse, and need to know that they would not lose their cultural identity and acceptance if they report the cases of discrimination and abuse they suffer. Therefore, a reorientation and education process is necessary, one which will include a holistic bottom-up approach that targets the reorientation of women in Nigeria, beginning from the grassroots level. Also necessary is the reorientation of men, who are key decision makers within the Nigerian patriarchal society, and of the cultural and religious leader who exert a high level of influence on the members of their various cultural and religious groups. The reorientation and education process should focus on campaigns and dialogues that would focus on upholding the positive aspects of the various cultures and religious, while canvassing for the eradication of the negative aspects of culture, as well as the culture of silence that surrounds cases of cultural discriminations, domestic violence and abuse. The protections provided by the Protocol should then be presented, not as a weapon for change, but as a means to enhance and improve on the positive aspects by simply eradicating the negative aspects of culture and religion that are so detrimental to the health, life and well-being of women and the girl child.

The Ministry of Women Affairs should partner with non-governmental agencies, gender specific organisations and the Nigerian National Orientation Agency[44] in the reorientation and education exercise. Necessary resources from national budget allocation should be earmarked and made available to the Nigerian National Orientation Agency and non-governmental organisations to facilitate the reorientation and education process. As much as possible, men must also be part of the reorientation and education process in conjunction with the Ministry of Women Affairs.

The police also play a critical role in the guaranteeing of a woman's access to justice. Police stations in the urban and rural communities of Nigeria should be able to receive and address cases of women rights discrimination, domestic violence and abuse. The analysis of the field research in Chapter Five shows that there are few incidents reportage of wife battery and marital rape to the police. There are several reasons for this, the main one being the culture of considering such practices as 'family matters' that should be resolved at home. Other reasons include the wife being blamed as the cause of her husband's behaviour. Therefore, the Nigerian National Orientation Agency as part of the reorientation and education process would sensitise and orient women to the need to report gender abuse to the nearest police station. It is hoped, then, that because men would already be part of the education and reorientation process, women would be more

[43] See Chapter Five above.
[44] This is the body tasked with communicating government policy, staying abreast if public opinion, and promoting patriotism, national unity and development of Nigerian society,

receptive to this initiative. As seen in Chapter Five, many women already find some of these cultural discriminations unfair and discriminatory but remain silent because they are not sure of the dispute resolution process, neither do they want to lose their place within their respective families, cultures and religion.

The police should also be educated and trained by the National Orientation Agency on how to adequately respond to cases of abuse and domestic violence. The police should be trained particularly on how to handle reports of grievances without blaming the woman, which was the experience of a few respondents referenced in Chapter Five. Further, the Ministry of Women Affairs should ensure that police are empowered with the necessary resources to respond when cases of discriminations and abuse are reported to them.

(d) Enforcement of gender quotas for religious organisations by the Corporate Affairs Commission

The research findings in chapter five show that the discrimination suffered by women in Nigeria is also seen in the small ratio of women who are allowed to serve on the leadership board of some religious organisations. Women in most religious organisations are not allowed to hold leadership positions, nor have a voice within their religious sects. Therefore, promoting women's right and status within the various religions will require imposing a minimum gender representation requirement for the formation of religious entities in Nigeria. Similar to the current requirement in Nigeria where all directors must have reached the legal age of maturity for registration of a legal entity in Nigeria, it is recommended that the Corporate Affairs Commission also specify a minimum registration requirement of 35 per cent female gender representation on the board of every religious registered trustee in Nigeria. This is in consonance with the National women agitation for 35 percentage representation in government and governance. The inclusion of religious leaders in the reorientation, education and inculturation process mentioned in subsection (c) above, would arguably provide an easier understanding for the religious leaders of the need to enforce gendered positions within religious organisations.

Having women registered as part of the registered trustees of the various religious bodies will give women a voice in the affairs of religion and would enable women lend their voice on women related matters. While getting a buy in from religious leaders may not be easy, the reorientation and education process would aid create more awareness in the religious leaders of the importance of the gender inclusion in leadership. Furthermore, the quota for female representation would be small compared to that of the men for a start. This gender representation in leadership via compulsory registrations at the Corporate Affairs Commission will not only improve the perception and status of women in Nigeria generally but will also enable religious organisations adopt a balanced and more responsive approach to matters relating to the female gender in Nigeria. To achieve this gender inclusion, the Federal Ministry of Women Affairs, the

National Orientation Agency, and women non-Governmental organisation must include it in the reorientation and education process proposed in subsection (c) above.

