

**CUSTOMARY LAW AND THE RIGHTS OF THE GIRL-CHILD AMONGST THE
PEOPLES OF THE NIGER DELTA: CHALLENGES AND PROSPECTS**

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2014397010F

**FACULTY OF LAW
NNAMDI AZIKIWE UNIVERSITY
AWKA, NIGERIA**

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2014397010F

**A Dissertation Presented To The Faculty Of Law, Nnamdi Azikiwe University, Awka,
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Philosophy (Ph.D) Degree In Law**

SUPERVISOR: PROF. G. N. OKEKE

SEPTEMBER, 2017

APPROVAL

This research work has been read and approved for the award of Doctor of Philosophy (Ph.D) Degree of the Faculty of Law Nnamdi Azikiwe University Awka, Anambra State.

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CERTIFICATION

Be it certified that this dissertation is the original work of AKOLOKWU GRACE OGONDA (2014397010F) carried out under the guidance and supervision of Prof. G.N. Okeke. Be it further certified that this work has not been submitted in part or whole for any degree or examination in any other university or academic institution and that all the sources used had been indicated and acknowledged by complete references.

AKOLOKWU GRACE OGONDA
(STUDENT)

DATE

DEDICATION

This Dissertation is dedicated to God Almighty, the fountain of all wisdom; to my husband and children; and to all persons who have refused to bow under the weight of injustice.

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ABSTRACT

The customary law as applied in the Niger Delta Region recognises certain rights applicable to both male and female. However, the extent of the application of these rights to the girl-child is faced with many challenges. Recognising that the girl-child is one of the most vulnerable groups in the society, the research focused on examining the challenges and prospects of application of the rights of the girl-child among the peoples of the Niger Delta region. The doctrinal method of research was adopted to analyse laws which incorporate the rights of the girl-child, and described cultural practices in the Niger Delta that continue to discriminate and violate the rights of the girl-child. This work found that the human rights of the girl-child include fundamental rights as provided by the Constitution of the Federal Republic of Nigeria 1999. Yet the various customary practices in the Niger Delta do not respect this position of the law. The research identified some of the major challenges to the application of the girl-child rights in the Niger Delta to be custom and tradition; patriarchy; illiteracy and poverty. Efforts made by government, international agencies, non-governmental groups, the judiciary and individuals to highlight and redress the plight of the girl-child through advocacy campaigns, various policies, and programmes were also investigated and the research confirmed the continuing erosion of the rights of the girl child and its spiraling negative effect on the development of the region. The researcher therefore recommended amongst others; the codification of customary laws in the various communities constituting the Niger Delta Region, expunging identifiable practices that are violative of the girl-child's rights as provided by the Constitution and in all the Statutes operating in the area; the amendment of gender discriminatory laws; the domestication of ratified international instruments relevant to the rights of the girl-child, improved enlightenment campaigns, entrenchment of positive policies on the part of Government, establishment of relevant monitoring agencies especially in the rural areas to accord with freedom from any form of discrimination against the girl-child and in accordance with the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979) and the 2003 Protocol to the African Charter, ecetera.

TABLE OF CONTENTS

COVER PAGE	
TITLE PAGE.....	i
CERTIFICATION	iii
APPROVAL	iii
DEDICATION.....	v
ACKNOWLEDGEMENTS.....	vi
ABSTRACT.....	vii
TABLE OF CONTENTS.....	viii
TABLE OF CASES	xii
LIST OF STATUTES	xvi
LIST OF ABBREVIATIONS.....	xix
CHAPTER ONE.....	1
GENERAL INTRODUCTION.....	1
1.1 Background to the Study.....	1
1.2 Statement of Problem.....	8
1.3 Purpose/Objectives of Study.....	13
1.4 Methodology	15
1.5 Scope of Study	16
1.6 Significance of Study.....	16
1.7 Limitation of Study	18
1.8 Literature Review.....	19
1.9 Definition of Terms.....	50
1.9.1 Custom	50
1.9.2 Customary Law	52
1.9.3 The Concept of a Right	54
1.9.4 Human Rights	55
1.9.5 Girl – Child	57
1.9.6 Niger Delta.....	58
1.10 Organizational Layout	58

CHAPTER TWO	60
THE GIRL- CHILD IN THE EYE OF CUSTOMARY LAW	60
2.1 Customary law and its application in Nigeria	62
2.1.1 Characteristics of Customary Law	70
2.1.2 Validity and Essentials of Customary Law	73
2.1.3 Proof of Customary Law	79
2.2 Customary Law and the Rights of the Girl- Child	85
2.2.1 Political Rights of the Girl- Child under Customary law	87
2.2.2 Economic Rights of the Girl -Child under Customary law	98
2.2.3 Social Rights of the Girl -Child under Customary Law	101
2.3 Violations of the Rights of the Girl -Child under Customary Law	103
2.3.1 Child Labour	105
2.3.2 Child Marriages	107
2.3.3 Disinheritance of the Girl-Child	109
2.3.4 Female Genital Mutilations.....	118
2.3.5 Assault and Rape.....	120
2.3.6 Child abuse.....	121
2.4 The Girl- Child amongst the Peoples of the Niger Delta- Who is the Girl- Child?	125
2.4.1 The Girl- Child among the Kalabari People	126
2.4.2 The Girl- Child among the Ikwerre people	132
2.4.3 The Girl-Child among the Ogoni people	137
2.4.4 The Girl -Child among the Ogba people.....	144
2.4.5. The Girl-Child among the Ijaw People	150
2.4.6 The Girl-Child among the Efiks of Cross River State and the Annangs of Akwa Ibom State in the Niger Delta.....	155
2.4.7 The Girl-Child among the Bini and Esan people of Edo State	157
CHAPTER THREE	159
HUMAN RIGHTS RELATING TO THE GIRL-CHILD AND ITS UNIVERSAL APPLICATION	159
3.1 Nature of Human Rights, Its Development and Universality.	160
3.2 International Instruments Protecting the Rights of the Girl –Child	173
3.2.1 Universal Declaration of Human Rights (UDHR 1948)	175
3.2.2 International Covenant on Civil and Political Rights (ICCPR 1966)	178

3.2.3 International Covenant on Economic, Social and Cultural Rights (ICESR1966).....	180
3.2.4 Convention on the Political Rights of Women (CPRW) 1954.....	181
3.2.5 Convention on consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964.....	181
3.2.6 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979)	182
3.2.7 Convention on the Rights of the Child (CRC 1989)	185
3.3 Regional Instruments on the Rights of the Girl-Child	188
3.3.1 African Charter on Human and Peoples Rights (ACHPR 1981)	188
3.3.2 African Charter on the Rights and Welfare of the Child (ACRWC) 1990.	189
3.3.3 African Union Declaration on Gender Equality in Africa, July 2004.....	191
3.4 Municipal Instruments on the Rights of the Girl-Child	192
3.4.1 Constitutional Provisions on Fundamental Human Rights in Nigeria.	193
3.4.2 The Child Rights Act 2003	203
3.5 The Girl-child’s Reproductive Rights.....	206
3.6 Enforcement of the Girl-child Rights in Nigeria.....	210
3.7 Remedies for Girl-Child Rights Violations- Judicial and International interventions.....	213
CHAPTER FOUR.....	222
CHALLENGES FACING THE APPLICATION OF THE GIRL-CHILD RIGHTS IN THE NIGER DELTA.	222
4.1 The Niger Delta: Its Peoples and Location.	223
4.2 Application of Child Rights in the Niger Delta	225
4.3 The Challenge of the Law in Relation to Application of Girl-child Rights in the Niger Delta	230
4.3.1 Examining Relevant Legislation on Application of Girl-child’s Rights.....	237
4.3.2 Domestication of International Instruments.....	239
4.4 The Challenge of Access to Justice.....	242
4.5 Cultural Impediments: The Challenge of Customs and Traditions.....	244
4.6 The Challenge of the Niger Delta Environment	250
4.6.1 The Challenge of Poverty	254
4.6.2 The Challenge of Inadequate Infrastructural provisions	258
4.7 The Challenge of Patriarchy	259
4.8 The Challenge of Education and Enlightenment	261
4.9 The Challenge of Religion	263
4.10 The Challenge of Government Policies and Programmes	265

4.11 The Challenge of Policing in the Niger Delta.....	268
CHAPTER FIVE	270
PROSPECTS OF LEGAL ENFORCEMENT OF GIRL- CHILD RIGHTS IN THE NIGER DELTA REGION OF NIGERIA.....	270
5.1 The Role of the Judiciary in the Enforcement of Girl-Child Rights	273
5.2 Legislative Interventions in the Enforcement of Girl-Child Rights.....	280
5.3 The Role of International Responses and Agencies in the Enforcement of Girl-Child Rights: Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs)	283
5.4 The Role of Civil Society Organizations (CSOs): Non Governmental Agencies (NGOs) in Enforcement of the Rights of the Girl-child	289
5.5. The Role of Community –Based Organizations (CBOs) in the Enforcement of the Rights of the Girl-Child.....	295
5.6 Government Policies and the Affirmative Action: National Gender Policy	301
5.7 Customary Practices and Enforcement Strategies on the Rights of the Girl-child from other Jurisdictions: Examples of Kenya, Southern Africa Development Community States (SADCS) and India.	307
CHAPTER SIX.....	325
CONCLUSION AND RECOMMENDATIONS	325
6.1 CONCLUSION.....	325
6.2 RECOMMENDATIONS	331
6.2.1 Codification of customary laws	331
6.2.2 Domestication of Relevant International Instruments.....	332
6.2.3 Legislative Inputs.....	333
6.2.4 Government Policy Changes.....	334
6.2.5 Implementation of Laws	335
6.2.6 Advocacy Campaigns and Enlightenment	336
6.2.7 Judicial Reforms	336
6.2.8 Establishment of Relevant Agencies.....	337
6.2.9 Provision of Social Amenities.....	337
6.2.10 Establishment of Trust Funds	338
6.2.11 Police Reforms.....	338
6.2.12 Legal Aid Scheme.....	338
6.2.13 Education/ Enlightenment/Re-orientation.....	338
BIBLIOGRAPHY	340

