

24 WOMEN'S RIGHTS AND RELIGION: POLITICAL AND LEGAL COMPLEXITIES AFFECTING THE DOMESTICATION OF CEDAW AND THE AU WOMEN'S PROTOCOL IN NIGERIA

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INTRODUCTION

Nigeria is a unique, dynamic, multi-religious and multi-ethnic country. A striking feature is its profound intermixing between religion and governance,² which impacts human rights expression and defines interrelationships amongst people and between communities. With a highly diverse and multicultural context, Nigeria is open to religious and ethnic tensions,³ which limit the expression of women rights.⁴ Therefore, exploring the nexus between the complex nature of the environment that supports discrimination against women and the existing legal framework on women's rights requires a multi-pronged approach,⁵ including deploying appropriate collaborative mechanisms to advocate for holistic legislative reforms to addresses contradictions that relate to gender discrimination.⁶

Research has shown how conservative religious networks impact the confines and latitudes of women's rights at the global level. Political scientist Louise Chappell has noted the existence of a "network of religious actors who come together through international fora such as the UN conferences to advance a consistent and complimentary conservative position on the specialised area of women's right".⁷ Chappell describes the challenges posed by the "unholy alliance" of Vatican, Islamic and anti-abortion groups and how these have impacted the outcomes of major conferences, such as the Cairo International Conference on Population and Development (ICPD) and the Fourth World Conference on Women (FWCW) in

1 Department of Public Law, Faculty of Law, University of Lagos.

2 Sampson TI. 2014. "Religion and the Nigerian State: Situating the *de facto* and *de jure* Frontiers of State – Religion Relations and its Implications for National Security", *Oxford Journal of Law Religion* 3(2):311-339.

3 Ibidapo-Obe A. 2000. *Essays on Human Rights Law in Nigeria*. Concept Law Press, 144.

4 Ezeilo JN et al. 2003. "Towards a Cross-Cultural Approach to Women's Human Rights", in Ezeilo JN, Ladan MT and Akiyode-Afolabi A. *Sharia Implementation in Nigeria – Issues and Challenges on Women's Rights and Access to Justice*. Lagos: Women's Aid Collective, 95.

5 Imam AM. 2010. *Adopting Women's Human Rights Legislation in Nigeria – A Synthesis Analysis Report*. Abuja: Infovision Limited, 4.

6 Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 4.

7 Chappell L. 2004. "Contesting Women's Rights: The Influence of Religious Forces at the United Nations". Paper presented at the Australasian Political Studies Association Conference, University of Adelaide.

Beijing among others.⁸ These alliances at the United Nations determine women's rights and formulates their boundaries based on a conservative worldview of what is perceived to be suitable to their religions, as opposed to global feminism advocacy efforts towards reframing and reclaiming women's rights. This conservative network has influenced the drafting of most texts relating to gender equality and connived in frustrating efforts aimed at entrenching women's rights as a global standard for affirming human dignity – particularly women's rights to physical and mental integrity, equality and religious freedom.⁹

A 2016 UN Women report on "Religion and Gender Equality" affirms the complex links between religion and gender, and how this can manifest in different ways in different societies through cultural, social, economic and political norms. To a large extent, religious texts continue to interpret gender roles and status of women and men the way they have been codified by conservative religions for centuries.¹⁰ While women have been subjugated by these conservative views, patriarchy has controlled women's relationship with religion, ironically by making women the major implementers of faith, responsible for the embodiment and transmission of religious teachings and traditions.¹¹ The report argues that feminist faith activists are increasingly becoming pacesetters in re-examining religious teachings and laws and advocating for women's rightful participation in the interpretation of religious doctrine, with the aim of providing new thinking around the role of religion and faith in promoting full equality. One of these groups is Women Living Under Muslim Laws, with movements in Nigeria, Mali, Senegal, Niger and Chad.¹² The group has found allies in scholars who work with them to compile proof from the sacred religious texts to show that the complementarity between religious texts and international conventions.

Nigeria ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹³ in 1985, with no reservations, and it has further reaffirmed its commitment to gender equality, by depositing its instrument of ratification for the Protocol to the African Charter on Human and People Right Union's Women's Protocol (AU Women's Protocol) in July 2004.¹⁴ Nigeria is a

8 Chappell, "Contesting women's rights".

9 Otto D. 1996. "Holding Up Half the Sky, But for Whose Benefit?: A Critical Analysis of the Fourth World Conference on Women", *The Australian Feminist Law Journal* 6:7-28.