(e) Promoting socio-cultural and religious revolution

As articulated in previous chapters, both culture and religion play a critical role in the determination of the worldview and perception of people and particularly informs gender roles and responses. Defending human rights violations in the name of culture/religion is an approach that ultimately disenfranchises and subjugates the female gender. On the other hand, advocating for human rights outside of the cultural/religious context in which it would be applicable may also not guarantee better protection for the female gender, particularly in a society that is very patriarchal like Nigeria.

A socio-cultural cum religious revolution that targets a comprehensive public education of women of their basic rights, will ensure a more realistic and long-term eradication of the existing biases and stereotyped roles of subordination of women within the Hausa/Fulani, Igbo and Yoruba cultures in Nigeria. The socio-cultural/religious revolution will explore an intra-cultural/religious discourse aimed at identifying and promoting the positive aspects of culture. The intra cultural discourse will seek to identify and understand from the various cultures and religions, the reason/intent behind the negative practices discussed in previous chapters. Thereafter, alternative means of promoting the intent of culture/religion will be explored together with the various cultural and religious adherents. For effectiveness in achieving this goal, it is important that the positive aspect of culture is promoted and considered in designing strategies and programmes to address gender inequality and eradicate harmful cultural practices. To be successful, the intra cultural/religious discourse must be done within the cultural/religious context wherein they operate. An example is with child marriage. Some of the reasons proffered for its subsistence in chapter four and five is the need to prevent promiscuity in the girl child and also for economic reasons. Alternative resolutions to this cultural need could be the government's involvement in promoting free and better education for the girl child and economic empowerment for their parents.

The Nigerian government through the Federal Ministry of Women Affairs, and in partnership with civil societies should sponsor education campaigns and inter-religious conferences on gender equality. Harmful traditional practices should be addressed through dialogues, which consider the eradication of the discriminatory aspects of culture and beliefs.[45] The representatives of all religions should be part of the revolution process, and heads of religious sects should be encouraged by the government to join the dialogues. Benefits of the process could be highlighted to the cultural and religious group leaders to encourage them to join the conversation. Such benefits could include granting education scholarships to the girl child and women especially in the communities, and provision of welfare benefits to the various communities by the government under the auspice and budget of the Ministry of Women Affairs.

[45] Abdullahi A. An-Na'im (ed)*Cultural Transformation and Human Rights in Africa"* (2002\ at 269; Ibhawoh Bonny *Between Culture and Constitution - The Cultural Legitimacy of Human Rights in Nigeria* (1999) *at 839*.

As earlier mentioned in chapter three above, achieving a balance between the extremist positions on universality of human rights and cultural relativity is necessary to achieving better protection for the rights of women. An intra-cultural discourse and exchange is therefore necessary to arguably attain long-term solutions to the age long discourse on the challenge of culture to the protection of the international rights of women in Africa, and particularly in Nigeria. In the light of the above, basic international rights of women and the girl child would be expressed and understood under the light of the peculiar cultural understanding and beliefs.

(f) Institutionalising political evolution of women/Gender Quota for Political Parties

Women participation in politics in Nigeria as earlier mentioned in chapter three, is extremely low and remains one of the lowest rankings in Africa.[46] As was stated in Chapter three, Nigerian women recently intensified their fight for better rights for women and gender equality. The rejection of the gender Bills by the National Assembly resulted in Nigerian women clamouring for a change to the status quo. The five rejected bills include a bill to create additional seats for women to increase women's representation in the National Assembly and therefore significantly lead to an increase in the number of women in parliament. Seats held by women should be compulsory and created at various levels of government to enable them to influence the promulgation of laws, particularly gender-related laws. Women should equally be encouraged to pursue their education and equip themselves with the necessary skills and know-how to improve on their status. This can be achieved through provision of free or low-cost education so that a majority of women can afford it. The electoral law under the institution of the Independent National Electoral Commission (INEC) should ensure, via the promulgation of the necessary law, the compulsory participation of women in politics, via positive motivation and mobilisation in all the 774 Local Government Areas, the 109 senatorial seats, the 36 governorship positions, the national executive committees (NEC) of all political parties, and the strategic offices of the president and the vice-president in Nigeria. One strategic way to achieve this is to absolve women from paying for elective office forms[47] at all levels of government and party politics. Currently, the cost of elective forms in Nigeria is very expensive and could discourage several women who are not economically enabled to run for the available elective offices. Also, the recent efforts for gender inclusion via the adoption of the National Gender Policy (NGP) in Nigeria need to be urgently implemented. The NGP recommendation of 35 per cent female participation in both elective and appointed public service positions, which is above the 30 per cent advocated by the World Conference on Women in Beijing, needs to be practically and urgently implemented and translated into the lived realities of Nigerian women.[48]

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[46] Women in Parliament (WNP) (2019) Data on world classification. available at *http://archive.ipu.org/wmne/classif.htm* accessed 14-05-2021.