TABLE OF CASES

Pages

Adadevoh Re (1951)13 WACA, 304.....	75
Adaku Amadi v Edward Nwosu (1992) 6 SCNJ 59.....	277
Adedeji v Oloso(2007)5 NWLR,Part 1026,140.....	68
Agbai v Okagbue, (1991) 7 NWLR, (Part 204)391.....	201
Agbam v Amadi (Unreported) CC/23/2005.....	137
Agboola v U.B.A. Plc (2011)11 NWLR, (pt 1258) 384.....	69
Ajao v Obele (2005)5 NWLR, (pt 918) 405.	63
Ajikande v Yussuf (2008) 2NWLR,(pt 1071) 307.....	67
Ajisua v Aiyebelehin (2001) FWLR(pt.66)710.....	37, 67
Akande v Adisa (2012) (pt 1324) 545	65
Akinnubi v Akinnubi, (1997)4 NWLR (pt 486) 144.....	116
Alhaji Lawal v Israel Opawile (2001)1SCNQR 1.....	198
Amachree v Kalio(1914)2 NLR 108.....	75
Amusan v Olawuni (2002)FWLR, Part 118, p.1391.....	66
Aniekwe v Okereke, (1996)6 NWLR (pt 452)60.....	201
Asemota v Yesufu & anor, (1981)1 NCLR 420.....	217
Awudu v Daniel (2005)2 NWLR (pt 909) 206.....	35, 63
Chinemelu v Commissioner of Police (1995)4 NWLR (pt 390)467.....	196
David-Osuagwu v A G of Anambra State (1993)4 NWLR (285)13.....	212
Davies v Davies, (1929)2 NLR, P 79.....	115
Dawodu v Danmole (1958)3 FSc 46.....	112

Edet v Essien (1932)11 NLR 47.....	75, 276, 277
Effiong Okon Attah, Re 1930, 10 NLR 65.....	78
Egbuta v Onuna (2007) 10 NWLR (pt1042) 302.....	79
Ekenebe v Waribo (Unreported) Suit No BHC/22/1990.....	152
Ekeocha v. Ariataraonyenwa [2009] All FWLR (Pt.456) 1972.....	38
Eshugbayi Eleko v Government of Nigeria (1931) A.C 662-673.....	43, 71
Ewhurudje v W.L.G.C (2005)7NWLR (pt 924)337.....	213
Eyo v Onuoha (2011) All FWLR (pt 1257) 1-47.....	80, 81
F.R.N. v Ifegwu (2003)15 NWLR (842)113.....	57, 216
Hirnor v Yongo (2003) 9 NWLR, (pt 824)77.....	68
Ibrahim v Osunde (2003)2 NWLR, (pt 804) 249.....	64
Itode v Otukupe (Unreported) Suit No CCA/4/1919.....	153
Lewis v Bankole (1999) 1 NLR P. 100.....	72
Madhu kishwar v State of Bihar (1996)5 SCC125	4, 28
Mashuwareng v Abdu (2003)11 NWLR Part 831, P 409.....	7, 34, 51
Maxwell Lekagha & 2 ors v Bealemabari Giima(Unreported) Suit No. CCK/26/2011.....	142
Mogaji v Board of Customs and Excise (1982)2 NCLR 552 at 561.....	195
Mojekwu v Ejikeme (1997)7 NWLR, (pt 517)283.	117, 141
Mojekwu v Mojekwu (1997)7 NMLR (pt 512)281.....	1, 39, 78, 101,117
Motoh v Motoh, (2011), 16 NWLR (pt 1274) 474.....	40, 78
Nezianya v Okagbue (1963)ALL NLR 352.....	116
Nwanya v Nwanya (1987)3 NWLR (Part 62) 697.....	76, 277
Nyaara Aafaa v. Dimkpa Natom (Unreported) Suit No. PHC/397/76 of 21/8/1980.....	140

Nzekwu v Nzekwu (1997)7 NWLR (pt 512)283.....	3, 116
Obaro v Probate Registrar (2001) FWLR(pt 59)1382.....	64
Obiaso v Okoye (1989)5 NWLR (pt 119)80.	81
Ogolo v Ogolo (2003)18 NWLR(Pt 852) 494.....	79
Ojisua v Aiyebilehin (2001) FWLR, (pt.66)710.....	47, 48, 51
Okarike v Samuel(2005)7 NWLR (pt 924) 370.....	80
Oke v Oke(1974)3 SC. 1.....	116
Olawoyin v Attorney General, Northern Region (1962) 1 All NLR 324 at 327.....	216
Olubadan v Lawal, (2008)17NWLR, (pt 1115)1.....	51, 67
Omaye v Omagu(2008)7 NWLR (pt.1087)482.....	34, 52, 59,77
Onwuchekwa v Onwuchekwa(1991)5NWLR(Pt 194) 739 -742.....	84, 117
Onyibor Anekwe & anor v Maria Nweke (2014)9NWLR, (pt 1412) 393.....	272, 275
Osamwoyi v Osamwoyi, (1972)All NLR 792.....	96, 107
Osolu v Osolu (1998)1 NWLR (Pt 535)532.....	81
Owoniyin v Omotosho (1961) All NLR, 304.	52, 71
Oyeodini v Oyeodini (Unreported)Suit No. CCA/27/1922.....	154
Oyewumi v Ogunesan 1990, 2 NSCC (Pt II), P257.....	35, 53, 63, 79
Ransome kuti v Attorney General of the Federation (1995)2 NWLR (pt 6)211.....	6, 55
Rahul Sah v State of Bihar, AIR 1983 SC 1086.....	219
Salome Dezua & Anor. v. Ledon Dezua & Anor (Unreported) Suit no BHC/587/2012 of 26/3/2014.....	140
Shodipo v Shodipo (1990)5 WRN 98.....	76

Shugaba Darwan v Minister of Internal Affairs (1983)3 NCLR P 915.....	218
Solomon v Gbobo (1974) 4 UILR, page 396.....	74
Sokwo v Kpongbo, 2008, 7 NWLR, (Pt 1086) 342.....	83, 84
State v Onagoruwa (1992)2 NWLR, (pt 221).33.....	198
Temile v Awani (2001) FWLR (Pt. 62) 211.....	83
Uke v Iro (2002), FWLR, (Pt. 129)1453.....	39, 71, 74, 77
Ukeje v Ukeje (2001)27 WLRN, 142.....	117, 277
Ukorogwung v Dennis (Unreported) CA/PH/176/2014.....	152
Unilorin v Oluwadare, (2003)3 NWLR, Part 808, p.557.....	161
Usiobaifo v Usiobafo (2005)3 NWLR, Part 913, P 672.....	76, 79, 82
Uzoukwu &ors v Ezeonu II & ors,(1991)6 NWLR, (pt 200)708 at 761.....	192, 194
Yussuf v Dada (1990)4 NWLR, (pt.1499) 657.....	34, 53, 62
Zaiden v. K. Molissen FH (1973)11 SC 1.....	42

LIST OF STATUTES

Age of Customary Marriage Law, Cap 5, Vol. 1, Laws of Rivers State of Nigeria 1999.

Bauchi State Hawking by Children(Prohibition)Edict, cap 58, 1985.

Child Marriage and Female Circumcision or genital Mutilation Prohibition Law (No 22) of Cross River State, 2000.

Childs Rights Act 2003.

Children and Young Person's Act Cap 32 Laws of the Federation of Nigeria and Lagos, 1958.

Company and Allied Matters Act (CAMA) Cap C20, Laws of the Federation of Nigeria (LFN) 2004

Constitution of the Federal Republic of Nigeria, 1999 Cap C.23, Laws of the Federation of Nigeria. 2004.

Criminal Code Act Cap C 38-1 Laws of the Federation of Nigeria, 2004.

Cross Rivers State Girl Child Marriage and Female Circumcision (Prohibition) Law 2000.

Customary Courts Law; Laws of Rivers State of Nigeria, Vol.2, Cap 40, 1999

Dehumanizing and Harmful Traditional Practices Law of Rivers State, 2003

Ebonyi State Law on Abolition of Harmful Traditional Practices against Children and Women
No 10, 2010

Edo State Female Genital Mutilation (Prohibition) Law 2002

Evidence Act, Vol 6, Cap E14 Laws of the Federation of Nigeria (LFN) 2004.

Evidence Act, 2011

Female Circumcision Abolition Law of Rivers State, 2001

Fundamental Rights (Enforcement Procedure) Rules 2009.

High Court Law Cap 62, Vol 3 Laws of Rivers State of Nigeria 1999.

Infringement of Widows and Widowers Fundamental Rights law, (No3) of Enugu State, 2001.
Labour Act; Cap L 1, Vol 8, 2004.

Limitation of Dowry Law (Eastern States) 1956.

Marriage Act Cap M6, Vol. 8, 2004.