10 UN Women. 2016. "In Brief: "Religion and Gender Equality". Online at: http://www.partner-religion-development.org/fileadmin/Dateien/Resources/Knowledge_Center/Religion_and_Gender_Equality_UNWOMEN.pdf

11 UN Women, "Religion and Gender Equality".

12 Joda A and Eze-Anaba I. 2008. "Comparative Study on the Domestication of CEDAW", in Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 249.

13 Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

14 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo,

dualist state by virtue of Section 12 of the 1999 Constitution of the Federal Republic of Nigeria. By implication, therefore, mere signing and ratification of international treaty does not make the treaty applicable in the domestic plane in Nigeria until the National Assembly enacts it into law. According to South African human rights law scholar Frans Viljoen, ratification by states represents an expression of their consent to be bound.¹⁵

CEDAW and the AU Women's Protocol are therefore classified by the Nigerian constitution as a category of treaties which require the ratification of the National Assembly and the approval of at least two thirds (2/3) of the State Houses of Assembly to come into effect. Nigeria also ratified most International Instruments guarantee rights to freedom of religion including the International Covenant on Civil and Political Rights (ICCPR)¹⁶ and the African Charter on Human and People's Rights.¹⁷ A land mark case of *Abacha and Others v Fawehinmi*¹⁸ clarified the position of law that a treaty becomes enforceable at the domestic level once incorporated into a national legislation.

In addition, while Nigeria, by virtue of Section 10 of the Nigerian Constitution is a secular state, no fewer than twelve states in the northern Nigeria have adopted *sharia* law fully in a way that includes criminal cases as well.¹⁹ The adoption of *sharia* has raised several legal and jurisprudential issues regarding its limitations on the rights of women. Two cases demonstrate the extent to which *sharia* can affect women's fundamental rights. The case of Safiya Hussaini Tungar Tudu, a divorcee who was tried for adultery under *sharia* for having a child outside marriage and sentenced to death by stoning in a Sharia Court in Sokoto State, became a major reference point.²⁰ It took the combined efforts of feminists within the country and internationally to build up a strong campaign for her freedom. Her sentence, was later reversed and dismissed following an appeal. Another case, which also attracted international

CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005.

15 Viljoen F. 2012. *International Human Rights Law in Africa*. Second Edition. Oxford: Oxford University Press, 22.

16 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

17 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, art 18(3).

18 (1996) 9 NWLR (PT.475) P.710. See also (2001) African Human Rights Law Report (AHRLR), 172.

19 Tanko MI. 2003. "Application of the Sharia in Northern Nigeria: Role of the Judiciary in a Constitutional Democracy", in Ezeilo, Lada and Akiyode-Afolabi. *Sharia Implementation in Nigeria*, 10, n 4.

20 On 9 October 2001, Safiya Hussaini Tungar Tudu was sentenced to death by stoning by an upper Sharia Court in Gwadabawa, Sokoto State, for committing adultery with Mallam Yakubu Abubakar. See *COP v Yakubu Abubakar and Safiya Hussein* Case No. USC/GW/CR/FI/10/2001.

attention, was that of Amina Lawal,²¹ another divorcee sentenced for the same crime in a Sharia Court in Katsina State. A Sharia Court of Appeal eventually overturned Lawal's case in 2003.

This chapter therefore examines the role of religion in determining the limits of women's rights in Nigeria and how religion has constituted a drawback to domestication of CEDAW and the AU Women's Protocol. The chapter seeks to identify the key issues in contentions as well as the divergent and convergent view in the domestication of these instruments. The chapter proposes the need to deepen conversations around issues of women rights and religion to engender more constructive engagements with major issues religious platforms on how to broaden understanding on the relevance of gender equality norms in sustaining peace and stability and how equality of men and women in a multi-religious context could be incentives rather than impediments to development.

The first part of this four-section chapter provides the background information as well as introductory notes to the subject matter, while the second part focuses on gender identity, religion and international human rights law with specific reference to freedom of religion within the human rights regime. The third part of the chapter examines the way the debates around antagonistic views, as well as the points of convergence, on gender and religion have manifested at global and national levels, while the fourth part summarises issues arising from counternarratives by pro-CEDAW movements. The concluding remarks set forth options available to stakeholders in deploying strategies to ensure prompt domestication of CEDAW and the AU Women's Protocol.