[47] The application forms for elective positions.

[48] Oluyemi O *Monitoring Participation of Women in Nigeria* (2016) available at *https://unstats.un.org/unsd/gender/Finland_Oct2016/Documents/Nigeria_paper.pdf* Accessed 14- 05-2021; I Schoon 'Explaining persisting gender inequalities in aspirations and attainment: An integrative development approach' (2015) 7(2) *International Journal of Gender, Science and Technology* at 151-165.

(g) National reorientation on the girl-child value and education across all cultures

Child/early marriage, as discussed in chapters four and five, continue to be practised within the Hausa/Fulani, Igbo and Yoruba cultures in Nigeria due to cultural perceptions concerning the value of the girl child. The girl child is consequently denied access to education and regarded as intellectually less equipped than the male child. Therefore, an increasing awareness of the need to educate the girl child would contribute to the economic, social, and political state of Nigeria. It could bring about a reduction in the prevalence of child marriage in Nigeria. The perceptions of people need to change, and this can effectively happen only through reorientation and education, as discussed above. The Nigerian people need to be educated about the negative impact of gender roles fostered by culture and religion. The various cultures need to converge with the assistance of the National Orientation Agency, the Federal Ministry of Women Affairs and non-government organisations to formulate new ways of promoting their cultural values, such as promoting piety in the girl child which is the major reason given for the subsistence of child marriage, while affording equal rights to education to the girl child.

Education and an awareness of cultures vis-a-vis the girl child should start as early as possible in childhood at the time when children develop a concept of themselves and their academic and career interests.[34] This education should cut across formal, informal and non-formal types of education. At the formal level of education, schools should develop a comprehensive curriculum designed to remove gender stereotypes from educational materials and teach children that their life and career choices are not dependent on their gender.[49] Academic textbooks and methods of engaging in education should be devoid of any form of stereotypical gender roles. At the informal level and non-formal level of education, parents who would have been part of the reorientation and education process, should endeavour to train their children with an understanding of their basic rights as human beings and not within the construct of gender distinctions and expectations. There should also be no restrictions on the type of trade or business that a girl or a boy can undertake in Nigeria.

Through the various engagements at the religious, social, and cultural levels as discussed in this chapter, educated and uneducated parents should undergo a reorientation process on the status and rights of the girl child and women, which they, in turn, will reflect in the training of their children.

[49] Onyeka C Okongwu 'Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria' ((2020) *International Journal of Discrimination and the Law,* available at *https://journals.sagepub.com/home/jdi*_accessed on 14 May 2021.

IV CONCLUSION

Nigerian women are subjected to many acts of discriminations despite Nigeria's ratification of a number of regional and international laws on the right of women. The Nigerian legal system has also not provided sufficient protection for the rights of women. The Protocol to the African Charter on the Rights of Women in Africa seemed a beacon of hope for women in Nigeria. However, Nigerian women have not been able to enjoy the benefits of the protection afforded by the Protocol because it has not yet been domesticated in Nigeria. Despite the efforts by women rights organisations and civil societies to canvass for the domestication of the Protocol, it continues to face many hindrances to its domestication, top on the list being the existing cultural systems and religious beliefs in Nigeria.

To enable the Protocol find expression within the Nigerian cultural, religious and legal systems, there is a need to domesticate the Protocol via a legal model that would enable its enforcement in Nigeria. The proposed model for the domestication of the Protocol in Nigeria includes first, enacting enabling laws that would provide better protection for the rights of women according to international and regional standards on human rights. These laws include the 1999 Constitution, the Child Rights Act, The Marriage Act, Violence against Persons (Prohibition) Act, and statutory and customary laws on inheritance. To achieve this, more women are needed as lawmakers in Nigeria. Secondly, women's right and access to justice should be guaranteed. The belief that family related matters are private from the field reports, have forced many women to remain silent and refuse to report cases of discrimination they suffer. A few women who have taken steps to report cases of discrimination and abuse to the police have been held to be responsible for the situation they find themselves in. Many women are not aware of the non-governmental organisation that deal with women' issues, or do not know how to access them.