Matrimonial Causes Act 1970, Cap M7, Vol. 8, 2004.

National Centre for Women Development Act, Cap N15 Vol 10, Laws of the Federation of Nigeria (LFN) 2004.

Penal Code Act, Cap P3-1 Laws of the Federation of Nigeria 2004.

Police Act Cap P 19, laws of the Federation of Nigeria 2004.

Rivers State Reproductive Health Services Law, 2003.

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.

LIST OF INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples Rights (Enforcement and Domestication) Act Cap 10, 1990.

African Charter on Human and Peoples Rights (1981).

African Charter on the Rights and Welfare of the Child, 1990.

African Union Declaration on Gender Equality in Africa, July 2004.

Children's Act of South Africa 2005.

Constitution of Kenya 2010.

Constitutive Act of the African Union 2000

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

Convention on the Rights of the Child (CRC) 1989.

Convention on the Political Rights of Women 1954.

Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, 2001.

International Covenant on Civil and Political Rights (ICCPR)1966.

International Covenant on Economic, Social and Cultural Rights (ICESR1966)

Optional Protocol to the Convention against Torture (OPCAT) 2009.

United Nations Charter of 1945.

Universal Declaration of Human Rights 1948.

Vienna Declaration 1993.

REPORTS

Country Report on Human Rights Practices, United States Department of State Bureau of Democracy, Human Rights and Labour 2008.

Gender in Nigeria Report 2012.

National Political Reform Conference Report, May 2005.

NDES Report 2002.

Niger Delta Environmental Survey Report (Vol. 1, 1997).

Report of the Committee on Human Rights and Social Security: National Political Reform Conference, May 2005.

UNEP Report on Ogoni Land 2011.

UNDP Report 2006.

World Health Organization Report 2007.

LIST OF ABBREVIATIONS

ACHPR	-	African Charter on Human and Peoples' Rights
ACRWC	-	African Charter on the rights and Welfare of the Child
AJOL	-	African Journal on Line
ALL ER	-	All England Report
ALL NLR	-	All Nigeria Law Report
ANPPCAN	-	African Network for the Prevention and Protection against Child Abuse And Neglect
ANLR	-	All Nigeria Law Report
ANOR	-	Another
ART	-	Article
AWLA	-	African Women Lawyers Association
BC	-	Before Christ
BBC	-	British Broadcasting Corporation
BHC	-	Bori High Court
BUDFOW	-	Business and Development Fund for Women
BIU	-	Benson Idahosa University
CAMA	-	Company and Allied Matters Act
CAP	-	Chapter
CAT	-	Convention Against Torture and other Cruel Inhuman or Degrading Treatment
CASS	-	Centre for Advanced Social Science
CBOs	-	Community-Based Organizations
CCA	-	Customary Court of Appeal
CCK	-	Customary Court Khana

CDHR	-	Committee for the Defence of Human Rights
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
CFRN	-	Constitution of the Federal Republic of Nigeria
CISLAC	-	Civil Society Legislative Advocacy Centre
CLAN	-	Children's Legal Action Network
CLO	-	Civil Liberties Organization
COVAW-K	-	Coalition on Violence against Women - Kenya
CPRW	-	Convention on the Political Rights of Women
CRA	-	Child Rights Act
CRC	-	Convention on the Rights of the Child
CSO	-	Civil Society Organization
CSSR & D	-	Centre for Social Science Research & Development
DHR	-	Declaration of Human Rights
DSM	-	Democratic Socialist Movement
ED	-	Edited
ERLR	-	Eastern Region law Reports
FCT	-	Federal Capital Territory
FGM	-	Female Genital Mutilations
FIDA	-	Federated Women Lawyers
FWLR	-	Federation Weekly Law Report
FSC	-	Federal Supreme Court
IBID	-	Ibidem (Same as immediately Above)
ICC	-	International Criminal Court
ICCPR	-	International Convention on Civil and Political Rights
ICESR	-	International Convention on Economic and Social Rights

ICT	-	Information Communication Technology
ILO	-	International Labour Organization
INC	-	Incorporated
IWT	-	Innovative Women Teachers
JLCR	-	Journal of Law and Conflict Resolution
JSC	-	Justice of Supreme Court
JTRI	-	Judicial Training & Research Institute
JTF	-	Joint Task Force
JVA	-	Joint Venture Agreement
KAACR	-	Kenya Alliance for the Advancement of Children
LFN	-	Laws of the Federation of Nigeria
LRF	-	Legal Resources Foundation
LTD	-	Limited
MDGs	-	Millennium Development Goals
NACCRAN	-	National Council of Child Rights Advocates of Nigeria
NAPTIP	-	National Agency for the Prohibition of Trafficking in Persons
NCAA	-	National Coalition on Affirmative Action
NCLR	-	Nigerian Customary Law Report
NCWS	-	National Council of Women Societies
NDES	-	Niger Delta Environmental Survey
NDDC	-	Niger Delta Development Commission
NDHS	-	Niger Delta Health Survey
NEEDS	-	National Economic Empowerment and Development Strategy
NGP	-	Niger Gender Policy
NGO	-	Non- Governmental Organization
NHRC	-	National Human rights Commission

NICN	-	National Industrial Court of Nigeria
NIG	-	Nigeria
NJPL	-	Nigerian Journal of Public Law
NJRS	-	Nigerian Journal of Rural Studies
NLC	-	Nigerian Labour Congress
NLR	-	Nigeria Law Report
NMLR	-	Nigeria Monthly Law Report
NOPRIN	-	Network on Police Reforms in Nigeria
NPM	-	National Preventive Mechanism
NREGA	-	National Rural Employment Guarantee Act
NSCC	-	Nigeria Supreme Court Cases
NWLR	-	Nigeria Weekly Law Report
OMPADEC	-	Oil Minerals Producing Areas Development Commission
OPCAT	-	Optional Protocol to Convention against Torture
OP. CIT.	-	Opus Citatus (Work cited above)
ORS	-	Others
PRAWA	-	Prisoners Rehabilitation and Welfare Action
PIL	-	Partners in Learning
POCSO	-	Protection of Children from Sexual Offences Act
PTF	-	Petroleum Trust Fund
RIMA	-	Rivers State Microfinance Agency
SADCS	-	Southern Africa Development Community States
SARS	-	Special Anti Robbery squad
SC	-	Supreme Court
SCC	-	Supreme Court Cases
SCNQR	-	Supreme Court of Nigeria Quarterly Report

SDGs	-	Sustainable Development Goals
SGDV	-	Sexual and gender based violence
SPDC	-	Shell Petroleum Development Corporation
STI	-	Sexually Transmitted Infection
P	-	Page
PH	-	Port Harcourt
PHC	-	Port Harcourt High Court
PT		Part
UDHR	-	Universal Declaration of Human Rights
UILR	-	University of Ife Law Report
UK	-	United Kingdom
UN	-	United nations
UNCHS	-	United Nations Commission on Human Settlements
UNEP	-	United Nations Environmental Programme
UNGEI	-	United Nations Girls' Education Initiative
UNICEF	-	United Nations Children's Emergency Fund
UNIFEM	-	United Nations Development Fund for Women
USA	-	United States of America
VVF	-	Vesico Vagina Fistula
WACA	-	West African Court of Appeal
WACOL	-	WomenAid Collective
WFFC	-	World Fit For Children
WILDAF	-	Women in Law and Development in Africa
WLSA	-	Women and Law in Southern Africa
WOFEE	-	Women Fund for Economic Empowerment

- WLGC - Wano Local Government Council
- WLRN - Weekly Law Report of Nigeria
- WRN - Western Region of Nigeria

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Girl-child rights concern governments, organizations, groups and individuals. The Constitution of the Federal Republic of Nigeria 1999 (as amended) recognises and establishes certain rights that are fundamental to its citizens.¹ It goes further to provide copiously for the protection of these rights. These Constitutional provisions apply to the girl-child as a human being with rights recognized nationally and internationally; and are actually enforceable against both the State and private persons. However, in spite of these provisions and provisions in other international instruments, women (including the girl child) still experience certain infringements of their human rights borne out of the fact of being females.

Customs which regulate the way of life of a people cannot be downplayed or wished away by modern legislations as the laws derivable from them continue to play a significant role in regulating the lives of persons to whom they apply. These customary laws are still recognized limitations to the freedom of persons in the locality they apply. Some can even be described as being antithetical to human rights, and to the development of persons and invariably the nation as well, although some of them have become abandoned for being repugnant to natural justice, equity and good conscience over time. An example of such abandonment of a customary law was in the case of *Mojekwu v Mojekwu*² where the Court of Appeal held that a custom which allowed the surviving brother of the deceased who died intestate to inherit the landed property of the deceased to the total exclusion of the widow and her daughters because she had no son was

¹ Chapters 2 and 4 of the 1999 Constitution of Nigeria, Cap C.23, Laws of the Federation of Nigeria 2004.

² (1997)7 NMLR (pt 512)281.

repugnant to natural justice, equity and good conscience and was also unconstitutional for breaching the right to freedom from discrimination. Also in *Nzekwu v Nzekwu*,³ the Supreme Court held that any custom that discriminated against the woman's right to inherit her husband's property was repugnant. According to the court, the Onitsha custom which postulates that only a first son (*Okpala*) has the right to alienate the property of a deceased person in the life time of the widow is a barbarous and uncivilized custom and so be declared unacceptable. Despite these courageous attempts by the Nigerian courts, the rights of the girl child continue to be infringed by our various customs and traditions regardless of constitutional provision and protection of rights.

