

**THE RIGHT OF THE FEMALE CHILD TO FREEDOM FROM DISCRIMINATION: NIGERIA AS A CASE STUDY**

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Abstract:

The objective of this study is to examine the right of the female child to freedom from discrimination in Nigeria. This right is founded on the equality before the law which is one of the cardinal principles of the rule of law as propounded by Prof. A. V. Dicey. The equality postulates equal protection of all persons by the laws of the land regardless of sex, race, religion, color, language, physical disability, circumstances of one's birth, or other considerations. The idea of legal equality was recognized in 1948 by the UNDR. Similarly, it is among the couple of rights constitutionally guaranteed under the 1999 Constitution of Nigeria. The doctrinal method of research, comprising both primary and secondary sources, was solely adopted in the course of this study. The primary sources include the 1999 Constitution of Nigeria and other relevant laws. The secondary sources include books and articles sourced from the library, in addition to the internet sources. The study gathered that gender inequality has become the worst of all the cases on discrimination in Nigeria, especially in the context of succession rights. It is more worrisome that some aspects of discrimination are guaranteed by the Constitution under the derogatory provisions. That is why the implication of the derogatory provisions on the rights of the female child in Nigeria was examined in this work. The paper ends with a call for deliberate efforts to uphold freedom, equality, and justice as the only prerequisite for the peaceful coexistence and growth of our nation.

Keywords: Nigeria, discrimination, female, constitution, rights, child

INTRODUCTION

The right to freedom from discrimination is among the internationally recognized human rights having been recognized by foundational global agreements established in the mid-20th century, such as the 1948 declaration outlining universal human rights, along with other major international treaties, have played a central role in shaping human rights standards worldwide regional charters and treaties. A human right is a right bestowed on human beings by nature and so inalienable. Without human rights, life becomes meaningless

and worthless.¹ Protection against discriminatory treatment is recognized as a fundamental human right and an enforceable right having been recognized and incorporated in the national constitutions of many countries of the world as a fundamental right.² Its recognition and enforcement in upholding the principle of equal treatment lays the groundwork for a just, free, and peaceful in any society.

However, research has revealed that this right is among the greatest rights being abused most often in all parts of the world.³ Rishworth, drawing on the context of Apartheid in South Africa, emphasized that discrimination constitutes “The most far-reaching, organized, and intense violation of human rights”.⁴ From the international perspective, the discrimination may be grounded in racial, linguistic, or color-based distinctions. Locally, the discrimination may often be based on tribe or religion. In the third world countries, discrimination is often based on gender, circumstances of one’s birth, age, property, national or tribal origin, social standing or political opinion. This issue has been a burden to the general populace, particularly the victims of discrimination who are most often vulnerable in the society. They always feel marginalized and cheated by the same government and the people meant to protect them. Ikong and Ibekwe stated unequivocally that;

The treatment of human rights in Nigeria, whether by government entities, institutions, or private individuals, remains deeply problematic. Most notably, persons with disabilities suffer ongoing and systemic discrimination rooted in their physical or mental conditions. They are routinely excluded from access to essential public services, educational opportunities, and employment. This exclusion persists despite the existence of legal provisions intended to safeguard their rights. The situation is further aggravated by the lack of equal access to electoral participation, public facilities, and fair labor opportunities for individuals living with disabilities.⁵

In Nigeria, the level of gender inequality is worrisome as women, widows, and female children are most often disallowed from sharing in the estate of their deceased spouses or fathers as the case may be.⁶ They are always treated less favorably than their male counterparts especially on issues involving right to landed properties and succession. In Nigerian politics, the discrimination against women is worse as it seems a no-go-area for women. The beneficiaries of the discriminations always invoke the derogatory provisions of the Constitution to justify their claims as if the derogations were meant to rob Peter to pay Paul. We are fully aware that

¹ Patricia Izuka Tom (Mrs), writing on the scope of anti-discrimination rights under the UDHR, discusses this in the *International Journal of Business and Law Research*, vol. 6, no. 2, 2018, p. 41.

² See section 9 of the 1996 Constitution of South Africa and Article 17 of the 1992 Constitution of Ghana as instances.

³ MOU Gasiokwu, *Human Rights, History, Ideology and Law* (Jos, Nigeria, 2003) 255.

⁴ Paul Rishworth examines the origins and revival of the Bill of Rights in his chapter in *Rights and Freedoms*, edited by Grant Huscroft and himself, highlighting key developments (1995) at page 13.

⁵ J Adams Adoga-Ikong and Adaeze Favour Ibekwe, work in ‘Right to Freedom from Discrimination: The Case of The Disabled in the Context of International Human Rights and the Practice in Nigeria’ (2020) 3 *Pinisi Discretion Review* 341.

⁶ J. N. Aduba and S. Oguiche, *Key Issues in Nigerian Constitutional Law* (1st ed.) 2014), p. 161.

discrimination is not always unlawful.⁷ There is always a benchmark for certain positions. Setting age limits for eligibility into political offices is quite in order as obtainable in other parts of the world.⁸ We cannot classify that as discrimination, the subject matter of this study. No.

The area that concerns this study is the discrimination against female children that amounts to glaring injustice having not fallen within the scope of the derogatory provisions of the Constitution or any other relevant law. How can a child be denied the right to share in her deceased father's estate on the ground that she was born a female? This goes against the core values of natural justice, equity, and sound conscience. Today, it has come to the fore that the concepts of freedom, equality and justice are the modern watchwords and principles which ought to be fully actualized by any civil society for its growth and development.⁹ In *Loyola High School v. A-G (Quebec)*,¹⁰ the court reiterated the responsibility of the states to protect and promote the peoples' rights to equality, justice, and fairness as rights of legitimate interests.