Therefore, beyond reviewing and enacting enabling laws, there is the need for a reorientation of and education in the perceptions and understanding of gender bias and the status of women in Nigeria. This reorientation and education process should be powered by the Ministry of Women Affairs in partnership with non-governmental organisations, the Nigerian National Orientation Agency, the police, religious and cultural leaders. Thirdly, the compulsory inclusion of female quota in the leadership positions in religious organisations should be enforced by the Corporate Affairs Commission in Nigeria. This would enable the women to have a level of influence in the policies and structures of religious organisations that discriminate against the rights of women. Fourthly, gender discriminatory laws should be repealed, these include some provisions of both the Criminal Code and Penal Code that enable domestic violence and discriminations against women to continue.

Fifthly, a cultural/religious revolution is required to promote the political evolution of women which would see to more women occupying political offices and consequently able to influence the promulgation of laws that negatively impact on the rights of women. Sixthly is the national reorientation across all cultures of the value of the girl child and her education. This will result in better equipping the girl child to have a voice in the social, economic, and political space in Nigeria.

CHAPETER SEVEN

RECOMMENDATION & CONCLUSION

I RECOMMENDATION FOR FURTHER RESEARCH

The thesis focuses on the three main tribes in Nigeria (Hausa/Fulani, Igbo and Yoruba), but there exist several minority cultural groups likely to have their own distinct cultural beliefs and practices. Further research into these minority cultural groups could yield additional responses and reveal additional hindrances to the realisation of the rights of women in Nigeria, which would allow for a more comprehensive and thought−provoking discourse about effectively guaranteeing the rights of women in Nigeria.

This research has covered cultural and religious hindrances to the realisation of rights for women in Nigeria, as have been drawn from research respondents who were representative of the three main cultures and religions in Nigeria. The Hausa/Fulani, Igbo and Yoruba are the three largest ethnic groups in Nigeria and constitute about 64 per cent of the total population.[1]

Further research could also be carried out on other social factors borne from culture that impede on the rights of women in Nigeria, especially on the sensitive cultural issues of female infertility and non-conception of male children. There could also be other cultural factors that impede the rights of women in Nigeria that are not addressed in this thesis. These views could be obtained from the many other minority cultures existing in Nigeria. This however does not invalidate the outcome of this thesis.

II CONCLUSION

This research investigates the perceived religious and cultural factors that restrict the rights of women within the three main religions (African Traditional Religion, Christianity and Islam), and three main cultures (Hausa/Fulani, Igbo, Yoruba) in Nigeria. The research analyses the religio-cultural challenges to the rights of women in Nigeria vis-a-vis the protections afforded by the Protocol to the African Charter on the Rights of Women in Africa (hereinafter referred to as the Protocol) and proposes a legal model feasible for the domestication of the Protocol within the Nigerian polity which, in turn, will ensure its domestication and implementation in Nigeria. The findings, analysis and interpretations from each chapter of the study are summarised in here, and a conclusion is presented.

Chapter One provides a background to the human rights system that applies to women internationally and regionally. The chapter introduces the debate on the concept and scope of the human rights of women.

[1] Statista Distribution of Ethnic Groups in Nigeria in 2018 (2022) available at *https://www.statista.com/statistics/1203438/distribution-of-ethnic-groups-in-nigeria/* accessed 35-08-2020.

While the universalists state that the human rights of women are universal and should be construed without any cultural overtones, the cultural relativists argue that culture is supreme and should be protected. The extremist positions of the adherents to universalism and cultural relativism have, however, created more difficulties for the realisation of the human rights of women in Nigeria. Women are perceived to be culturally subordinate to men due to prevalent patriarchal structures and religious beliefs. Several cultural practices exist, despite their harmful effects on the life and health of young girls and women and the numerous human rights instruments that have been ratified by Nigeria. The Nigerian legal system is also disadvantageous to women, as many of its laws are drafted with cultural undertones and thus perpetuate more discrimination against them. The Protocol to the African Charter on the Rights of Women in Africa (hereinafter Protocol) has been applauded for the way in which it outlines the basic rights of African women devoid of patriarchal undertones. However, the Protocol face several challenges to its domestication in Nigeria; hence the need for a legal model that addresses the cultural and religious hindrances to the Protocol in Nigeria with the aim of easing its domestication.

Chapter Two presents the designs, methods and procedure used in carrying out this research. A qualitative study that uses the case study approach as the mode of enquiry is adopted to investigate the various research questions. These questions are designed to investigate the perceptions of women, men and religious and cultural leaders from the three main religions and cultures in Nigeria, on the prevalence of religious and culturally influenced discriminations against women. Their objective is to arrive at the common perceived factors that propel discrimination against the rights of women in Nigeria as provided for in the Protocol, and the proposed model that would enable the Protocol to be domesticated in Nigeria, thereby affording the better promotion and protections of the rights of women. Both closed and open-ended interviews and questionnaires were used and 554 questionnaires were handed out and returned, while 50 respondents were interviewed.