The issue of rights is multi faceted especially with regard to the rights of the girl-child in a patriarchal state like Nigeria where there is a notable and noticeable gap between the provisions of the law, its application and enforcement. The level of education and enlightenment of the receiving public become critical as women's rights issues become somewhat more meaningful to the literate and urban woman than the deeply illiterate and traditional woman in the rural areas. These rights most of the time become more exercisable in favour of the persons who have knowledge of their existence and can take steps to agitate their actualization. The question is, what happens to the uninformed majority?

The patriarchal system which emphasizes descent along father's line has worsened the fate of the girl-child as she plays the second fiddle role to the male child, and with an assured traditional role in the kitchen which does not require the expertise garnered from western education. In the 21st century the sentiments that the girl-child does not need to go to school to become a good wife and mother with cooking, cleaning and sewing skills has persisted. This confirms the notion that "women have always been discriminated against and have suffered and

³ [1989]2 NWLR (pt 104) 317.

are suffering discrimination in silence.”This was the position of the court in *Mahdu Kishwar v State of Bihar*.⁴ And these discriminations have been described⁵ 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...”

Over time and in different jurisdictions, gender issues have always cropped up as claims of marginalization and even outright non-recognition of rights continue to arise. “The intensification of women’s issues and rights movement all over the world is reflected in the form of various Conventions passed by the United Nations.”⁶ Bunch writes that “human rights instruments and mechanisms provide avenues for challenging the systematic abuse of women; and that government can be made to take gender-based violations more seriously...”⁷

‘Equality and freedom’ Rao⁸ states:

have evaded women, as in the chequered history of mankind, one finds that different and disparate cultures however distant they may be in time and space, have one thing in common and that is contempt for women. This unequal status of women being offensive to human dignity and human rights emerged as a fundamental crisis in human development, the world over.

In history, it is recorded that the ancient Greeks and Romans denied their female species of all rights. Specifically, the Greeks imprisoned their women within their houses and denied them all rights, while in the Roman Empire women of all categories were refused all legal rights.⁹

⁴(1996)5 SCC125.

⁵ M Rao, *Law Relating to Women and Children* (3rd ed. Lucknow: Eastern Book Company, 2012) p. 62.

⁶ *Ibid*, p 62.

⁷ C Bunch, ‘Transforming Human Rights from a Feminist Perspective’ in J Peters and A Wolper; *Women’s Rights, Human Rights* (eds. London: Routledge, 1995) p.13.

⁸ *Ibid*, p.3.

Issues concerning the girl-child in society, whether traditional or modern occupy the front burner of discussions across the globe. The attention centered on these human species is to a large extent due to the fact that they are regarded as one of the vulnerable groups who would naturally be exposed to various forms of violations ranging from sexual assault, wife battering and neglect to other forms of discriminatory cultural practices. The girl – child is generally regarded as the weaker sex by both religion and the society. Over time the girl child has to some extent through indoctrination of societal-approved feminine roles, weakness and illiteracy accepted the second position to her male counterpart, thereby allowing her rights as a human being to be gradually but systematically eroded. This picture is better painted by Grimke,¹⁰ who stated that:

All history attests that man has subjugated woman to his Will, used her as a means to promote his self gratification, to minister to his sensual pleasures, to be instrumental in promoting his comfort; but never has he desired to elevate her to that rank she was created to fill. He has done all he could to debase and enslave her mind; and now he looks triumphantly on the ruin he has wrought and says, the being he has thus injured is his inferior...

Many women do not even have a firm grasp of their rights as human beings and further as women. Under the common law, women were treated as chattels.¹¹ “All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights.”¹²

⁹ *Ibid*, p.1.

¹⁰ S. M. Grimke, *Letter on Equality of Sexes and the Condition of Women* (Boston: Isaac Knapp reprinted by Source Book Press, New York 1838)10.

¹¹ Mamto Rao, *Op.cit*, p. 1.

¹² *Ibid*, p.66.

The available legal support, Conventions and Protocols on the rights of women have not succeeded in detangling the girl-child from this debilitating position. “Lives of women continue to be lived out largely in the private domain where the right to privacy is used to conceal unequal treatment of women which is justified by invoking custom and tradition.”¹³ The volume of literature and international response to this issue underscore its importance especially as the constant erosion of the rights of the girl-child has a spiraling negative effect on the development of nations. Quality manpower which could have been harnessed from the womenfolk due to various forms of discriminations is abandoned and abilities become unrecognized.

Issues bothering on societal treatment of the girl-child are germane and have variously led to calls for the global recognition and enforcement of girl- child rights. Some of these calls have metamorphosed into global conferences and meetings for deliberation on gender issues with the aim of charting the way for the proper placement of the girl-child in the global scheme to enhance optimal productivity and security of the entire human race. In fact, the United Nations¹⁴ have stated that:

it is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the universal recognition in law of equality of rights between men and women and to exploring ways to give women in fact, equal opportunities with men to realize their human rights and fundamental freedoms.

¹³ F Banda, *Women, Law and Human Rights: An African Perspective* (Oxford and Portland: Hart Publishing, 2005) p.61.

¹⁴ United Nations Report on Human Rights, New York (United Nations, New York 1984) p. 148.

The above sentiments of the United Nations have encouraged and given birth to Conventions, Regulations and Protocols which have emerged to give a new direction. Are they succeeding? Are they sufficient? How are they enforced? Are they actually enforced or are they merely paper tigers? Agitations for the protection and promotion of women rights have become a global concern as cases of abuse, neglect and subjugation of the womenfolk in the guise of religion and culture are rife, especially in the third world countries.

Some persons have expressed the view that despite global efforts at protecting girl-child rights, and the provisions in our laws, the rights of the girl-child continue to be trampled upon.¹⁵ These human rights have been described by the court per Kayode Eso in *Ransome kuti v Attorney General of the Federation*¹⁶ as:

Rights which stands above the ordinary law of the land and which in fact is antecedent to a political society itself; is a primary condition for a civilized existence and what has been done by our constitution since independence is to have those rights enshrined in the constitution so that the rights could be immutable to the extent of the immutability of the constitution itself.¹⁷

Some of these rights enshrined in local and international Statutes are that “all human beings are born free and equal;”¹⁸ that nations are “encouraged to modify the social and cultural patterns of conduct... with the view to eliminate inferiority and superiority of either sexes or stereotype

¹⁵ ‘Women in Nigeria are ranked lower than men in all indices of development. Though women’s rights are clearly spelt out in the nation’s Constitution, unfortunately in practice they remain paper tigers...’ ‘The Rights of Women in Nigeria’ The Lawyers Chronicle.com , assessed on 19th Nov.2015.

¹⁶ [1985]2 NWLR (pt. 6) p. 211 at 230

¹⁷ *ibid.*

¹⁸ Art 1 Declaration of Human Rights (DHR).

roles of men and women;”¹⁹ African member states are enjoined to “actively promote the implementation of legislation to guarantee women’s land, property and inheritance rights including the right to housing,”²⁰ “to ensure the elimination of all discrimination against women and also ensure the protection of the rights of women...;”²¹ Also, Article 21 of the Protocol to the Charter on Human and Peoples Rights which was ratified in Nigeria in 2004 states on the rights of women in Africa that “a widow/widower shall have the right to inherit each other’s property in the event of death, and whatever the matrimonial regime to continue living in the matrimonial home,” whilst the same law provides further that “women and girls shall have same rights as men and boys to inherit in equal shares their parents properties.”²²

Despite these provisions however, girl-child rights are continually violated. It is trite that customs and tradition shape the character and lifestyle of a group of people living in a particular locale. In *Mashuwareng v Abdu* these customs are defined as the “mirror of accepted usage,”²³ and are the generally recognized and acceptable rules that govern the interaction of persons in a given locality. How are the rights of the girl-child in the Niger Delta affected by custom and tradition? What is the position of girl-child rights in Nigeria? What is the role of customary law on these rights? Is customary law protective of these rights or are they clear sources of infringements? What legal instruments are available for the protection of the girl-child rights in the Niger Delta? Are these laws enforceable? What constraints or problems are associated with the application of Child Rights in the Niger Delta? All these challenges of girl-child rights under customary law will form the basis of this research.

¹⁹ Art 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the United Nations in 1979 and was ratified in Nigeria in 1984.

²⁰ Art 4(1), Chapter 7 of the Constitutive Act of the African Union.

²¹ Art 18 of the African Charter on Human and Peoples Rights (Enforcement and Domestication) Act Cap 10, 1990.

²² Art 21(2), *ibid*.

²³[2003]11 NWLR (pt 831) p. 409.

1.2 Statement of Problem

The problem examined by this research centres on what happens to the rights of the girl-child in the Niger Delta especially against the background of the continued influence and interference of customary laws in Nigeria. Despite the series of constitutional provisions on the rights of persons in the country and even despite a plethora of international instruments, the girl child in the Niger Delta and even elsewhere is still suffering lots of abuses not meted to her male counterpart. Girl-child rights have been consistently relegated to the background and even abandoned by both the State apparatus and individuals. Several injustices have been done to the girl-child. And such injustices and abuses have even been justified on the basis of such acts originating from the custom of the people and is instrumental to the wellbeing of the girl-child in particular and the peace and progress of society in general.