Therefore, states should repress the type of privilege perceived as the birthright of men against their female counterparts. Interestingly, Nigeria is a signatory to the 1948 declaration affirming universal human rights, along with subsequent international legal frameworks including regional and sub-regional charters and treaties that prohibit any form of discrimination against women and minorities. Therefore, the government of Nigeria, political activists, pressure groups, and other stakeholders should ensure that the country does not run short of its obligations in ensuring equality of all and sundry irrespective of gender, tribe, religion, or other considerations.

RIGHT TO FREEDOM FROM DISCRIMINATION

Right to freedom from discrimination presupposes that all individuals are entitled to equal rights and privileges notwithstanding their race, gender, age, nationality, religion, color, language, circumstances of their birth or other status in the society. It means that the law that applies to the king equally applies to his servant without fear or favor and without bias. In the case of *Brown v. Board of Education*,¹¹ the Supreme Court of the United States of America unequivocally condemned racial discrimination in the schools by reiterating that there can

⁷ See, for instance, the Canadian case of *Law v. Canada (Minister of Employment & Immigration)* (1999) 1 SCR 497 where the Court upheld the validity and constitutionality of a Legislation which granted some survivors' benefits based on age and other considerations. Those with physical disabilities and the elderly ones were granted benefits at the demise of their contributing spouses while those under their productive ages of 35 to 45 got nothing until they attain the age of 65.

⁸ Jamil Ddamulira Mujuzi examined the constitutional and legislative measures for safeguarding the right to freedom from discrimination in Zambia, *International Journal of Discrimination and the Law*, Vol. 19, Issues 3–4, at p. 85.

⁹ Ese Malemi, *The Nigerian Constitutional Law* (1st ed. Lagos, Princeton Publishing Co.) 2006, p. 120.

¹⁰ (2015) 1 SCR 613, 643.

¹¹ 374 US 483 (1954).

be no distinction of any kind among those who were born or naturalized in the United States and so separating, the segregation of Negro children from other individuals born or naturalized in the United States, solely on the basis of their race and color, constitutes unlawful discrimination.¹² In 1979, the same Court in *Orr v. Orr*¹³ struck down an Alabama law concerning spousal support payments only for female spouses against their male counterparts upon divorce and not *vice versa*. The Court held that what applies to a female spouse should as well apply to a male spouse without distinction. Randall restated that it is a right that entitles every man, woman, youth, and adult to;

Every individual, regardless of sex, age, or background, is entitled to protection from any form of differentiation or treatment whether in the form of exclusion, restriction, or preference that is based on characteristics such as race, ethnicity, nationality, language, or other similar grounds, and which limits their ability to fully enjoy their fundamental rights and freedoms.¹⁴

This right is not of a recent origin rather it existed with humanity right from history. It can be recalled that the decision of the United States Supreme Court in *Scott v. Sanford*¹⁵ in the 19th century where Scott, a slave, was held to be property and not a person capable of exercising rights and privileges by reason of his status as a slave which led to a civil war and the resultant Fourteenth Amendment of the American Constitution.¹⁶ According to the Court in the subsequent case of *Williams v. Fears*;¹⁷

The U.S. Supreme Court in *Williams v Fears* recognized that the primary aim of the Fourteenth Amendment was to address state laws that subjected newly freed Black Americans to systematic and severe discrimination, imposing unjust and burdensome conditions on them as a distinct class.

It was after the Second World War that the United Nations decided to incorporate the right to equality and freedom from discrimination as part of the rights that determine the human worth, dignity, and value, and to be universally recognized and safeguarded.¹⁸ Thus, out of the 30 Articles of the UDHR 1948, substantial parts were focused on the rights to freedom, recognition, the principles of fairness and equal treatment. Article 1 asserts that every person is born equal in rights and dignity and so should be treated as such. Article 2

¹² The Court disapproved the decision in the case of *Plessy v. Ferguson*, 163 US 537 (1896) where segregation in the schools was upheld as valid.

¹³ 440 US 268 (1979).

¹⁴ **Vernellia R. Randall**, *What is the Human Right to Freedom from Racial Discrimination?* available at <https://racism.org/articles/law-and-justice/286-racial-discrimination> (accessed 19 December 2024).

¹⁵ 60 US 393 (1856).

¹⁶ See Hon Justice P Nnaemeka-Agu, "Discrimination and the African Charter on Human and Peoples Rights" in *Commonwealth Law Bulletin*, Vol. 9, Issue 4, 1993, p. 1673.

¹⁷ 179 US 270 (1900) 274.

¹⁸ Tarunabh Khaitan & Jane Calderwood Norton, "The Right to Freedom of Religion and the Right against Religious Discrimination: Theoretical Distinctions" in *International Journal of Constitutional Law*, Vol. 17, Issue 4, 2019, p. 1132.

specifically provides for the general rights to freedom from discrimination whether by reason of sex, race, political influence, language, nation of origin, political or other opinion, status, property, circumstances of birth or other considerations.¹⁹ The importance attached to this right was demonstrated in the premium it was accorded under the different global treaties and agreements on human rights as well as other regional and sub-regional charters and treaties. For instance, the Preamble to the International Covenant for Civil and Political Rights (ICCPR) proclaimed that the recognition of the inherent dignity and equality of mankind as inalienable rights is the foundation upon which the world's peace, freedom and justice are to be built. Emphasis is always on the human equality and nondiscrimination.