GENDER, RELIGION AND INTERNATIONAL HUMAN RIGHTS LAW

Gender and religion interact in Nigeria in complex ways. Several attempts to bring CEDAW and the AU Women's Protocol into domestic laws have been met with stiff resistance, owing to religious considerations.²² The failure to domesticate these international instruments is a major setback for the advancement of women's rights in several ways. Specific negative impacts on the women include infringement on rights to property, freedom from harmful traditional practices, discriminatory practices to citizenship, sexual and reproductive rights, violence against women and restriction of women's political participation and socio-economic rights, among other discriminatory practices that women and girls contend with in Nigeria.²³ Furthermore, Israeli international human rights law professor, Frances Raday, has cautioned that extending religious law to criminal penalties has more tendencies of

21 Ibrahim H. 2004. "Rule of Law Prevails in the Case of Amina Lawal", *Human Rights Brief* 11(3):39-41. Online at: <http://digitalcommons.wcl.american.edu/hrbrief/vol11/iss3/11>

22 Para-Mallam OJ, Lanre-Abass B, Adamu F and Ajala A. 2012. "The Role of Religion in Women's Movements; The Campaign for the Domestication of CEDAW in Nigeria", Birmingham Religions and Development Working Paper 59.

23 Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 24, n 5.

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further exposing women to dangers.²⁴ A case in point in Nigeria is the 2001 Zamfara State Sharia Code provision Section 3-10, which violates the rights of women to personal liberty and freedom of association by prohibiting association in public of two or more persons of opposite sex to engage in discussion in circumstances not approved by the tradition of the state; female putting on trousers or shirts exposing parts of their body in public places of dressing to expose sensitive private parts; as well as all forms and styles of foreign hairstyles. To reclaim the rights to freedom of religion for women against such laws, there is a need for a deliberate alteration of religious norms which are discriminatory to women and girls, by a firm legal framework to be rooted in the constitution. Failure to do this may leave women with limited options in the enjoyment of their fundamental right to freedom of religion.

Frictions between religious beliefs and women's rights are also manifest in religious restrictions on women's right to abortion, on ordination of women to religious positions and particularly on women's roles in the private life of the home and in the public sphere. Women who are more engaged and committed to religion are protected within religious traditions.²⁵ Research findings have shown that even when women seek liberation from some aspect of religion, they may "not necessarily wish to escape religion or belief as a source of meaning, a call of conscience and a bond of community".²⁶

The measures with which religions, particularly Christianity and Islam, have impacted on women's rights vary. For example, within Christianity, Catholicism adopted and retains a prohibitive attitude towards abortion and contraception, even as other branches of Christianity have more permissive views on these issues and are changing their rules to embracing active participation of women in religious activities and women's emergence as religious leaders.²⁷ There has also been progressive development on women's rights in *sharia* law, as in the case of Tunisia, which recently adopted more progressive stance on gender equality.²⁸ In 2002, Tunisia revised its family law code to abolish the *talaq* divorce, common in many Muslim communities, whereby husbands could repudiate their wives with thrice invocation of a desire to divorce, with a new law provided for equal rights

24 Raday F. 2007. "Culture, Religion and CEDAW Article 5(A)". Online at: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Vortraege/culture_religion_and_cedaws_article_5_frances_raday.pdf

25 Sheen J. 2004. "Burdens on the Right of Women to Assert their Freedom of Religion or Belief", in Lindholm T, Durham WC (Jr) and Tahzib-Lie BG (eds). *Facilitating Freedom of Religion or Belief; A Deskbook*. Leiden: Martinus Nijhoff, 531. See also Durham WC (Jr) and Scharffs BG. 2010. *Law and Religion – National International and Comparative Perspective*. New York: Aspen Publishers, 345.

26 Sheen, "Burdens on the Right of Women to Assert their Freedom of Religion or Belief", 346.

27 Some branches of Christianity (Lutheran, Episcopal and Protestant) and Judaism (Reform, Reconstructionist and Conservative).

28 Charrad MM. 1998. "Cultural Diversity Within Islam: Veils and Laws in Tunisia", in Bodman HL and Tohida N (eds). *Women in Muslim Societies, Diversity Within Unity*. Boulder, CO and London: Lynne Rienner Publishers, 63.

of men and women in filing for divorce and an increase in the age of marriage to seventeen for women and twenty for men.²⁹ While in countries like India, Pakistan and Egypt women can negotiate for a delegated power of divorce as part of their marriage contract and allow to pay *khul* (compensation) to the husband they are divorcing, this is not known to majority of Muslim women in Nigeria.³⁰

Feminists in Nigeria have argued that the implementation of Sharia Penal Codes in northern Nigeria is flawed in several respects, but more fundamentally that it does not adequately protect the rights of women. Therefore, cases of abuse, violence and discrimination against women go unpunished, as they are wrongly considered to be socially acceptable. In addition, the testimony of women is devalued and treated as that of a minor or person without the necessary legal capacity.³¹ Often, these biases and attitudes also influence judges and judgments of the Sharia Courts. In Safiya Hussein Tungar Tudu's case, for instance, the question of gender bias was raised on the grounds that: (1) her pregnancy constituted the main evidence against her, but no scientific efforts were made to establish or disprove the paternity of the child; (2) the pregnancy was the sole evidence to prove adultery, and (3) the man named in the case was allowed to go free after denying responsibility for the pregnancy. These facts reinforce the belief that *sharia* and its supporters hold presumption of guilt against the women with regards to "offences" of adultery or fornication.³²