These behaviour traits inimical to the proper exercise of rights of the child have in some instances become the norm and are not even consciously being linked to the customary law applicable in the area when in reality the root of the problem is in the custom and traditions of the people. Learning the particulars of customs still operative in our communities and which still regulate the lives our people become imperative in a study of the natural and enshrined rights of the girl-child as well as the analysis of the issues surrounding the continuous but societally permitted denial of the rights of the girl-child or the societal glossing over of some acts globally recognized as abusive of the human rights of the girl-child. Women continue to be discriminated against as women. Investigating most of the human rights violations of the girl-child which stem from systemic docility, acceptance and tolerance of customary practices which promote abuse and injustice is the focus of this work.

The rights of the girl-child in Nigeria are not properly recognized and protected leading to series of abuses ranging from the physical abuse, to the psychological and emotional; with all contributing to the under achievement of the girl child, the perpetual second fiddle role for the girl-child in society and even in some cases to the premature death of the girl-child. Nigerian women still face barriers which deny them access and participation in certain societal affairs.²⁴ The basic and fundamental rights which accrue to all human persons and drawn from “universal core values defined in seminal international conventions and treaties²⁵ are constantly violated as gender discriminations continue to thrive in the Niger Delta region of Nigeria.

There are very “disturbing gaps between the ideals and ideas of human rights contained in the Constitution and the reality of the lives of average Nigerians.”²⁶ The girl-child, both the illiterate and the educated are ignorant of their human rights; and even where they are aware of such rights and the system’s denial of same, become noncommittal about its defence, choosing sometimes to explain away such unjust behaviours as customary and traditional. It is also true that non enforcement of human rights may sometimes be borne out of fear of male reprisals, and the general suspicion and distrust of State agencies which are seised with the power and mandate to protect citizens’ rights. This becomes a problem for human rights enforcement.

In the third world countries, the story of the female gender is mainly that of denial of rights taken for granted in the developed countries of the world. The girl-child in the Niger Delta is vulnerable and face “disproportionate disadvantage as a result of some obnoxious cultural practices such as early child marriages, denial of education, denial of right to bail an accused, right to inheritance, access and participation in the economic and political process.”²⁷ Demands

²⁴ National Political Reform Conference Report, May 2005.

²⁵ *Ibid*, p.10.

²⁶ *Ibid*, p.11.

²⁷ *Ibid*, 14.

for the enforcement of rights have been viewed as “intended to manipulate the Nigerian State and thus alien to Nigerian culture.”²⁸ And our customary laws which generally treat the girl-child as a person inferior to the man would consider any woman who seeks to enforce her fundamental rights as an aberration. She may even be viewed by the society in a very negative light and described variously as a spoiler, not submissive to authority, disrespectful, even immoral and corruptive of the ‘good’ girls in the community. This position may somewhat provide the answer to the question of why some of our customs which infringe on the rights of the girl-child go unreported and still hold sway in many parts of the Niger Delta. The problem is that the girl child who is at the receiving end of violations is conditioned by the same society to think that reporting the violators who may be her father or brothers is a thing of shame and will bring ridicule to the family name, coupled with the fact that she may also be treated as a dissident, a wayward person and as an outcast.

Human rights issues in most communities in the Niger Delta are farfetched to the inhabitants grappling with the immediate problems of survival in a harsh environment, such as satisfying the immediate physical needs of food and shelter which are actually recognizable fundamental rights but of course are not viewed as enforceable rights to the greater majority of these persons. This scenario results from the fact that current discussions on gender rights and human rights are generally mostly media driven and urban centered. Also, discriminations against the girl-child and infringements of her human rights are oftentimes cloaked by rules of customary law. So, the girl-child faces a situation where in one breath her fundamental rights are guaranteed under the Constitution, regional and international instruments, and in another breath those same rights are ignored and even destroyed by customs and traditions. Which way does the girl-child turn; is it solely to the Constitution or to customary law which appears to support and

²⁸ *Op.cit* ,20.

even reinforce the inequalities and disabilities women suffer in society? Can she really choose to ignore the customary practices in her community? Does she have the liberty to do so?

Enormous literature has been turned out by scholars promoting and protecting our cultural values through various customs and traditions which distinguish peoples and groups. Inherent in these customs and traditions are certain behaviours which are inimical to the fundamental rights of the people. For instance, the insistence of communities on early girl marriages works against her right to education and self dignity. Early marriages take away the girl-child's liberty as a human being, turning her into a sexual tool to be exploited at a tender age (even by older men) when she has not fully understood the essence of life. And this has the effect of denying her the right to achieve her full potentials in life and the making of deliberate choices in the exercise of her will. Some of our customary practices such as the female genital mutilation are downright harmful and can lead to the girl-child's untimely death. They are actually affronts on her right to privacy, the dignity of a human person and right to life. Her reproductive rights are trifled with when she is forced to marry anyone for whatever reason and made to go into motherhood even when her physical body is unprepared for such a process, leading to many cases of *Vesico Vaginal Fistula* (VVF) and possible death or ostracism.

Discriminations against the girl-child are counter-productive to national development. The marginalization of the girl-child which is sanctioned by certain unwholesome customs kills initiative, skill and knowledge. The preference of most parents under our patriarchal system for a male child over the female has its negative consequences on the economy as the girl-child from infancy is shut out of maximizing her potentials and contributing to national development. And because she is not allowed access to western education, she may just be permitted minimal education even where great aptitude for academics is displayed because of the cultural notion

that she is wealth to be inherited by another family upon her marriage and so investing in her educational improvements would be a wasted effort.

The girl-child experiences peculiar discriminatory practices despite constitutional protection. The problem sought to be investigated by this research bothers on infringements particular to the female gender; and the extent they are denied or glossed over by Governments and the Society whose acceptable norms are skewed in favour of the man in a male dominated culture. And also with the resultant effect of treating such human rights abuses as the norm and sanctioned by custom and tradition. Most Nigerian customs and traditions threaten the development of the girl-child. Certain deep seated cultural practices which have not been effectively dislodged by the Constitution like the early marriage, disinheritance of widows and the girl-child impede the enforcement of their human rights.

This research thus seeks to investigate the persisting gender discrimination in Nigeria despite the presence of both national and international legal instruments to the contrary. What is to be done about these customary laws which are diametrically opposed to the laws protecting the human rights of the girl-child and which continues to be applicable though rendered void by the express provisions of the Constitution? Should customary laws which directly interfere with the rights of citizens not be identified, directly and specifically excluded by our Constitution?

This research thus attempts to examine the issue of a possible disconnect between national, international laws and our customary laws which are still very much applicable in our communities. With the exception of the injunction to our High courts not to apply and administer customary laws that are repugnant to justice, equity and good conscience not much is said about the weight and legal force that is attached or should be attached to our customary laws or aspects of our lives that should be regulated by customary law. In fact, our Constitution clearly provides

for the application of customary law in areas that they are so recognized as law and so are applicable. The nature of customary law which is fundamentally not uniform across Nigeria make the task of isolating customs unfriendly to the protection of human rights difficult and cumbersome. It is the true position that customary law described as ‘grassroot’ laws hold sway in most of the Niger Delta communities despite the copious national and international laws protecting the rights of the girl child. The geographical location of some of these communities even make access to law enforcement agencies difficult so that superstition based on cultural beliefs become the order of the day much more than the provisions of the Constitution, or the African Charter or the United Nations Resolutions.

There is thus the need to study these customary laws and re-establish the position of our laws on the rights of the girl-child. This work would also examine and juxtapose the position of the identified customary laws on the rights of the girl-child vis-à-vis Constitutional and International provisions as well as analyse possible challenges to the application of girl-child rights and also discuss the prospects of their proper application. The research thus attempts to answer the following questions namely:

1. Are our customs and traditions which form the basis of our customary laws actually supportive of constitutional and other national and international legislative instruments establishing and promoting the rights of the girl – child?
2. How does customary law reflect and reinforce the human rights position of the girl-child in the Niger Delta?

1.3 Purpose/Objectives of Study

This research therefore seeks to identify the cultural laws applicable to the Niger Delta, and isolate those laws that are working against the proper application of the rights of the girl-child. It

will also identify the established rights of the girl-child, examine the challenges to the exercise of those rights and suggest a plan of action for the proper enforcement of the girl-child rights in the Niger Delta.

This research therefore seeks to do the following:

1. to appraise the concept of customary law and its role in the maintenance and protection of the girl-child rights. Examine the customary law applicable in the Niger Delta area, its role in protecting the rights of the girl –child or its denial of the inalienable rights of the girl-child and the extent of denial and non recognition of these rights.
2. to highlight the fundamental rights of the girl-child. To investigate the provisions and application of the basic rights of the girl-child in addition to examining her strategic needs of access, participation and representation in decision making particularly decision making that affects the quality of their lives.”²⁹
3. to highlight different customary practices in the Niger Delta that negate and violate the right of the girl-child. To explore the manner in which discriminations of the rights of the girl-child supported by customary law may be identified and eliminated.
4. analyze the rights of the girl-child as species of human rights and discuss probable abuses of these rights. To examine the role of customary law in the non application of the human rights of the girl-child in the Niger Delta which has been the task confronting various feminist jurisprudence which seek to “unmask the traditional and often ignored inequalities in society

²⁹ *Op.cit*, 23.

which are supported by law; and to suggest in differing ways-the manner in which such continuing inequalities may be redressed.”³⁰

5. examination of the challenges facing the application of girl-child rights in the Niger Delta. And to suggest ways of overcoming human rights violations in the Niger Delta by examining the role of Law Enforcement Agencies and other organizations in the promotion of child rights.

6. to underscore the areas of reform in our laws to ensure the protection of girl-child rights.