Under the ICCPR alone, Articles 2(1), 3,²⁰ 14 and 26²¹ are mainly focused not only on equality and freedom from discrimination but also on the responsibility of the state parties to the covenant to ensure the fulfillment of those rights.²² Even though, the international agreement on economic, social, and cultural entitlements (ICESCR), being one of the international Bill of Rights,²³ protects civil and political rights, yet it nevertheless recognized the right to equality and nondiscrimination. Article 2(2), for instance, makes it obligatory on the states to ensure that the rights in the covenant are enjoyed without discrimination. Both ICCPR and ICESCR did not expressly mention people with disabilities but the term 'other status' is wide open and encompasses other grounds such as age and physical disabilities.²⁴ Quinn reemphasized that people with disabilities were duly recognized by the Bill of Rights and so any discrimination whatsoever against them is inconsistent not only with the UDHR, the Bill of Rights, but also the UN's established rules promoting the leveling of chances for persons living with disabilities.²⁵ To ensure that the rules did not just end on a paper, the United Nations

¹⁹ See also Article 6, which guarantees every person the right to recognition as a human being before the law everywhere. Article 7 states that all individuals are equal before the law and entitled to equal protection without discrimination, including protection against incitement to discrimination under this Declaration.

²⁰ Under Article 2(1) of the ICCPR, state parties are required to uphold the Covenant rights for all individuals within their jurisdiction, ensuring these protections apply equally and without discrimination based on attributes such as sex, religion, language, race, political belief, social or national origin, property, birth status, or any comparable condition.

²¹ While Article 26 re-echoes the equality before the law without distinction of any sort, Article 14(1) provides that all persons shall be treated as equal by the courts and tribunals.

²² Article 2(1) of the ICCPR provides that each state party to the Covenant should ensure that persons within its jurisdiction enjoy the rights guaranteed under the Covenant without distinction on the grounds of sex, religion, language, colour, political or other opinion, property, national or social origin, circumstances of one's birth or other status.

²³ Both ICCPR and ICESCR were negotiated in the 1950s, adopted by the UN General Assembly in 1996 as the International Bill of Rights but came into force in 1976 after they were ratified by the substantial number of the member states.

²⁴ Gerard Quinn, *et al*, *The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, 2002, p. 54.

²⁵ See Gerard Quinn, "The International Covenant on Civil and Political Rights" in *Human Rights and Disabled Persons*, T. Degener and Y. Koster-Dreese (eds.) 1995, p. 81.

went further to provide a guide to the state parties on the means of ensuring the fulfillment of these rights and reporting back, from time to time, on the progress made so far by these states.²⁶

The right to equality and freedom from discrimination is also accorded a very high premium under the African Charter on Human and Peoples' Rights. First, it was lucidly declared under the Preamble that freedom, equality, justice and dignity remain the essential objectives of the African Union²⁷ and the African Charter.²⁸ The rights are also recognized and protected under Articles 2, 3, 18, 19 and 28 of the Charter. As Article 2 provides that every individual is entitled to enjoy the rights guaranteed under the "Charter without distinction of any kind..." Article 3 guarantees equality and equal protection of all persons before the law.²⁹ While the intent of Article 2 of the Charter was to eliminate all sorts of discrimination in the region, Article 3 guarantees equality and just treatments of persons and application of the Charter and the laws to all persons within the region as held in the case of *Al-Hassan Fadia v. Togolese Republic*.³⁰

In *Advocaid Ltd. v. Republic of Sierra Leone*,³¹ the ECOWAS Court of Justice invalidated the Sierra Leone's Public Order Act of 1965 for violating the right to equality and non-discrimination guaranteed under Articles 2 and 3 of the Charter. The Public Order Act prohibited loitering within certain times and places and anyone found loitering who has no visible means of income and cannot give account of himself is presumed to be an idle and disorderly person liable, upon conviction, to imprisonment not exceeding one month. The applicants submitted that the law was targeted against the poor and less privileged in the society who have no viable sources of income. The aftereffect of the law was that the poor ones moving about their businesses in the night were arrested by the police but those riding flashy cars at the same period were left alone. Again, the security operatives who arrested women loitering at the same time allegedly demanded sex in exchange for their release. Those who complied were released while those who refused were arraigned and charged accordingly.

The Court held that the Law violated Articles 2 and 3 of the Charter. The emphasis of Article 18(3) is on the elimination of discriminations against women and children in conformity with the stipulations under the international human rights treaties. Unlike the ICCPR and the ICESCR which did not expressly pronounce the

²⁶ See the *UN Manual on Human Rights Reporting* (HRI/PUB/91/1 (Rev.1), Geneva, 1997).

²⁷ Then Organization of African Unity (OAU).

²⁸ *Jamil Ddamulira Mujuzi*, "The African Commission on Human and Peoples' Rights and its Promotion and Protection of the Right to Freedom from Discrimination" in *International Journal of Discrimination and the Law*, Vol. 17 Issue 2, 2017, p. 69.

²⁹ Article 19 not only provides for equality of all persons in the enjoyment of rights and respects but also went further to prohibit any form of domination of the minority by the majority. Article 28 imposes obligations on the individuals to have mutual respects to their fellow beings without discriminations of any kind.

³⁰ ECW/CCJ/JUD/17/24, Para 62. See also the case of *Kwoyelo v. Uganda*, Comm No. 431/12. Para 158 where the African Commission held that Article 3 was meant to guarantee fair and just treatment of every individual within the legal system of the country concerned.