Chapter Three addresses research question one: What protections are afforded women within the International, Regional and Nigerian legal framework? It also answers research question three: What protections are afforded women in the Protocol and how does the Protocol address the practices of early/forced marriage, female genital mutilation, widowhood practices and rites, and female inheritance under Nigerian customary laws? In 1948, the Universal Declaration of Human Rights (UDHR) was adopted and is the foundation of international human rights law. The UDHR affirms the universal recognition of human rights equally applicable to everyone. Another key international agreement on human rights is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Almost all African countries, including Nigeria, ratified CEDAW. The African human rights system also developed its own laws on human rights — the African Charter. However, the provisions of the African Charter were seen as inadequate for the protection of women's rights. The Protocol to the African Charter for the Rights of Women in Africa was therefore adopted and ratified within several African states including Nigeria.

However, the Protocol has no force of authority for its enforcement in Nigeria because it has not been domesticated. The Protocol has met with much resistance to its domestication in Nigeria due to prevalent cultural practices and religious beliefs that discriminate against women.

The Nigerian legal system also enables more discriminations and abuse against women and has refused to domesticate the Protocol despite its comprehensive and innovative approach towards situating the rights of women within the positive context of African culture. A critical evaluation of Nigerian laws reveals how they reflect patriarchal understandings and standards. Chapter Three therefore explains that the prevalent laws on the rights of women in Nigeria are inadequate and do not afford comprehensive protections for them. The male-dominated legislative arm also poses problems for the realisation of effective gender specific laws in Nigeria, hence the need to equip and empower more women to be part of the country's legislative process. Furthermore, there is an increased involvement of women's rights and civil society groups and organised protests for the safeguarding of the rights of women facing discrimination and abuse.

The chapter concludes that the Protocol has achieved a balance between the universalist and cultural relativists positions by reaching into the private spheres of the family, community, and tradition, where women are more likely to experience discrimination. The Protocol particularly deserves praise for its attempt to explicitly address certain cultural and traditional practices such as widows' rites and rituals, the rights of women in polygamous marriages, and female genital mutilation that have long formed part of the human rights discourse in Africa.

In Chapter Four, the religious doctrines and beliefs, the cultural practices and understandings that influence the deep-seated patriarchal structures and gender stereotypes in Nigeria are discussed. The chapter addresses research question two (RQ 2) – What was the status and place of women in historical Nigerian society, and to what extent has religious beliefs and practices, and cultural values and systems hindered the promotion of women's rights in Nigeria as entrenched in the Protocol? The chapter argues that contrary to the views of several authors, gender discrimination in Nigeria was not introduced with the coming of colonialism but has long defined and determined the way of life of the people. Though women exercised some level of influence during the pre-colonial era, this was more evident in respect of women-related matters. Practices influenced by religion and culture that affect the life, health and well-being of the girl child and woman, such as female genital mutilation/circumcision, child marriage and widows' rites, have been in existence from time immemorial. These practices persist despite the prevailing laws and the extensive interventions by international organisations and non-governmental organisations in Nigeria.

Chapter Five reports the findings and provides an analysis and interpretation of responses given by 554 participants to whom questionnaires were administered and 50 interviews conducted on the perceived influence of religion and culture on the rights of women within the three main religions (African Traditional

Religion, Christianity, and Islam) and cultures (Hausa/Fulani, Igbo, and Yoruba) in Nigeria. The chapter provides answers to Research Question (R.Q.) 4: What are the perceived religio-cultural factors in Nigeria hindering the rights of women as enshrined in the Protocol? The common practices within the religions and cultures include female genital mutilation/circumcision, demeaning widows' rites and rituals, a discriminatory devolution of properties after the death of a male relative, wife beating, marital rape, child/forced marriage, the absence of women's right to divorce, the denial of custody of under-aged children, wife inheritance, and the absence of a recourse to justice.