1.4 Methodology

This research adopted the doctrinal method of obtaining information and data. The research method adopted to solve the problem identified above involves the collation and analysis of relevant materials on the subject matter derivable from primary and secondary sources such as domestic and international statutes especially the 1999 Constitution of Nigeria and the Child Rights Act 2003, Law Journals and Commentaries, Law textbooks, Law Reports, Conference papers, other publications as well as Internet sources; and the description and examination of relevant customary laws applicable in the Niger Delta region. In addition to the above, the researcher conducted oral interview of some persons from the Niger Delta on the cultural laws applicable in the area, especially on how it relates to the girl-child was adopted. The reports of these interviews form secondary sources of information describing the customs particular to the peoples of the Niger Delta.

³⁰ H Barnett, *Source Book on Feminist Jurisprudence* (London: Cavendish Publishing Ltd, 1997) p 59.

1.5 Scope of Study

This research is on “Customary law and the Rights of the Girl Child in the Niger Delta: Challenges and Prospects. The geographical scope of this study is the Niger Delta area of Nigeria although references shall be made to other parts of Nigeria and the world. In this work, the Niger Delta would be limited to States of Rivers, Bayelsa, Akwa Ibom, Cross Rivers, Delta, Edo, Abia, Imo and Ondo States. References may however be made to other States in Nigeria and other jurisdictions to highlight similarities and differences in the application of customary law. In this work the girl-child rights considered shall include women rights and child rights in Nigeria. And the basic laws that would be considered in this work are domestic legislations such as the Child Rights Act 2003, the Constitution of the Federal Republic of Nigeria 1999 etc, regional instruments such as the African Charter on Human and Peoples Rights, African Charter on Women and Children’s Rights and other international instruments and Conventions.

1.6 Significance of Study

This research on the rights of the girl-child in society is not new and neither is the study of cultural influences on the rights of the women and children. This study however broadens the frontier of knowledge on this subject matter by giving more attention to the Niger Delta. It scrutinizes the available forms of customary laws operational in the area and the extent to which the law protects the rights of the girl-child in the Niger Delta. It also seeks to highlight possible constraints to the application of these rights and suggest ways of improving the human rights record in the zone.

This study lays a further foundation for studies concerning women and gender rights in the Niger Delta. It will examine the specific gender issues and challenges faced by the girl-

child in the Niger Delta region and provide useful information on the peoples of the Niger Delta which will be of immense benefit to the public, the judiciary and the academia especially as most of our customary laws are not documented. The work will provide a ready tool for the various customary courts and customary courts of Appeal in the task of applying relevant customary laws in cases between parties before them. In addition, it will help to highlight aspects of our customary laws that are in conflict with the human rights of the girl-child. This research will accomplish the following:

1. It will enlighten the government groups, private persons and the international community on aspects of the cultural laws applicable in the Niger Delta that are inimical to the application of child rights in the area. It will contribute to knowledge on the issue of gender disparity and injustice to the girl-child despite available laws to the contrary.
2. The research will assist Human Rights groups and Agencies, International Organizations to be better acquainted with the challenges facing the application of child rights in the Niger Delta so as to proffer better and lasting solutions to problems of injustice and discrimination of the girl-child.
3. It will assist government at all levels to formulate more sustainable policies and set up programmes that would ensure the achievement of the Sustainable Development Goals regarding elimination of all forms of discriminations and thereby enhancing the economic development of the country.
4. It will assist the National Assembly seised with the responsibility of making laws to appreciate the peculiar challenges and needs of the girl-child; and to take proactive steps through the enactment of laws to proscribe customs that are diametrically opposed to the promotion and application of human rights.

5. The significance of this work stems from the fact that most of the customs and traditions of the peoples of the Niger Delta which are the source of violations of the rights of the girl-child are not codified and reported; and this research will thus highlight some of these practices and make a case for the expunging of such customary laws. This work thus highlights the peculiarity of the Niger Delta with regard to the rights of the girl-child.

This work will make a case for the proper use or application of customary law on established constitutional rights.

6. It will create awareness about the deep rooted discriminatory challenges facing the girl-child and to recommend policies to help ensure parity of gender, and empowerment of the girl-child for national development.

7. This study will add value to the Nigerian corpus juris because beyond the jurisprudential contributions, it creates a new understanding to the challenges faced by the girl-child in the different areas of the Niger Delta. It would thus help to build up the body of our customary laws beyond the known frontiers.

8. The peculiarity of the study may help the process of creating enabling laws that would radically change the legal condition of the girl-child in Nigeria vis a vis current trends.

1.7 Limitation of Study

One challenge faced by the researcher is the fact that there are no specific domestic or international legislation on the girl-child rights. The rights of the girl-child were gleaned from other instruments on women and child rights, the Constitution etc.

Another limitation encountered is the absence of a statutory definition of the girl-child.

1.8 Literature Review

There are abundant literature on human rights, gender rights, gender based violence, discriminatory practices and customary law. The researcher however did not see any scholarly work that directly dealt with customary law and the rights of the girl-child in the Niger Delta except a research proposal³¹ on the consequences of child abuse in Nigeria; a case-study of the Niger Delta area. Some of the literature examined discussed the disturbing negative influence of custom and tradition on the protection of the human rights of women generally with no specific reference to particular customary laws in the Niger Delta and the rights of the girl-child in the area. An attempt is made to review some literature relevant to the topic under discussion. Some of the literature reviewed include the works of Ikpeze, Ogugua V C,³² L. M. Wambua³³ Ann-Marie Mooney Cotter,³⁴ Fareda Banda,³⁵ A S Annad,³⁶ Hilaire Barnett,³⁷ Mamta Rao,³⁸ Felicia Anyogu³⁹ Adanma Madu,⁴⁰ Yinka Olomjobi,⁴¹ De silva de- Alwis⁴² etcetera.

Ikpeze⁴³ examined the gender dynamics of inheritance rights in Nigeria as according to her gender “influences the distribution of power, status, access to economic resources such as

³¹ F Itulua-Abumere, 'The Consequences of Child Abuse in Nigeria: A Case Study of Niger-Delta Region' cited in <https://www.researchgate.net>>publication accessed on 23/7/16.

³² *Gender Dynamics of Inheritance Rights in Nigeria Need for Women Empowerment* (Onitsha: FOLMECH PRINTING & PUB CO. LTD, 2009)pp 1- 326.

³³ L.M. Wambua 'Gender Issues Affecting the Girl-Child in Kenya' (February 2013, Vol. 3, No 2, International Journal of Humanities and Social Science)

³⁴ *Gender Injustice: An International Comparative Analysis of Equality in Employment* (England: Ashgate Publishing Limited, 2004)pp 1- 295.

³⁵ F Banda, *op.cit*

³⁶ *Justice For Women Concerns and Expressions* (2nd Edition, Delhi: Universal Law Publishing Co PVT. Ltd, 2003) pp.1- 271.

³⁷ H Barnett, *op.cit*

³⁸ M Rao, *op. cit.*

³⁹ F Anyogu, *Access to Justice in Nigeria: A Gender Perspective* (2nd edition, Enugu: Ebenezer Productions Ltd. (2013) pp.1- 497.

⁴⁰ A C Madu, *Women Empowerment. Its Relation To National Development and Human Rights*, (Snaap Press Ltd, 2010).pp. 1- 205.

⁴¹ Y Olomjobi, *Human Rights on Gender, Sex and the Law in Nigeria* (Princeton Publishing Company, 2013) p.10

⁴² R De Silva-de-Alwis, 'Child Marriage and the Law,' Legislative Reformatory Paper Series-Division of Policy and Planning, January (2008) p.17

⁴³ *Op.cit*

land...” To her, gender affects everything in society as “it pervades every sphere of social, economic, cultural as well as ideological relationships.” She equally examined the concept of inheritance in detail which she stated to be essentially the same as succession but went on to distinguish them. According to her, while inheritance concerned the possession of a dead person's property by the living, succession concerned “acquisition of rights or property by inheritance under the law of descent and distribution.” Succession primarily had to do with the distribution of a deceased person's property to his heirs. She went further to examine inheritance as a human rights issue; and concluded that the inheritance rights cut across the first, second and third generations of human rights. She considered women's inheritance rights and posited that most human rights instruments are gender neutral but that this neutrality created room for discriminatory interpretations against women whose rights to empowerment and development were not acknowledged.

Lamenting on societal attitude to inheritance issues concerning women, she stated that it is a man's world and the males dominate every given society and that this attitude is a barrier to ensuring and actualizing human rights of women globally. While enumerating factors that can impede inheritance rights as patriarchy, negative customary practices, religion, and ignorance she reiterated that the effects of patriarchy is that it encourages male dominance over the female and as a result impedes the achievement of the woman's economic goals. She examined international instruments protecting a person's inheritance rights such as CEDAW and ACHPR and stated the effects of denial of the female's right to land to be economic, social and psychological. She equally examined inheritance under various customs in Nigeria including some tribes in the Niger Delta which is the focus of this work. However, whereas her focus was on inheritance rights, this research focuses on the role of customary law on the rights of the girl-child generally.

In the same vein, Wambua⁴⁴, writing on gender issues in Kenya examined the experiences of the girl-child in Kenya where he identified certain gender issues which affect the girl-child in Kenya to include female genital mutilations, early marriages, sexual abuse, girl-child school drop-out as educating the male child is preferred among Kenyan families facing financial constraints etc. While some of the identified violations are not exclusive to Kenya, this work did not consider nor compare customary practices in other parts of Africa.