Several other instances exist where religion has been used to denigrate women's rights in Nigeria. A female journalist was threatened with a *fatwa* for publishing a story that was perceived not to be religiously sensitive,³³ while women preachers have been butchered and killed for their beliefs.³⁴ Several women were also murdered by so-called fundamentalists in the North-East region of Nigeria for

29 Charrad M, "Cultural Diversity Within Islam", 64.

30 Imam AM, Fijabi M and Akilu-Atta H. 2005. *Women's Right in Muslim Laws*. Lagos: Baobab for Women's Human Rights, 48.

31 Akiyode-Afolabi A. 2003. "Democracy, Women's Rights and Sharia Law in Nigeria", *Pambazuka News*, 23 January.

32 Akiyode-Afolabi, "Democracy, Women's Rights and Sharia Law in Nigeria".

33 On 16 November 2002, a national newspaper, *This Day*, published in their paper a piece by Isioma Daniel, a 21-year-old features writer, which discussed a proposed Miss World contest supposedly taking place in Nigeria, arguing that it would benefit the country's economy, as a counternarrative to a mostly Muslim argument that it "was immoral to bring 92 women to Nigeria and ask them to revel in vanity". In the article, Daniel alluded that the holy Prophet Mohammed would have taken one of the beautiful woman for a wife. The deputy governor of Zamfara State, drawing a comparison with the infamous decree by Iranian religious leaders, announced a *fatwa*. "Like Salman Rushdie, the blood of Isioma Daniel can be shed" Mamuda Aliyu Shinkafi declared after regional politicians and Islamic leaders met to decide the sentence. "It is binding on all Muslims, wherever they are, to consider the killing of the writer as a religious duty." See Astill J and Bowcott O. 2002. "Fatwa is issued on Nigerian journalist", *The Guardian*, 27 November.

34 "Woman Killed in Kano for Alleged Blasphemy", *This Day*, 3 June 2016. See also Smith S. 2016. "Christian Mother of 7 Hacked to Death in Nigeria While Preaching", 12 July; 2016. "How Female Redeemed preacher was killed during morning evangelism", *Punch*, 10 July.

either refusing to change their religion or belonging to a different religion.³⁵ Nigeria has had a number of religious motivated conflicts, which have resulted in the death of many, and the disappearance of uncountable number of women and girls on account of professing their religion or living in a community identified with a particular religion.³⁶

According to a British Council report on “Gender in Nigeria”, the 80.2 million women in the population Nigeria have significantly worse life chances compared to Nigerian men and to counterparts in comparable societies for several reasons, including violence against women, neglect and discrimination in different forms.³⁷ The report states that about 70% of Nigerians currently live below the poverty, the majority of whom are women, and that 60-79% of the rural work force are women, while men are five times more likely to own land. Nearly five times as many judges and permanent secretaries are men rather than women. Dropout rates from school are higher among girls than boys because of gender abuse and violence against girls. Among young women aged 20 to 29 in the North-West region, 70.8% are unable to read or write. Nationally, the maternal mortality rate is 545 deaths per 100,000 live births, which is nearly double the global average. In the rural North East region, mortality rate is 1,549 per 100,000 births, over five times the global average. On average, 47% of Nigerian women become mothers before they reach 20.

Nigeria has a complex legal structure – including customary, Islamic and English law – with the women bearing the brunt of the multiplicity of laws and their intersections, which often put women at a disadvantage. The 1999 Constitution of the Federal Republic of Nigeria permits discrimination in citizenship and nationality registration procedures and permits sex-based discrimination by conferring validity on cultural or religious norms. Women are discriminated against in customary and religious laws in areas ranging from the status of women in proffering evidence in legal matters, to restriction of Muslim women from choosing to defend themselves based on non-religious law; to unequal status in inheritance and marriage as provided by customary and Islamic law, as well as restriction from custody of their children and the right to own properties.³⁸

Researches have shown that religious discrimination has the potential to exacerbate deep-seated conflicts in plural society where people from multi-ethnic backgrounds and multi-religious persuasions coexist. As rightly noted by Nigerian law scholar

35 Sampson IT. 2012. “Religious violence in Nigeria: Causal diagnoses and strategic recommendations to the state and religious communities”, African Centre for the Constructive Resolution of Disputes (ACCORD), 1 April. Online at: <http://www.accord.org.za/ajcr-issues/%EF%BF%BCreligious-violence-in-nigeria>

36 See Sampson, “Religious violence in Nigeria”, for detailed data about religious conflicts in Nigeria, 1999–2011.

37 British Council. 2012. “Gender in Nigeria Report 2012”. Online at: <https://www.britishcouncil.org/partner/track-record/gender-nigeria-report-2012>. All statistics cited in this paragraph are from the British Council report.