While the various religions present differing perceptions on the positions of women within their organisations, there is nevertheless a consensus that women are not equal to men, and consequently experience a level of differentiation as a result of their gender. All of these result in women enduring varying levels of domestic abuse and domestic violence in compliance with the dictates of their religion. Furthermore, women cannot and would not submit marriage and family related matters and cases of abuse to the courts or legal institutions for determination, as such matters are considered 'private.' The force and influence of culture is also evident in responses received during the fieldwork, as women say they would rather not report cases of discrimination and abuse experienced within the marriage. Reporting cases of discrimination and abuse within the marriage to the police or any law enforcement agency was not an acceptable option considered by respondents due to the privacy required in marriage and also because the women would be judged by the police when they reported these abuses. It is also argued that women are often the promoters of some of these discriminatory practices, such as female genital mutilation, widows' rites and practices and child marriage. Furthermore, women will continue to promote a compliance with these discriminatory practices if their cultural perceptions and perspectives are not reoriented.

Also evident from the chapter is the fact that culture is a strong determinant of what society perceives as an acceptable practice, and no culture in Nigeria is oblivious to the deprivation of the rights of women in every sphere. Hence, achieving an effective domestication of the Protocol in Nigeria would require a reorientation and education of religious and cultural structures within the ambit of the law, and a careful consideration of the mitigating role of religion and culture in the proposed domestication process.

Chapter Six proposes a legal model for the domestication of the Protocol in Nigeria, which comprise seven features. These include enacting enabling laws on the rights of women in Nigeria, repealing discriminatory laws and institutions, guaranteeing women's rights and access to justice, enforcing gendered positions within religious organisations via the Corporate Affairs Commission, promoting a socio-cultural revolution, institutionalising the political evolution of women/gender quota for political parties, and reorientating the value of the girl-child and the importance of the girl-child education across all cultures in Nigeria.

The thesis concludes by offering a comprehensive domestication model aimed at influencing social and cultural patterns, through intra − cultural discourses and exchange, which will in turn ensure the eradication of cultural and religious biases and stereotypes and situate the Protocol as a viable instrument for the promotion of the rights of women in Nigeria.

An understanding of both the universalist and relativist arguments are essential in addressing the contending human rights debate in Africa - Nigeria. A rigid application of either ideology can lead to universalism marginalising local customs, while relativism may excuse serious rights abuses. The challenge lies in finding a balance where core human rights are upheld without imposing a one-size-fits-all model that disregard cultural uniqueness. Adopting a cross-cultural dialogue which involves engaging in dialogue between cultures to build mutual understanding and consensus around human rights can help bridge the gap between universalism and cultural relativism. This could involve reformulating rights language to resonate with local values without compromising on fundamental human dignity.

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APPENDIX A

QUESTIONAIRES FOR WOMEN AND MEN REPRESENTING THE THREE MAIN RELIGIOUS GROUPS AND CULTURES IN NIGERIA

1. INTRODUCTION: The purpose of this questionnaire is to find out from men and women, about the rights of women in Nigeria. The questionnaire also wants to find out how the various religious beliefs and cultural practices affect the status and role of women in Nigeria, and if the women and men want these practices to continue or stop, and why. The cultural/religious practices in consideration in this questionnaire are child/forced marriage, female genital mutilation, domestic violence/abuse (wife-beating & marital rape), widowhood rites/practice, and customary inheritance.

This is a PhD research work under the supervision of the Public Law Department of the University of Cape Town in South Africa. Participants will not be asked for their names, and every information that can allow the public identify the participants, will not be included in the questionnaire and the analyses. You also have the right to refuse to answer this questionnaire, and you can stop answering if you do not feel comfortable answering the questions.

Kindly tick the correct answer where options are provided, and please provide as much details as possible when answering the other questions.

A. GENERAL

1. Do you understand that you do not have to participate or answer the questions below? Yes ☐ No ☐
2. Do you understand that you can withdraw or stop participation at any time?
   Yes ☐ No ☐
3. Age: ☐
4. Sex: Female ☐ Male ☐
5. Tribe: Hausa/Fulani ☐ Igbo ☐ Yoruba ☐
6. Marital Status: Single ☐ Married ☐ Widow ☐ Divorcee ☐

   Separated ☐

7. Religion: Christian ☐ Muslim ☐ African Traditional Religion ☐

8. Occupation: Unemployed ☐ Housewife ☐ Artisan ☐ Trader ☐

   Professional ☐ Student ☐

9. Educational Level
   i. Informal (e.g. Technical and Vocational Education)
   ii. Primary School Level
   iii. Secondary School (WAEC/NECO)
   iv. National Diploma (ND)
   v. Higher National Diploma (HND)
   vi. National Certificate in Education (NCE)
   vii. University Graduate (BA, BSC etc)
   viii. Masters/PGD
   ix. PhD

10. Types of Marriage:
   i. Traditional/Customary Marriage
   ii. Church Marriage
   iii. Islamic Marriage
   iv. Statutory Marriage
   v. Not Applicable

11. Nature of Marriage:
   i. Consensual Marriage
   ii. Arranged Marriage
   iii. Forced Marriage
   iv. Not Applicable

12. Duration of Marriage?
   i. 0-10years ☐ ii. 11 – 20years ☐ iii. 21 – 40 years ☐

   iv. Above 40years ☐

B. CULTURAL PERSPECTIVE

13. Which of the following practices exist in your culture?
   i. Child Marriage
   ii. Female Circumcision
   iii. Widows Rites
   iv. Others. Please Specify.....