³¹ ECW/CCJ/JUD/33/24.

disabled among those that should not be subjected to discrimination by reason of their disabilities, Article 18(4) of the Charter expressly mentioned the protection of the under-aged and the disabled against any discrimination by reason of their vulnerable situations.

LAWS, TREATIES AND DISCRIMINATIONS AGAINST WOMEN

For the couple of decades past, gender equality has been given priority by the United Nations Assembly and many countries of the world. That is why there has been an unprecedented increase in anti-discrimination laws against gender inequality in the recent past. It is not a surprise that among those issues proclaimed in the Preamble to the United Nations Charter include the attainment of the equal rights of men and women as a requisite for the attainment of the desired global peace and development.

Again, sex is among those grounds of discrimination explicitly prohibited under Article 2 of the Charter so that the women enjoy equal rights and privileges like their male counterparts and other individuals.³² Article 16(1) is also meant to tackle gender inequality but exclusively in respect of marriage, family and dissolution of marriage. The United Nations has also adopted some instruments and measures to combat the inequality between men and women. A prominent example is the 1979 international treaty, CEDAW, which seeks to eliminate all types of discrimination directed at women by prohibiting such practices;

Article 1 of CEDAW defines discrimination against women as any distinction, exclusion, or limitation based on sex that undermines or prevents women regardless of marital status from enjoying equal human rights and fundamental freedoms in all areas of life, including political, social, cultural, and civil spheres.³³

The CEDAW has been perceived by the UN General Assembly as the International Bill of Rights for women. Today, it has been ratified by many countries of the world including the member states of the African Union. The CEDAW required state parties to eschew all forms of discriminations against both women and children whether in public or private matters, ranging from ownership of property, freedom from violence, equal participation in governance, and equal access to education.³⁴ The first World Conference on Women, held in Mexico in 1975 which condemned the marginalization of women, underscored the immeasurable contributions

³² See Sanchari Roy provides a comprehensive overview of laws that discriminate against women, surveying relevant literature in her 2019 work, at page 9.

³³ Article 1 of CEDAW. See also M. E. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, 1998, p.168.

³⁴ For example, the preamble of CEDAW and the Human Rights Committee's General Comment No. 28 on Article 3, which addresses equality between men and women, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), dated 29 March 2000, provide authoritative guidance.

of women to the world peace and development and declared the equality of men and women in all spheres of life.³⁵

The Beijing Declaration of 1995 also constituted another visionary plan of the global community to eradicate gender discriminations in all its ramifications,³⁶ proclaiming the human rights of women and girls as not only “inalienable but also an essential and unified component of all human rights and basic freedoms.”³⁷ Other treaties and conventions which prohibit gender disparity include the European Convention on Human Rights,³⁸ Convention on the Nationality of Married Women, and American Convention on Human Rights.³⁹ Some regional human rights treaties also address gender disparity. Apart from the African Charter that prohibits gender disparity under Article 2, Article 18(3) provides that;

The African Charter mandates that nations bring to an end all types of discrimination against women and to safeguard the rights of women and children in line with international agreements and declarations.

Again, the Maputo Protocol, that serves as African Charter complement adopted in 2003 was an extra effort by the African Union to end all sorts of discriminations against women in Africa, ranging from female dignity,⁴⁰ equality in marriage,⁴¹ and the right to resolve whether or not to have children.⁴² Today, many countries in Africa have ratified the Protocol.⁴³ Many other countries, within and outside the African region, have put in place anti-discrimination laws for the purpose of reducing gender disparities. They also provide guidelines through which these laws are to be enforced to ensure that women enjoy equivalent rights with men. This is more imperative in respect of property ownership, inheritance and succession considering that access to property is one of the greatest means through which gender disparity can be tackled. When women have access

³⁵ The International Women’s Year conference was held in Mexico City from June 19 to July 2, 1975, marking a significant moment in the global struggle for gender equality and women’s liberation. For further details, see Chiara Bonfiglioli, “The First UN World Conference on Women (1975) as a Cold War Encounter: Recovering Anti-Imperialist, Non-Aligned and Socialist Genealogies,” in *Politics of Remembrance: Post Socialism and Its Revisions* (2016), p. 524.

³⁶ Beijing Declaration is also one of the International Bill of Rights for Women. See Wangrawa Sadia Rita Sonia, “Women’s Rights in Africa – Progress. Problems! Prospects?” in *Euro-Asian Law Congress*, 2021, p. 2.

³⁷ See Article 9 of the Beijing Declaration, Annex 1, Beijing Declaration and Platform for Action, the 4th World Conference on Women, A/CONF.177/20/Add.1 (1995).

³⁸ Article 114,

³⁹ Articles 1(1), 6(1) and 27(1). See also Articles 2, 3 and 26 of the ICCPR and Articles 2, 3 and 7(i) of the ICESCR.

⁴⁰ Article 3.

⁴¹ Article 6.

⁴² Article 14. The Maputo Protocol was adopted in Maputo, Mozambique in July 2003 with the sole aim of enhancing and ensuring the actualization of the human rights of African women and expected to be in force after being ratified by a minimum of 15 member countries of the African Union. In July 2023, African women reconvened in Kenya to commemorate two decades of the Maputo Protocol desiring to actualize the rights of women and girls in Africa in conformity with the Maputo Protocol and CEDAW.