38 Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 10.

Akin Ibidapo-Obe, “developments past and present within the Nigerian polity in the handling of religious issues, indicate quite clearly to the discerning mind the possibility of a religious crisis if conscious efforts are not made to re-evaluate state policy regarding religion”.³⁹

LEGAL REGIMES PROTECTING WOMEN'S RIGHT TO FREEDOM OF RELIGION

International human rights norms protect freedom of religion – including women's rights to freedom of religion. Article 18 of the Universal Declaration of Human Rights (UDHR) protects freedom of thought, conscience and religion, and the right is further amplified in the International Covenant on Civil and Political Rights (ICCPR) in Articles 18 and 27.⁴⁰ As observed by Kelvin Boyle and Sangeeta Shah, the UDHR failed to adequately specify the full effect of freedom of religion or belief in international law,⁴¹ thus providing justification for the expansion of this right in subsequent treaties, leading to the comprehensive approach adopted in the ICCPR and other treaties addressing freedom of religion.⁴² The expansion of the right of religious freedom in the ICCPR provides a wider worldview, guaranteeing the right of individual to freedom of thoughts, ideas and belief, and also providing for citizens to reject religious beliefs that are not in agreement with their conscience.⁴³ Article 18 of the ICCPR also offers protection against indoctrination and allows for freedom to manifest one's religion, which can only be curtailed subject to prescribed laws and when necessary to protect public order and safety or the rights being enjoyed by others.⁴⁴

As for women's right to religion, ICCPR Article 18(3) by clear allusion, restrains women from being subject to any religion that could offend public order, part of which might include a democratic way of life which allows of freedom of association, participation and to leave and manifest once beliefs without any cohesion from patriarchal beliefs arising from custom or culture and religion when it affects the right to gender equality, as provided for in Article 3 of the ICCPR. According to Frances Raday,⁴⁵ the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) compliments the rights guarantee in the ICCPR and

39 See Ibidapo-Obe, *Essays on Human Rights Law in Nigeria*.

40 Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

41 Boyle K and Shah S. 2014. “Thought, Expression, Association and Assembly”, in Moeckli D et al. (eds). *International Human Rights Law*. Oxford: Oxford Press, 220.

42 Boyle and Shah, “Thought, Expression, Association and Assembly”, 220.

43 Boyle and Shah, “Thought, Expression, Association and Assembly”, 220.

44 Boyle and Shah, “Thought, Expression, Association and Assembly”, 220.

45 Raday, “Israel ‘Culture, Religion and CEDAW Article 5’”.

imposes a positive obligation on States Parties to recognise these rights.⁴⁶ The links between CEDAW and these other bills of rights are well established in international human rights law.⁴⁷

CEDAW defines discrimination as “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.”⁴⁸ Article 2(f) of CEDAW places an obligation on state parties to ensure that both legal and administrative measures are taken to ensure that laws and practices do not prejudice women’s enjoyment of equal rights in public and private places. The AU Women’s Protocol finds its primary relevance in its comprehensive embodiment of the rights and freedoms, which women in the African region should be enjoying, but which are unfortunately still largely denied. It was promulgated out of concern by the AU that, despite the ratification of the African Charter and other international human rights instruments by its member states, women in Africa still continue to be victims of discrimination and harmful practices. The Women’s Protocol reaffirmed their rights to non-discrimination.

Among its various provisions, the AU Women’s Protocol addresses the effects of the dominant cultures and religions that affect women negatively. The Protocol specifically states that the dominant cultures and religions in Africa often bear an element of inequality, when not being clearly unfavourable to women. The AU Women’s Protocol, thus, seeks to vindicate the rights of women in Africa by expanding international human rights to include those that are central to African women’s conditions. This include addressing discrimination in cultural and religious laws that impedes on the rights of women and girls. Some of these include right to widowhood, inheritance and custody of children. Nevertheless, the extent to which the Protocol has achieved its set goals within the African region is very much in doubt.

From the analysis above, it is clear that the existing international and African regional human rights regimes affirm religious rights without any form of discrimination.