14 Which of the following practices occur in your marriage?
   i. Wife beating
   ii. Marital Unfaithfulness
   iii. Forced Sexual Intercourse

iv. None
v. Other. Please specify……..

15 Why do you think the practices listed in question 14 above occur in your marriage?

…….

16 Why do you think the practices listed in question 14 above occur in marriages generally?
……..

17 What do you do when the practice(s) you listed in question 14 above occur in your marriage?

18 How do women in general, react when any of the practices listed in question 14 above

happen in their marriage?

19 Who do you normally report to when they experience any of the practices in question 14 above?
a. Family members
b. Religious leaders/traditional leaders
c. The police
d. All of the above
e. None of the above. Please explain why?……

20 Who do women normally report to when they experience any of the practices in question 14 above?
f. Family members
g. Religious leaders/traditional leaders
h. The police
i. All of the above
j. None of the above. Please explain why?……

21 Do you know of any law that protect women against the practices listed in question 14 in Nigeria? If yes, please state the law…….

22 What do you think about the practice of female circumcision or female genital cutting?

23 Do you think female circumcision or female genital cutting should be continued, or should be stopped?.....
Please give reasons for your answer ……

……..

24. What is the usual age for a girl to get married within your culture? ……

25 Is the marriage age different for boys? _____ Give reasons for your answer .....

26 Can women divorce their husband in your culture?
Give reasons for your answer.....

27 Can men divorce their wives in your culture? Give reasons for your answer……..

28 What should a woman do if she wants a divorce? …….

29 What rights do women have after a divorce in your culture?
   i. To her children ……
   ii. To Properties acquired during the marriage ……
   iii. To Matrimonial Home …….
   iv. Other. Please specify ……...

30 What burial rites are women expected to perform when their husband die?
   Please explain how the burial rites are done within your culture?

31 Can a widow refuse to perform the burial rites you stated above?
   Give reasons for your answer ……..

32 What rights do widows have in your culture?
   i. To her children
   ii. To Properties acquired during the marriage
   iii. To Matrimonial Home
   iv. Other. Please specify ……

33 Can a woman inherit from her father's property?
   Give reasons for your answer …….

34 Can a woman inherit from her husband's property? ……...
   Give reasons for your answer …….

35 Can a woman inherit the property of any of her male relative?

C. RELIGIOUS PERSPECTIVE

36 What positions can women hold within your religion?

37 Is there any difference between the positions held by men and those held by women? Yes ☐ No ☐

   Give reasons for your answer ……

38 What does your religion say about the minimum age for marriage?

   a. For a girl

   b. For a boy?

Give reasons for your answer……..

39 What do you think the role of a wife is under your religion?

40 Can a woman divorce her husband under your religion? Please give reasons for your answer?

41 Can a man divorce his wife under your religion? Please give reasons for your answer?

……

42 What does your religion say about the following practices?

i. Child marriage ……

ii. Female Circumcision …….

iii. Widows Rites/Rituals……..

iv. Female Inheritance …….

v. Divorce ……

43 What is your religions position when the underlisted cases happen in a marriage?

i. Wife beating ……..

ii. Marital unfaithfulness ……...

iii. Forceful sexual intercourse ……

44 What does your religious leader do when any of the cases listed in question 43 is reported to them?

45 What can a woman do where any of the actions listed in question 43 above are present in her marriage? ……...

46 Would you say the rights of women are well protected in Nigeria? Yes ☐ No ☐

Give reasons for your answer ……..

APPENDIX B

INTERVIEW FOR WOMEN AND MEN WITHIN THE SELECT CULTURAL GROUPS & RELIGIOUS ORGANISATIONS IN NIGERIA

INTRODUCTION: The purpose of this interview is to find out from women and men what rights are available to women in Nigeria, and if the rights of women are well protected. The interview will also find out the religious and cultural practices that discriminate against women in Nigeria, and if the women and men want these practices to continue or stop and why. The cultural/religious practices i would be focusing on in this interview are child/forced marriage, female genital mutilation, domestic violence/abuse (wife beating & marital rape), widowhood rites/practice, and customary inheritance.