⁴³ See *Treaties & Conventions Promoting Women’s Rights: An Overview, Facts and Figures*, 8 March 2023, <https://focus2030.org/treaties-and-conventions-promoting-women-s-rights>.

to property, it enhances their status, dignity, societal worth, growth and development.⁴⁴In Nepal, for instance, research revealed that an increase in a woman's access to land ownership boosts her empowerment, decision-making, healthcare services, and "household purchases".⁴⁵It is the same with Vietnam.⁴⁶

Today, many countries in Africa such as the nations of Côte d'Ivoire, Kenya, Malawi, and South Africa have introduced laws for the equitable distribution of family properties. Countries like Zimbabwe, Ethiopia, Nigeria, South Africa and Gambia have recognized the rights of married women, widows, and females to acquire, own, manage and dispose of their properties. The Zimbabwean government, for instance, enacted the Legal Age of Majority Act of 1982 which confers the right on women to acquire and inherit properties against the customary laws. In the Zimbabwean case of *Chihowa v. Mangwende*,⁴⁷the Supreme Court in Zimbabwe held that a woman who has attained the age of majority shall inherit her father's property as against the customary law which entitles only men the rights of such inheritance against their female counterparts. In *Ndossi v. Ndossi*,⁴⁸the Tanzanian Courts held that the customary law that deprived women the right of inheritance was unconstitutional as every person, whether man or woman, is entitled to own property in accordance with the provisions of the Constitution and other principles of international law directly applicable to Tanzania such as CEDAW domesticated under Article 9(a) and (f) of the Constitution. So, there is no allowed instance of the brother of the deceased husband substituting his widow and inheriting the deceased's property on her behalf, according to the customary law.

Despite all these laws, policies, and protocols, including the obligations imposed on the states to ensure elimination of gender disparities, it is worrisome that there are still many instances of gender inequality all over the world today. Writing about two decades ago, Mayanja expressed shock that after over three decades of the World Conference on Women in Mexico which was in 1975, as already stated, men have gone to the moon and come back while their female counterparts still remained where they were.⁴⁹

⁴⁴ Sanchari Roy, *supra*, p.10.

⁴⁵ N. Menon, *et al*, "Women's Land Rights and Children's Human Capital in Vietnam" in *World Development*, Vol. 54, 2014, pp. 18–31

⁴⁶ *Ibid*.

⁴⁷ (1987) 1 ZLR 228 SC.

⁴⁸ Civil Appeal No. 13 of 2001 (Unreported).

⁴⁹ She made the statement to alert the whole world on the precarious conditions of women despite all the laws, policies and conferences meant to improve their conditions through elimination of gender inequality. Refer to the remarks delivered by Ms. Rachael Mayanja, Assistant Secretary-General and Special Adviser on Gender Issues, during the 30th anniversary of the United Nations' initiatives for advancing gender equality, held in New York on March 4, 2005 (p. 3). This statement is accessible via the UN website (accessed 23 December 2024). Additional insights can be found in Hilikka Pietila's 2007 work, *The Unfinished Story: Women and the United Nations* (p. 42).

Roy also expressed shock that all the laws and treaties about gender equality ended in rhetoric in India as parents bypass the laws and treaties and reduce to the best of their abilities the chances of women inheritance.⁵⁰ Parents seem to be transferring their land ownership rights to their sons as a way to bypass legal restrictions. The scenario is worse in African countries where many women and girls are subjected to unbearable deprivations that are not in line with modern realities unlike their male counterparts. That is why some scholars expressed the fear that if it is so in other countries of the world, what must have been the fate of women in less developed economies that are hell-bent on maintaining the *status quo* and ensuring that women play second fiddles in all spheres of life within their jurisdictions resulting in increased suicides?⁵¹

In fact, ‘All animals are considered equal, yet certain ones hold greater privileges than the rest’⁵² still demonstrates its reality in many African countries today. The discrimination is in all spheres of life but more pronounced in property ownership, succession rights, inheritance, and rights over the children upon divorce or judicial separation. Wangrawa in her paper lamented that the discrimination in Africa is still very high in social activities and in the formulation of legal frameworks and policies despite all the laws, treaties and protocols ratified.⁵³ For instance, in countries like “Senegal, Nigeria, Niger, etc., the discrimination level is from high to very high”.⁵⁴ Women in Africa are discriminated against in almost everything notwithstanding that they constitute the majority of the population. They are under-represented in decision-making and lack sufficient access to funds and property ownership unlike their male counterparts.⁵⁵ In the words of Jousse, women in entrepreneurial activities in sub-Saharan Africa are usually greeted with a significant barrier, as they rarely gain access to government tenders; in fact, businesses owned by women secure just about one percent of all public procurement contracts.⁵⁶

Justice Nnaemeka Agu (as he then was) stated that as early as 1935 in Nigeria, the Chief Secretary to the Government stated that women are not effective in sales positions, and because they are not burdened with the same financial duties as men, they should not be paid equally.⁵⁷ In the Zimbabwean case of *Magaya v.*

⁵⁰ See Sanchari Roy, “Empowering Women? Inheritance Rights, Female Education and Dowry Payment in India, in *Journal of Development Economics*, Vol. 114, pp. 237.

⁵¹ S. Anderson and G. Genicot, “Suicides and Property Rights in India” in *Journal of Development Economics*, Vol. 114, p. 69.

⁵² George Orwell, *Animal Farm*, 1945, p. 5.

⁵³ Wangrawa Sadia Rita Sonia, “Women’s Right in Africa: Progress, Problems, Prospects?” in *Euro-Asian Law Congress*, 2021, p. 4.

⁵⁴ Ibid.

⁵⁵ Louise Jousse critically examines gender-based discrimination in Africa, raising questions about the reality of equality between men and women in her 2021 analysis p. 97.

⁵⁶ Ibid.