Anand⁴⁵ in his work centred on women empowerment as a key to achieving Millenium development Goals but with special focus on India. The work acknowledges that despite constitutional provisions and special laws enacted to promote gender justice, the status of women continues to be a cause of concern not only in our country but also in most countries of the world. Creating a nexus between gender equality and societal development he stated that ‘human rights issues which affect women in particular play a vital role in maintaining the peace and prosperity of a just society.’” Reviewing the impact of international instruments such as the UN Charter of 1945, the UDHR 1948, the International covenant on Economic, Social and Cultural rights 1966, CEDAW on prohibition of sex discrimination, she stated that there was still a great reality of gender inequality in India. Continuing, she warned that so long as there is disparity between the male and the female in education levels, the difference between the position of men and women would continue to exist with women given subordinate roles to play in their homes and society. Describing the gender gap in education as unconscionable, the work encouraged the countries to pursue the specific MDG targets of eradicating poverty and hunger, achieving primary education, promotion of gender equality and empowerment of women. The work went

⁴⁴ L M Wambua, ‘Gender Issues Affecting the Girl-Child in Kenya’ (February 2013, Vol. 3, No 2, International Journal of Humanities and Social Science) p.12.

⁴⁵ A S Anand, *Justice For Women Concerns and Expressions*(Second Edition, Delhi: Universal Law Publishing Co. Pv,Ltd, 2003)pp 1-271

on to identify education as the key to empowerment and recommended the need to create awareness among women about their rights and responsibilities. This work equally traced the major cause of discrimination and violence against women to the patriarchal social order which elevated qualities of maleness over femaleness.

Cotter in her work on Gender Injustice gave particular focus on gender equality and the importance of the law to combat discriminations against persons in society. She examined the concept of gender injustice globally and posited that “around the world where women have won greater equality, the benefits to development have been enormous.”⁴⁶ She acknowledged that fundamental rights are inherent in a person or instituted in the citizens by the State. In examining the issue of gender injustice, she opined that “gender discrimination in the labour market involves the unequal treatment of men and women, affecting remuneration and access to employment.” She concluded that “the globalization process and various economic agreements have a direct impact on women’s lives as key players in the labour market today.”

In establishing gender injustice in Europe and America, she compared the impact of two major trade agreements namely, the North American Free Trade Agreement and the European Union Treaty and found out that while the American agreement made greater gains in civil rights, the European Union made greater impact on the enforcement of human rights much more than that of North America. She also opined that gender justice and equality impacts greatly on the developmental processes of countries and that ‘women are getting to the top more than ever before, succeeding in jobs and making a difference in local and national governments. She however acknowledged that despite the progress made, “gender injustice still pervades.” She recommended amongst others that women should be integrated into the decision-making process

⁴⁶ *Op.cit.* 2

of every country to guarantee gender justice as well as rights to freedom of expression and association, equal right to access to information to ensure that women voices are heard.

Some of the incidence of gender injustice is what she termed ‘gender pay gap’ as the average woman earns less than a man and there is a clear under-representation of female employees in the higher skills and higher earning positions such as managerial, professional and technical occupations.” She conceded that even when women work in the same sector as men, wages are typically lower. Also, that although gender gap over the years is reducing due to increased school enrolments of boys and girls, she opined that girls are more likely than boys to discontinue their schooling. The reasons advanced for this position by the writer include household duties, early marriage and child bearing, parents perceptions that education is more beneficial for sons...

The work of Cotter on gender injustice in relation to issues of equal pay and access to employment though it touched Africa was specific on South Africa and made no direct reference to gender injustice in Nigeria nor to the role of customary law on the rights of the girl-child specifically. The writer however pointed out that women play a vital but often unrecognized role in Africa as food producers, carriers of water, collectors of fuel wood, processors of food, caretakers of children and the elderly and often times the primary earners of cash incomes. Going further she lamented that although most African countries Constitutions prohibit discriminations, the extent of protection varies according to “entrenched attitudes and practices as well as limited resources limiting the practical effect of these.” This position is correct and applicable to Nigeria.

Olomjobi on the other hand examined the discriminatory attitudes of the society on their women and concluded that they were borne out of the socialization process. To her gender concepts, inequalities and hierarchies are the roots of violence against women as they “stem from

the idea that certain qualities, behaviours, characteristics and roles are natural for men while other qualities and roles are natural for women.”⁴⁷ This culturally perceived ideas of whom a man is, his role, position and importance in the community has fuelled discriminatory and unjust practices against women. Olomjobi agrees that “men are not innately discriminatory towards women and children; rather they become discriminatory as a result of beliefs and norms about what it means to be a man.” This position underscores the effect of the acculturation process which shapes the character and biases of persons in society over time. In her work, she concentrated on discriminations against women and children generally as the vulnerable members of the society. She did not give any particular and special attention to the girl-child rights. Also while conceding that cultural ideas fuel discriminations against women and children, she laid the blame for such situations squarely on the acculturation process which from infancy taught both the male and female child alike of their different roles in society with the male roles superior to the female roles.

De Silva-de-Alwis⁴⁸ in her work views child marriage as a violation of the rights of the girl-child to be free from all forms of discrimination, inhuman and degrading treatment and slavery. She described child marriages to be those in which a child of less than 14 years is joined to an older man who may even be old enough to be her father and that such marriages are usually forced on the girl-child upon the payment of agreed terms. She examined such marriages in relation to the rights of the girl to be free from any degrading treatment. She also examined the role of the law in protecting the rights of the girl. In her work she analyzed the different legal frameworks and human rights dimensions of child marriages pointing out that early marriages are a violation of the fundamental human rights of the girl. Continuing she stated that State and

⁴⁷ Y Olomjobi; *op.cit* 27.

⁴⁸R De Silva-de-Alwis, ‘Child Marriage and the Law,’ Legislative Reformative Paper Series-Division of Policy and Planning, January (2008) p.17.

non State actors are both held accountable under international treaty obligations to combat early marriages. Her work which was limited on child marriages did not give much attention to other forms of violations of the rights of the girl-child and especially did not consider violations borne out of customs and traditional practices which still hold sway in many communities in Nigeria.

Barnett⁴⁹ in her work, centered on the modern feminine quest for equality which she traced to the earliest 18th century and involved identifying and campaigning for the removal of legal disabilities of women. In providing data on the position of women as generally provided by United Nations Reports especially dealing with treatment of women in different parts of the world as a result of cultural norms, the role of patriarchy and gender on women rights issues, she also considered how the law reflects and reinforces gender based inequalities, and gave an extensive study of violence against women, the treatment of women in the legal system and the status of women under international law. A central theme that runs through the work is the inferior position of women throughout the world. She made a case for the reproductive rights of women so that they can have the right and “means to regulate their childbearing which will enhance their ability to shape their own lives.”⁵⁰ The writer acknowledged that “issues of gender equality are moving to the top of global agenda but that better understanding of women’s and men’s contributions to society is essential to speed the shift from agenda to policy to practice.”⁵¹ Also, the writer contended that “agencies and institutions of government rather than contributing to the promotion and respect of human rights...were themselves instruments of the violations of human rights.”⁵²

⁴⁹ *Op.cit*

⁵⁰ *Op.cit*, p 5.

⁵¹ *Ibid*, p 11.

⁵² *Ibid*, p 14.

Furthermore, the issues of cultural universalism and relativism discussed by Barnett⁵³ appear to explain the continued interference of custom and tradition in the guaranteed rights of persons in a country to the point that they are readily deployed to regulate lives even on issues that have expressly been proscribed by the constitution. According to the learned writer, in some climes which permit cultural relativism, customary laws of these areas are recognized by their Constitutions but they are not fettered by considerations of non-discrimination or equality before constitutional provisions, or the Universalist theory which recognizes customary law and also provides for equality and non discrimination of persons before the law. The work also demonstrated how religious and cultural influences have been fundamental in establishing contemporary legal mores while investigating social and legal discriminations, and inequality; and how they are addressed by feminist jurisprudence.

To the writer, patriarchy has to do with “male power, control and dominance- and represents a powerful reminder of female exclusion and powerlessness.”⁵⁴ It describes a form of social organization which recognizes the male as the head of the family in addition to tracing kinship, title and descent along the male rather than female line. Inherent in such a patriarchal system operational in most parts of Nigeria, is the idea of the male superiority, and this fact especially distinguishes and emphasizes the differences between men and women with men having “superior physical strength and taking control of public life, law and government while women became relegated to the private domain of home and family.”⁵⁵

Banda⁵⁶ focused on the human rights of women in Africa and the treatment of the law. However, positions⁵⁷ have been canvassed that human rights should not be treated as a global

⁵³ H Barnett, *op.cit.*

⁵⁴ H Barnett, *op.cit.*, p. 23.

⁵⁵ *Ibid.*

⁵⁶ F Banda, *op.cit.*

concept as it is actually a western concept; thus “leading to reflection of particular continental perspectives in the regional human rights instruments.” The universality of human rights issues is not in doubt. It is however important to note that issues of justice and equity inherent in human rights considerations may sometimes be particular to some areas, so in as much as some African customs may be described as barbaric and repugnant to natural justice, equity and good conscience, they may be based more on western ideas of justice rather than African; and it is not everything African that is evil and should be discarded, as there are several positive aspects of the African culture which have kept its peoples together. Viewing African customs from a western lens creates a problem. It follows that sometimes a customary law is termed repugnant on considerations other than African. Banda describing how foreign law became the general law in colonial Africa stated that the native laws were not recognized as laws. In most cases the colonialists refused to treat customary law as laws⁵⁸ as they were described as “the repugnance as it is assumed, referring to British Victorian sensibilities.”⁵⁹ So the repugnancy or otherwise of our customary laws depend largely on western values, Christian morality and doctrine.