This is a PhD research work under the supervision of the Public Law Department of the University of Cape Town in South Africa. Your identity will be treated with confidentiality, though the interview will be voice recorded for purposes of credibility and ease of data analysis.

Let me start by asking you to please introduce yourself orally, what is your marital status? What tribe do you belong to? What is your highest educational level? What is your employment status? What is your religion?

Do you understand that you do not have to participate or answer the questions below?

Yes ☐ No ☐

Do you understand that you can withdraw or stop participation at any time?

Yes ☐ No ☐

SECTION A: PERCEPTIONS ON CULTURAL PRACTICES AFFECTING WOMEN

1. Which of the Nigerian three main cultural groups do you belong to? Igbo, Hausa or Yoruba?
2. Name some cultural practices within your culture that deal particularly with women?
3. In your opinion, what are the benefits of the cultural practice(s) you mentioned in question 2 above?
4. What do you consider to be the disadvantages of the cultural practice(s) you listed in question 2 above?
5. As a woman which of the practices have you been subjected to?

6. What is your culture's position on female inheritance of property?
7. At what age is a girl expected to get married in your culture?
   Give reasons for your answer.
8. Does this age differ if it is a boy?
   Give reasons for your answer.
9. Is a woman allowed to apply for a divorce within your culture?
10. What rights do Divorcees and Widows have within your culture to her children and properties?
11. Is female circumcision still being practised in your culture? Do you think the practise should continue? Please give reasons for your answer.
12. How does your culture view wife beating and forceful sexual relationship in marriage?
13. How will you say women are treated generally within your culture?

SECTION B: PERCEPTIONS ON RELIGIOUS PRESCRIPTIONS & BELIEFS

1. Which religion are you associated with?
2. What is the highest position of authority that a woman an can occupy within your religion? Is this position different in the case of a man? Please Explain.
3. Explain the various constraints or challenges that women experience within your religion as a result of being a woman?
4. What are your religions' expectations from women compared to men?
5. What do you understand by domestic violence/abuse in marriage?
6. How does your religion handle cases of wife beating, forceful sexual intercourse, and child marriage?
7. What options are available to women in an abusive Marriage within your religion?

SECTION C: GENERAL

1. Do you know of any law and or organisation that protect the rights of women in Nigeria? Please mention…….

2. Would you say the rights of women are well protected in Nigeria?
   Please explain…….

APPENDIX C

INTERVIEW FOR SELECT RELIGIOUS LEADERS IN NIGERIA

INTRODUCTION: The purpose of this interview is to find out from religious leaders, about what their beliefs and teachings are on the status and rights of women in Nigeria. Some cultural/religious practices will also be considered in this interview; child/forced marriage, female genital mutilation, widowhood rites/practice, and customary inheritance.

This is a PhD research work under the supervision of the Public Law Department of the University of Cape Town in South Africa. Participants names and details of specific religious sect will not be included in the questionnaire and the analyses. You also have the right to refuse to take part in this interview process, and you can stop answering if you do not feel comfortable after the process has started. Your identity shall be kept confidential.

Please answer all the questions as honestly and frankly as you can. Do you understand that you do not have to participate or answer the questions below?

Yes ☐ No ☐

Do you understand that you can withdraw or stop participation at any time?

Yes ☐ No ☐

1. What is your gender?
   a. Male b. Female

2. Marital Status?
   a. Single b. Married c. Separated/Divorced d. Widow

3. What is your religious affiliation?
   a. Islam b. Christian c. African Traditional Religion d. Other

4. For how long have you been a leader in your religious affiliation?
   1. 1-5 years
   2. 5-10 years
   3. Above 10 years. Please specify?

5. Can women occupy positions of authority or leadership within your religion?

6. What is the highest position of authority a woman can occupy within your religion?

7. Can women occupy the same positions of authority as men within your religion?
   Please give reasons for your answer.

8. What is your religious belief and teaching on the rights and responsibilities of a husband and wife in a marriage?

9. How does your religion handle the underlisted cases in a marriage?
   a. Wife beating
   b. Forceful sexual intercourse
   c. Divorce

10. What are your religious beliefs on the underlisted practices;
    a. Child Marriage
    b. Female Genital Mutilation/Female Genital Cutting
    c. Widowhood rites/rituals?
    d. Female Inheritance of Property?

11. What can a woman do if any of the cases listed in question 9 are present in her Marriage?

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