⁵⁷ Hon Mr. Justice P Nnaemeka-Agu, “Discrimination and the African Charter on Human and Peoples Rights” in *Commonwealth Law Bulletin*, Vol. 9, Issue 4, 1993, pp. 1670-1677.

Magaya,⁵⁸ a man died without leaving a will whereas he was survived by both male and female children. The eldest child, a female, was designated to inherit the property but the younger brother instituted action claiming that by the African customs, it is the men that have the right of inheritance, not women. The Supreme Court in Zimbabwe unanimously held that women are not entitled to any rights of inheritance under the customary laws. The Court added that the Constitution of Zimbabwe excludes customary laws from the grounds of discriminations prohibited under section 23 of the Constitution.⁵⁹ This decision triggered both local and international eyebrows.⁶⁰

In the South-Western part of Nigeria today, women are incapable of inheriting the property of their deceased spouses because they are regarded as integral parts of the husband's estates to be inherited by the husband's relatives in accordance with the Yoruba native law and custom which was upheld by the courts in a good number of cases as *Oshilaja v. Oshilaja*.⁶¹ This position was reaffirmed by the Supreme Court in the case of *Shaibu v. Bakare*⁶² where the apex Court stated lucidly that where a man dies intestate, his estate is transferred to his children rather than his wife.

THE 1999 CONSTITUTION

Marginalization and discrimination are among the greatest impediments to economic and social development of any nation. People are hardly happy or committed to nation building when they are discriminated against by the system. In contrast, equality of citizens is the benchmark of any liberal democracy and a major contributor to the peace, unity, and development of any country as the citizens, being active agents of nation building, are inspired to demonstrate their moral obligations and patriotism to the nation without reservations.⁶³ In order to achieve national cohesion and respect for human dignity and equality, successive Constitutions in Nigeria have given high premium to anti-discrimination provisions in many sections of these Constitutions.⁶⁴ Section 42 of the 1999 Constitution, for instance, ostensibly guaranteed every Nigerian the

⁵⁸ Case S C210/98 Unreported.

⁵⁹ Section 23 of the 1980 Constitution prohibits discrimination based on sex, creed, race, place of origin, colour, tribe and marital status. It also imposes obligations on the government of Zimbabwe to abide by the UN Conventions on the Elimination of All Forms of Discriminations Against Women (CEDAW). See John Hatchard, "The Constitution of Zimbabwe: Towards a Model for Africa" in *Journal of African Law*, Vol. 35, Issue 1-2, 2009, p. 84.

⁶⁰ See V. Knobelsdorf, "Zimbabwe's Magaya Decision Revisited: Women's Rights and Land Succession in the International Context" in *Columbia Journal of Gender and Law*, Vol. 5, Issue 3, 2006, p. 165.

⁶¹ (1973) CCHCJ 30/10/73, p. 11.

⁶² (1983) Sup. Ct. 115. See also the case of *Akinnubi v. Akinnubi* (1997) 2 NWLR 144.

⁶³ BO Nwabueze, 'Equality before the Law' in *Essentials of Nigerian Law*, Nigerian Institute of Advanced Legal Studies, NIALS Law Series No 2 (Lagos, 1989) 39.

⁶⁴ Anyogu and E Okika analyze the issues of marginalization and discrimination within Nigeria, highlighting how the 1999 Constitution addresses these concerns, as discussed in the *Nnamdi Azikiwe University Awka Journal of Private Property Law* (Vol. 1, Issue 2, 2024) p. 29.

right to be free from discrimination based on his ethnicity, location of origin, gender, religion, or political beliefs.⁶⁵ In other words, it is unconstitutional for any Nigerian to be subjected to any deprivation or disadvantage by the mere reason of his gender, community, tribe, religion or political affiliation.⁶⁶

Unlike the UDHR and other national Constitutions,⁶⁷ the terms ‘other status’, ‘language’ and ‘disability’ are missing as grounds of discrimination prohibited under section 42 of the 1999 Constitution when Nigeria is a country with multiplicity of language, status and disabilities. The view of some scholars is that the “circumstances of one’s birth” as used under section 42(2) encompasses both language and other grounds not specifically mentioned in that section.⁶⁸ Even though, the circumstances surrounding the birth of a person may be wide enough to cover language, sex, birth within or outside wedlock, colour or tribe because one gets them by birth, not by choice, as no one chooses where he is born,⁶⁹ ‘status’ and ‘disability’ may come from other factors outside birth, and so a serious omission in the Constitution. The importance attached to this right is demonstrated in the fact that it is not subject to derogations under section 45 of the 1999 Constitution. The only recognized ground upon which the right can be limited is in respect of appointments to offices that require benchmarks in accordance with legal prescriptions.⁷⁰

The gender inequality over property ownership in Nigeria has also attracted the provision of section 43 of the Constitution which confers the rights on Nigerians to acquire and own immovable properties anywhere in the country. This right is conferred on both men and women without discrimination of any sort.⁷¹ It is not a coincidence that this provision is immediately preceded by the right against discrimination. The provision is very imperative in view of the raging issue of depriving women rights over landed properties especially under the customary laws in Nigeria. By this provision, there is no stratification between women married under the customary law and those married under the statutory laws in respect of property ownership. Immoveable property means land and landed properties such as buildings. Therefore, this right by extension includes the right to adequate housing as its component, the right to shelter and a place of abode. This is a fundamental right and so any attempt to deprive anyone of this right is a violation of the person’s constitutional right. In the words of Otubu;

⁶⁵ Section 42(1)(b) of the 1999 Constitution.