46 Raday argues that this seems to be the reading implicit in the HRC’s General Comment on the equality of rights between men and women, which, although not expressly referring to Article 18(3), holds that the right to religion does not allow any state, group or person to violate women’s rights to equality, Raday, “Culture, Religion and CEDAW Article 5(A)”. See also UN Human Rights Committee (HRC). CCPR General Comments No. 28: Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, CCPR.C/21/Rev.1/Add.10.

47 The CEDAW document incorporates the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). Together, they proclaim “the right to equality, liberty and security and the rights to be free from discrimination, torture and degrading and inhumane treatment”.

48 CEDAW, art 1.

Most constitutions of the world also include provisions affirming freedom of religion – and Nigeria is in this category, as can be seen in the religious freedom provisions in Section 38 of the 1999 Constitution of the Federal Republic of Nigeria.⁴⁹ It is based on the potency of this constitutional assumption that Nigeria Supreme Court Justice Emmanuel Ayoola in *Medical and Dental Practitioners Disciplinary Tribunal v Okwonkwo*, stated that,

[T]he rights of freedom of thought, conscience and religion, implies a right not to be prevented without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of these freedoms as in all cases, are when they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.⁵⁰

Religion is, no doubt, key to human existence and is linked to human dignity and the totality of person, to the extent that any form of restriction on the way it is expressed violates the principle of human rights that the state is bound to respect and protect. As postulated by Dutch religious freedom expert Bahia Tahzib-Lie,⁵¹ the expression of the right to religion from a gender perspective can manifest in two ways; an internal freedom, “which denotes the individual's inner, private domain” and allows people to believe in a religion of their own choice without any form of coercion, and an external freedom as its outer, often public domain, defined as an individual's “freedom, either alone or in community with others and in public or private, to manifest his/her religion or belief in teaching, practice, worship and observance”.⁵²

The extent to which women enjoy internal and external freedom in complex, multi-ethnic and religious societies, such as Nigeria, remains uncertain, even if there are constitutional guarantees of rights to freedom of religion. In most countries of the world, women's rights are violated on the basis of cultural and religious practices and beliefs. Female circumcision, early or forced child marriage and other harmful traditional practices affecting the health of women and girls are justified based on these patriarchal beliefs. Some of these gender-based violations are also politically motivated and perpetuated to ensure that men are continually favoured, to the disadvantage and exclusion of women. Legitimisation of gender discrimination through patriarchal politics is a deliberate machination to perpetually demean women and cast them as dissenting in a male-dominated society, where the female

49 Constitution of the Federal Republic of Nigeria, 1999, sec 38(1) states: “Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, it includes provisions in the human rights regimes. In public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

50 *Medical and Dental Practitioners Disciplinary Tribunal v Okwonkwo* (1997) 1 NWLR (pt 550) 556.

51 Tahzib-Lie B. 2000. “Applying a Gender Perspective in the Area of the Right to Freedom of Religion or Belief”, *Brigham Young University Law Review* 2000:967.

52 Tahzib-Lie, “Applying a Gender Perspective in the Area of the Right to Freedom of Religion or Belief”.

is expected to remain unseen and unheard. In Nigeria, for example, in spite of overwhelming condemnation from the public, it took painstaking vigilance and robust resistance of feminist and civil society activists to stave off attempts at legislating in favour of child marriage.⁵³

Tahzib-Lie, in explaining internal freedom further, has argued that the definition of coercion should not be limited to the use of physical force or penal sanctions to obstruct people's right to religion. It can also involve, more indirectly, a range of restrictive policies and practices, including social hostilities around religion alongside government restrictions. While the state may not be directly responsible for the acts or violation, it remains culpable where it fails to take steps to stop or prevent human rights violation. The CEDAW and the AU Women's Protocol are useful instruments for addressing restrictions on women's human rights generally and can effectively strengthen women's rights to freedom of religion by holding states accountable. Since the state is responsible for bringing domestic law and practice into conformity with obligations under international law to protect and promote women's human rights, it is therefore argued that the failure of the government of Nigeria to remove any enactment, whether formal or religious, that impedes women's right to freedom of religion makes it culpable.

ANTAGONISTIC VIEWS TOWARDS CEDAW AND THE AU WOMEN'S PROTOCOL IN NIGERIA

The attempt to domesticate the CEDAW into Nigerian laws can be traced to activities led by civil society organisations and the Federal Ministry of Women Affairs, the gender ministry in Nigeria since late 1980s, immediately after the country's ratification of the instrument.⁵⁴ Unfortunately, despite the consistency of this group and institutions, the treaty is yet to find expression in Nigerian law.