⁶⁶ Ibid, section 42(1)(b).

⁶⁷ See section 9(3) of the 1996 Constitution of South Africa which includes pregnancy, disability, marital status and language as prohibited grounds of discrimination.

⁶⁸ J. O. Ezeanokwasa discusses the constitutional discrimination faced by Christian marriages in Nigeria, highlighting the need for redress, *Journal of Current Issues in Nigerian Law*, Vol. 2, Issue 1, 2014, at p. 5.

⁶⁹ A. M. Macdonald, *Chambers Twentieth Century Dictionary*, with Suppl., W & R Chambers Ltd, Edinburgh 1977, p.237.

⁷⁰ Section 42(3) of the 1999 Constitution.

⁷¹ See Chinedu A. Onah and Hilda Uche Obi-Obiora analyze the tensions between statutory and customary law in relation to women’s rights to acquire and own land in Nigeria, *UNIZIK Journal of Public and Private Law*, Vol. 12, 2022, at p. 2.

The right to housing is closely linked to the broader right to property. Securing a stable place to live is essential to preserving human dignity. Adequate housing, as an extension regarding the entitlement to a satisfactory quality of life and human dignity, plays a crucial role in enabling the full enjoyment of economic, social, and cultural rights. This right guarantee living conditions characterized by safety, peace, and dignity. It must be upheld without discrimination and be accessible to all individuals, regardless of their income or access to productive resources.⁷²

Other anti-discrimination provisions of the 1999 Constitution which are not under the fundamental rights abound under the Constitution's Chapter 2, covering the basic objectives and policy guidelines for the government. Section 15, for instance, is on political objectives of the government and stipulates that national integration shall be actively encouraged while "discrimination based on factors such as place of origin, gender, religion, social status, or ethnic and linguistic affiliations is strictly forbidden".⁷³ This provision has recognized that discrimination based on gender is inimical to peace, unity and development of the country because women are pivotal instruments of development in any society.⁷⁴ No society can afford to undermine the roles of women in national integration and development. Relegating them to the background as it is always done in Nigeria is counterproductive. Even the economic objective of the government under section 16 of the Constitution is anchored on "social justice and equality of status and opportunity".⁷⁵ This indicates that equality and justice are the foundation upon which the economy of any nation is built. It is also a fundamental objective of the government to make provision for adequate shelter for its citizens under section 16(2)(d) of the Constitution. The use of the phrase "for all citizens" means without distinction or segregation of any form. Similarly, section 17 of the Constitution stipulates that the social objectives of the government shall be founded on "ideals of freedom, equality and justice".⁷⁶ Consequently, all citizens shall enjoy equal rights, responsibilities, and opportunities under the law.⁷⁷ The realization of the equality of citizens can be achieved through judicial independence that will not only uphold the rights of the citizens without bias but also guarantee them unrestricted access to the courts for the ventilation of their grievances.⁷⁸ To achieve social order, the government should also ensure equal pay for equal work for all persons without discrimination on the ground of sex or any other grounds whatsoever.⁷⁹ It is also obligatory on the state to ensure that;

⁷² Akintunde Otubu, 'Fundamental Right to Property and Right to Housing in Nigeria: A Discourse' (2011) VII *JURIDICA* 31.

⁷³ Section 15(2) of the 1999 Constitution.

⁷⁴ J. O. Ezeanokwasa, *supra*, p. 6.

⁷⁵ Section 16(1)(b) of the Constitution.

⁷⁶ Section 17(1) of the Constitution.

⁷⁷ *Ibid*, section 17(2)(b).

⁷⁸ *Ibid*, section 17(2)(e).

⁷⁹ *Ibid*, section 17(3)(e).

Every citizen, regardless of their background or group membership, should have equal access to sufficient means of living and fair chances to obtain appropriate employment.⁸⁰

The main essence of these provisions is to ensure fairness, justice, and impartiality in the discharge of public duties or enforcement of the laws involving the citizens. However, these provisions fall under chapter 2 of the Constitution perceived as unenforceable going by section 6(6)(c) of the 1999 Constitution which precludes the judiciary from entertaining any issues under chapter 2 of the Constitution as held in *Anthony Okogie v. AG Lagos State*.⁸¹ This position has however been reversed in 2004 in the case of *FRN v. Anache*⁸² where the Supreme Court stated that “the non-justiciability of Chapter II of the Constitution is neither total nor sacrosanct” considering the opening paragraph of section 6(6)(c) and section 13 of the same Constitution.⁸³ The implication of the decision in *FRN v. Anache* is that actions can lie against the government or any person or authority that violates the provisions of chapter 2 of the Constitution.

AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

As already examined, the African Charter on Human and Peoples’ Rights has provided elaborately on the right to freedom from discrimination. The Charter has been domesticated in Nigeria⁸⁴ and so forms part of our municipal laws which the government can enforce to prohibit any form of discrimination against its citizens. Again, the Fundamental Rights (Enforcement Procedure) Rules 2009 has become a tool for the enforcement of the provisions of the Charter as fundamental rights in Nigeria. Though, there is no specific mention of right to freedom from discrimination under the Rules but one of its laudable objectives as captured in paragraph 3(a) of the Preamble to the Rules include liberal interpretation and application of the Constitution and the African Charter in a manner that will advance and protect the rights and freedoms guaranteed by the Charter.⁸⁵ The implication is that the provisions of the Charter can be enforced in Nigeria as fundamental rights. Therefore, anyone discriminated against in Nigeria can invoke the provisions of the African Charter to assert his right.