One of the ways of ensuring compliance with CEDAW is the requirement of a reporting procedure by state parties which is a key requirement for monitoring the progress of each country that has ratified CEDAW. The first report by Nigeria to CEDAW was submitted two years after ratification; however, subsequent reports have not been submitted on schedule. It took over ten years for the second report to take place.⁵⁵ Furthermore, the CEDAW Committee concluding comments on

53 Ekeanyanwu O. 2013. "As our senators re-constitutionalise child marriage", *Premium Times*, July 18.

54 Atsenuwa A. 2008. "Study of national legislations, policies and practices congruent and incompatible with the provisions of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the protocol to the African charter on human and people's rights on the rights of women in Africa". Unpublished report. Funded by CIDA. Lagos: Legal Research and Resource Development Centre, 94. See also Odinkalu C. 2008. "Domesticating CEDAW In Nigeria: A Stakeholder Analysis and Report", in Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 61.

55 Ezeilo JN. 2011. *Women Law & Human Rights – Global and National Perspectives*. Abuja/Enugu: ACENA Publishers, 57.

the second and third periodic reports submitted by Nigeria showed that Nigerian government has not done much to pursue its commitment to implementation of CEDAW.⁵⁶

Since 2004, the CEDAW Committee has been recommending the need to address the challenges in the continued existence of laws that are not concordant with CEDAW and that non-domestication of CEDAW reflected the non-primacy of CEDAW over domestic law in Nigeria.⁵⁷ The committee has called on Nigeria to take more proactive steps to ensure to bring existing laws in compliance with the convention, particularly with regard to women's rights to equality and non-discrimination, with the view to ensuring full compliance with CEDAW provisions, and they have called for the harmonisation of Nigeria's complex legal system of customary, Islamic and English laws.⁵⁸

Several studies commissioned to review the status of domestication of the CEDAW show that religious forces, particularly of the Christian and Muslim faith in Nigeria, have actively contributed to the failed attempt of the CEDAW domestication.⁵⁹ All the studies undertaken to assess efforts toward domestication agree that there is clear evidence of considerable diversity within religious groupings around women's rights. The most critical areas of contention from the standpoints of religious groups are well presented in the studies edited by Ayesha Imam and others.⁶⁰

The studies identified the number of issues as critical areas of concern for the major religious groupings in Nigeria. For example, the report shows that reproductive rights issues were opposed mainly by Catholic and conservative Muslims. Provisions relating to equality of rights of women and men within marriage were opposed by all three major religions in Nigeria: Christian, Muslim and traditional religion. Provisions relating to rights, responsibilities and duties of and over children were opposed mainly by Muslim and traditionalists. Equality before the law in witnessing opposed predominantly by Muslims, All three major religions were opposed to the definition of key terminology, for example, the terms "equality" and "equity". Women as leaders and affirmative action for women were opposed by some sectors of Christians and Muslims, with particular objections from Muslims on changes to the age of marriage.⁶¹

56 United Nations General Assembly. 1998. "Report of the Committee on the Elimination of Discrimination Against Women (Eighteenth and nineteenth sessions)", 14 May. U.N. Doc. A/53/38/Rev.1.

57 Committee on the Elimination of Discrimination against Women. 2004. "Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms Discrimination against Women: Combined fourth and fifth periodic reports of States parties: Nigeria", Thirtieth Session, 12-30 January, CEDAW/C/NGA/4-5.

58 CEDAW, "Combined fourth and fifth periodic reports of States parties: Nigeria".

59 See Para-Mallam et al., "The Role of Religion in Women's Movements". See also Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 6.

60 Imam, *Adopting Women's Human Rights Legislation in Nigeria*.

61 See Para-Mallam et al., "The Role of Religion in Women's Movements". See also Imam, *Adopting Women's Human Rights Legislation in Nigeria*.

The reports show that the issue of sexuality was extremely controversial, particularly to the Christian faith. The Catholic Church vehemently opposed access to reproductive services, which they equated with advocating abortion.⁶² However, other Christians argued that abortion could be permitted in certain circumstances, such as pregnancy resulting from rape, incest or with health consequences to the mother. For the Muslim community, access to reproductive health information and services was not a contentious issue, but a predominant population of Muslims opposed it as a method of family planning. The studies also show that there are provisions in both CEDAW and AU Women's Protocol to which religious forces have no objections. These areas of common grounds include nationality, rights to work, equal pay and conditions.⁶³