⁸⁰ Ibid, section 17(3)(a). See J. O. Ezeanokwasa, *supra*, p. 7.

⁸¹ (1981)2 NCLR 625

⁸² (2004)14 WRN 1

⁸³ Ibid, Tobi JSC at 61

⁸⁴ African Charter on Human and Peoples Rights (Ratification and Enforcement) Cap. A9 LFN 2004. See *Sani Abacha v Fawehinmi* (2000) SC No. 45/1997.

⁸⁵ Abiola Sanni offers an in-depth analysis of the 2009 Fundamental Rights Enforcement Procedure Rules as mechanisms for enforcing the African Charter on Human and Peoples’ Rights in Nigeria, emphasizing the urgent necessity for comprehensive reforms, *African Human Rights Law Journal*, University of Pretoria, 2011, at p. 512.

Similarly, ongoing initiatives seek to tackle the persistent challenges surrounding the right to freedom from discrimination in Nigeria. intensify, paragraph 3(b)(ii) of the Preamble to the Rules becomes very relevant as it requires the courts in Nigeria to uphold municipal, regional, and international bills of rights, including the Universal Declaration of Human Rights and various instruments and protocols within the United Nations human rights framework. This provision is germane to the enforcement of the right against discrimination in Nigeria considering that there is no specific mention of women, child, language or other status under section 42 of the 1999 Constitution that prohibits discrimination, as already examined. This gap has been filled by the Fundamental Rights (Enforcement Procedure) Rules as people can directly invoke the provisions of the Charter to challenge any discriminations against them in the Nigerian courts and ECOWAS Court.

FEMINIST JURISPRUDENTIAL APPROACH IN SOUTH AFRICA

In some countries of the world, women are seen as fragile and delicate objects and so handled with compassion unlike their male counterparts. South Africa is an instance. Section 9(3) of the 1996 Constitution prohibits unfair discrimination among the South African people on the ground of race, gender, sex, pregnancy, marital status, colour, culture, language, sexual orientation, belief, religion, age, disability and other similar grounds. Just like limitations or derogations under the 1999 Constitution of Nigeria, the term ‘unfair discrimination’ in South African Constitution is a tool that distinguishes between permissible and impermissible discriminations.⁸⁶For instance, discrimination can be justified to redress past unfair treatments or those already disadvantaged in the society such as those with disability, women, the sick, and the vulnerable. Individuals who were unfairly denied access to resources in the past deserve a greater share of resources today to rectify those historical injustices. An advantage has been given to women due to the special attention and care they give to their children unlike their male counterparts. Girls have been given advantages too.

This position is demonstrated in a number of cases in South Africa. In *President of South Africa v. Hugo*,⁸⁷ the then President of South Africa, Nelson Mandela, granted pardon to all women prisoners having children under the age of 12 but could not grant the same pardon to a male prisoner, Hugo, whose own son was below the age of 12 and without a mother. Hugo felt that he was subjected to discrimination on the basis of sex in the implementation of the Presidential Act that granted the President the power of pardon. The President claimed that his action was based on the special roles mothers play in the care and nurturing of young children and so

⁸⁶ Tobias P. van Reenen provides a comprehensive examination of Section 9 of the South African Constitution, focusing on issues of equality, discrimination, and affirmative action, *Sabinet African Journals*, Vol. 12, 1997, at p. 156.

⁸⁷ (1997) ZAAC 4 (18 April 1997). See also the cases of *Harksen v. Lane*, No. 1997 (11) BCLR 1489 (CC) and *City Council of Pretoria v. Walker*, 1998 (3) BCLR 257 (CC).

the release of the women would assist the society in its entirety in the nurturing of their children as the women bear more responsibilities to their children than the men. The court accepted the pardon as constitutional considering that mothers are more important to their children than their fathers.⁸⁸

CONCLUSION

This paper has examined extensively the right of the female child to freedom from discrimination using Nigeria as a case study. The research has discovered that discrimination against the women folk happens across the globe but more pronounced in the third world countries which include Nigeria. In fact, women in Africa are discriminated against in almost everything notwithstanding that they constitute the majority of the population, and notwithstanding the prohibitions against discrimination on the ground of sex. An example was given of Zimbabwe where the Supreme Court stated unequivocally that it is only the men that have right of inheritance, not women, in accordance with the customary laws. This pronouncement was made despite the Constitution and other laws, including the international human rights instruments, that prohibited discrimination on the ground of sex. Almost all the countries in Africa have ratified and adopted all the anti-discrimination treaties and protocols while our own local anti-discriminatory laws were made to conform to the treaties and protocols. Some countries have domesticated these treaties and protocols.

The 1999 Constitution of Nigeria, for instance, is the supreme law of the land and has provided exhaustively on prohibition of discrimination in conformity with the treaties and protocols. Therefore, any customary law that provides otherwise is void to the extent of its inconsistency by virtue of the supremacy provision of the Constitution.⁸⁹ It is therefore an aberration for any Court in Nigeria to uphold any discrimination under the customary laws in contravention of the Constitution as done in the Zimbabwean case of *Magaya v. Magaya*. Again, the omission of the terms ‘other status’, ‘language’ and ‘disability’ as prohibited grounds of discrimination under section 42 of the 1999 Constitution should be revisited by the National Assembly in any further amendment to ensure that they are incorporated as in the UDHR and the Constitutions of other countries.

⁸⁸ Pius Nkonzo Langa, “Equality Provisions of the South African Constitution” in *SMU Law Review*, Vol. 54, Issue 4, 2001, p. 2105,

⁸⁹ Section 1(3) of the 1999 Constitution.