The studies became more relevant in 2016, when opposition to CEDAW gathered momentum, with the recent re-presentation of the CEDAW domestication bill as the "Gender and Equal Opportunity Bill" (GEO Bill) in the Nigerian Senate. A strong section of the Senate and religious forces opposed the bill, challenging its provisions on issues relating to the rights of women to marriage and family life, the right of widows to inherit and rights of widows to take custody of children. The opposition was voiced on the ground that the bill runs against the tenets of Islam on inheritance and custody. Some Christian groups opposed the bill as an abortion bill because of the provisions relating to sexual and reproductive rights of women. Another aspect of the GEO bill which was opposed by some of the law makers was the aspect where provision is made for the modification of socio-cultural practices. Here, the opponents argued that the provision was directly in conflict with the Nigerian Constitution, which recognises the role of religion and customary practices of all Nigerians. All in all, there seemed to be a rather pervasive notion that granting women freedom would compromise patriarchy and weaken the societal value attached to the male. This view was further strengthened when a top Muslim leader visibly opposed the bill and warned Muslims not to support its passage.⁶⁴

COUNTERNARRATIVES BY PRO-CEDAW MOVEMENTS

In response to opposition to CEDAW bill, the gender equality groups, led by the National Coalition on Affirmative Action, mounted a campaign to provide a counternarrative to the opposition by religious leaders.⁶⁵ The group claimed that the

62 Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 9.

63 Imam, *Adopting Women's Human Rights Legislation in Nigeria*, 9.

64 "Nigeria Sultan of Sokoto rejects gender equality bill", *BBC News*, 28 December 2016. The Sultan of Sokoto is the most senior Islamic cleric in Nigeria.

65 Nwankwo O. 2016. "Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)". Civil Resource Development and Documentation Center (CIRDDOC). Online at: http://www.aacoalition.org/domestic_cedaw.htm. See also Akuki A. 2017. "Creating A Better Understanding On Gender Advocacy", *Independent*, 22 April.

provisions of the CEDAW domestication bill are not in conflict with Nigeria's 1999 Constitution; rather, they amplify and support the provisions of the Constitution, particularly the provisions dealing with prohibition of sex discrimination (Section 42) and which upholds the preservation of cultures that enhance human dignity and are consistent with freedom, equality and justice. Accordingly, the pro-CEDAW movements argued that the GEO Bill reinforced complementary and not competitive relations between men and women and proposed that this could be achieved through equal opportunities, mutual respect and common benefits to both sexes.⁶⁶

The group posited further that the GEO bill would not take away family headship from men, which was a major concern of antagonists to the bill, but rather that it enjoined shared roles and responsibilities for family life. The group argued that the bill was consistent with the fundamental objectives in the constitution.⁶⁷ Arguing that the domestication of CEDAW and the AU Women's Protocol would provide respite for women against existing legal frameworks under religious law that infringe upon, rather than protect, women's rights to religion. The group further argued that it is a matter of expression of the rights to equity, justice and freedom for a widow to have an equitable inheritance of her husband's estate, to take custody of her children and to continue to live in the matrimonial home on the death of her husband. Such fears are more rooted in African traditional cultures than in the modern religion, cannot stand in the face of the law and would therefore appear to have been misplaced since the two dominant religions in Nigeria preach the core values of human dignity, justice and equity. Unfortunately, the counternarrative is yet to yield any result, the bill is yet to scale through public hearing, despite all efforts by feminist organisations to persuade the National Assembly and to engage religious leaders.⁶⁸ It has been argued that there is no homogeneous theological position on the status of women, within and among faith groups, and that there are differences with regard to interpretation of religious texts and how the doctrines affect women. However, in some countries, women's groups and religious organisations have used religious texts to advance women's rights.

CONCLUSION

Marked differences exist in the ways religious groups interpret gender roles. This also implies that women rights to religion are largely determined by theological and doctrinal fixations. It is evident that, in some cases, women's rights are determined by age-old passions of religious faith doctrines which relegate the woman to a subordinate position rather than being dictated by emerging realities

66 Nwankwo, "Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)".

67 Nwankwo, "Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)".

68 Nwankwo O. "Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)".

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of human rights in the contemporary world. It is therefore not unexpected that opposition to the affirmation of women's rights are founded on stereotypical religious and cultural views which are mostly inexact. Notwithstanding the opposition to the proposed CEDAW/AU Women's Protocol domestication through the Gender and Equal Opportunities Bill, it is advised that gender equality groups, rather than directing their advocacy efforts at platforms that are antagonistic, deepen conversations around issues of women rights and religion to engender more constructive engagements with major issues that remain contentious in the bill, as well as on key areas that pose difficulties in arriving at common grounds towards the domestication of CEDAW and AU Women's Protocol. There are huge opportunities for sustaining interreligious interrogations and conversations of the rights of women and religion in Nigeria, and gender equality groups should take advantage of this space.