Rao’s work on Law relating to Women and Children presents deep insights into personal laws relating to women, law relating to crimes against women, law pertaining to the protection of children, constitutional protection and international commitments to women and children’s rights. The writer supported the position of Bunch⁶⁰ that “human rights instruments and mechanisms provide avenues for challenging the systemic abuse of women. In discussing international commitments to the fight for the protection of human rights, she emphasized the

⁵⁷ F Ougergouz, *The African Charter On Human and Peoples’ Rights*; (Leiden, Brill Publishers; 2003) p.11.

⁵⁸ T Bennet, ‘The Equality Clause and Customary Law’(1994)10 *South African Journal on Human Rights* 122 ,where he described the British treatment of Customary law in South Africa thus; “initially the British administration in Cape Colony refused to recognize native law, regarding it as ‘pre-legal custom’ before it gained grudging recognition as Bantu Law. And he contended further that at no point was customary law in Pre-independence South Africa ever treated as equal to Roman- Dutch law.

⁵⁹ F Banda, *op.cit* p.16.

⁶⁰ C Bunch, *op. cit.* 13.

impact of the United Nations Universal Declaration of Human Rights of 1948 which since its adoption has exercised a powerful influence both nationally and internationally. Other international commitments discussed are the Convention on the Political rights of women 1953, Convention on the Nationality of Married Women 1957, Declaration on the Elimination of Discrimination against Women 1967, and the Convention on the Elimination of Discrimination Against Women 1979.

The work of Rao⁶¹ centered on India, and especially discusses gender equality and protection under the Indian Constitution. Her position on the subject is encapsulated in the court's pronouncement in *Madhu Kishwar v State of Bihar*,⁶² that "half of Indian population is women. Women have always been discriminated against... they have been subjected to all inequities, indignities, inequality and discriminations" Going further, she stated that though the women had similar political and economic rights as the men in the Indian constitution, "it has had little effect as they are negligently represented in politics due to illiteracy, lack of political awareness, physical violence and economic dependence."⁶³ The writer dwelling on issues of fundamental rights however commended the framers of the Indian Constitution for being conscious of the unequal treatment and discrimination of the female species by including "certain general as well as specific provisions for the upliftment of the status of women"⁶⁴

Mullally's work presents rich literature on gender rights. It considers the feminist theory which is in opposition to universalism and discourses of human rights, and makes a case for the human rights discourse arguing for feminism that should reclaim universalism while reconstructing the theory and practice of human rights. Her work is actually a scholarly

⁶¹ M Rao, *op.cit*

⁶² (1996)5 SCC125.

⁶³ Rao, *op.cit.* p.65.

⁶⁴ *Ibid*, p. 66.

reflection on aspects of human rights especially with regard to women. She concedes that feminist legal theory falls within “the liberal paradigm but in recent years have taken a relational turn...” In this light, she considered Carol Gilligan’s feminist ethics of care, Catharine Mackinnon’s radical feminism⁶⁵ and post modern feminisms. An example of Carol Gilligan’s feminist ethics of care showed a female mode of moral reasoning based on caring and the maintenance of relationships; and the masculine code of rights and rules which she argues has been defined by a limited and partial view of human interaction. She further posited that “women are brought up from the earliest years in the belief that their ideal of character is the opposite to that of the men; “not self-will and government of self control but of submission and yielding to the control of others”⁶⁶

The argument of Mackinnon on the other hand is that any special ability women may have for caring and connection can be attributed to the negative aspects of subordination as “women value care because men have valued us according to the care we give them.” Mackinnon goes further to theorize that “gender is not only the way in which women are differentiated from men, it is also the way in which women are subordinated to men.” She criticized human rights movements and practice which emphasized ‘abstract rights’ as according to her, these rights authorize the male experience of the world rather than preferring domestic civil rights movements which can contribute to social change in a way that human rights movements cannot because they provide “direct civil remedies for harms suffered; distribute power from government to people as well as redistributing power among people...”⁶⁷

⁶⁵ C A Mackinnon, *Feminism Unmodified Discourses on Life and Law* (Cambridge: M.A Harvard University Press, 1987) p. 39.

⁶⁶ J S Mill, ‘On the Subjection of Women’ cited in S Mullally, *Gender, Culture and Human Rights: Reclaiming Universalism* (Oxford and Portland, Oregon: Hartland Publishers, 2006) p.41.

⁶⁷ *Ibid*, p.14.

Meanwhile Madu has recommended that Nigeria can advance the enforcement of human rights in the country through its Constitution which “should outlaw all laws, customary and traditional practices which violate the human rights of citizens.”⁶⁸ This would be in line with the provisions of the various global and regional treaties, Conventions, Charters, and Protocols to “affirm the inherent dignity, the equal and inalienable rights of all human beings irrespective of sex, race or class.”⁶⁹ Commenting further, the writer stated that some international instruments, Conventions and Protocols on the rights of women such as the Convention on the Elimination of All Forms of Discriminations against Women (CEDAW) and the African Charter on the rights of women in Africa impose a duty on member States to introduce laws and even amend State laws to give effect to agreed provisions. Continuing, the writer stated that the human rights of persons in Society are the aggregate of attributes showcasing the essence of human life. They display and protect human life and worth, making notable distinctions between man and other animals.

Human rights posit that persons despite their colour, geographical location, level of refinement and education have and should enjoy certain rights as human beings coupled with the fact that such rights should be collectively protected from violations by all through the instrument of State power. “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control”⁷⁰

In Nigeria, institutional, attitudinal and cultural constraints faced by citizens and State agencies as they worked to promote respect for fundamental human rights were examined by a National Political Reform Conference on Human Rights and Social Security which analyzed the

⁶⁸ Madu, *op.cit.* p. 22.

⁶⁹ *Ibid*, p. 1.

⁷⁰ Art 25, Paragraph 1, Universal Declaration of Human Rights (UDHR) 1948.

status of fundamental human rights and the rule of law in Nigeria. The Committee focused its attention on the fundamental rights of four critical groups namely; (i) all citizens (ii) women (iii) persons with disabilities; and (iv) ethnic minorities...⁷¹

Fundamental rights are universal rights which belong to all persons by virtue of the fact of their being human beings. These rights are inherent in persons and so are not granted by any country's legislation but are merely recognized, adopted, declared and upheld by Constitutions and Bodies. These rights are civil, political, economic, social and cultural rights,⁷² and are not transferable rights since they spring forth from the human person. They are inalienable and so should not be denied by any group or government. These rights emanate from the notion of the dignity and worth of the human person, and which notions should be protected to ensure continuity of life hence the recognition of a person's right to life and liberty. Human rights are fundamental but they acquire the force of law when adopted by legislative instruments of nations.

In Nigeria many International Conventions and Protocols on the gender rights and protection have not been ratified nor domesticated. This Nigerian position becomes very limiting to a peoples' exercise of universal rights.

It has been observed that:

Even the fundamental human rights provisions enshrined in Chapters 11& IV of the 1999 Constitution of Nigeria as currently defined and practiced, are restrictive and not wide enough to accommodate the

⁷¹ Report of the Committee on Human Rights and Social Security: National Political Reform Conference, May 2005.

⁷² Universal Declaration of Human Rights (UDHR) 1948.

wider view and concepts of the third generation definition of human rights as is universally the case.⁷³

In Nigeria, issues bordering on enforcement of human rights have been discussed in different fora. It is generally agreed that the fundamental rights provisions under Chapter II of the 1999 Constitution attract great difficulty of enforcement as they are not justiciable. They are not strong and do not sufficiently commit the State or its agencies to honour its obligations and responsibilities to the citizen.

Nnadi⁷⁴ in her article centred on patriarchy and culture as causes of gender based violence stated that among the Igbos of Nigeria their presence in society has ensured the continued violations of the rights of women, while Igwe & Akolokwu defined patriarchy as “a familial-social, ideological, political system in which men by force, direct pressure or through ritual, tradition, law and language, customs, etiquette, education and the division of labour determine what part women shall or shall not play and in which the female is everywhere subsumed under the male” directly impacts on the human rights of the girl-child. Continuing on the role of patriarchy in the violations of human rights of women in Nigeria, they⁷⁵ stated that:

the practical concrete reality is that all the human rights of women are violated in one form or the other in Nigeria on the grounds of masculine sexiest cultural and traditional beliefs and practices despite the fact that Nigeria is signatory to numerous international human rights instruments on the human rights of women.

⁷³ *Op. cit.* 13

⁷⁴ I Nnadi, ‘Patriarchy and Culture, The twin Pillars of Gender-Based Violence- A Case study of Igbo Society of South Eastern Nigeria,’ in Port Harcourt Law Journal, Vol. 6 No 1, (2014) where she stated that “patriarchy and culture are two causes of violence against women among other causes.”

⁷⁵ *Ibid.*

Continuing, they stated that “the patriarchal family system in Nigeria constitutes cultural impediments to gender equality as well as to the promotion, protection and enjoyment of fundamental freedom and human rights of the female homo sapiens.” Patriarchy, an ideology that preaches male dominance and superiority has over the years in most African Countries been the bane of the enforcement of the rights of women. Inherent in the discussions concerning the rights of the girl-child in the Niger Delta are the twin challenges of custom and patriarchy which treat the girl child as a second class citizen whose rights are sometimes trampled upon through various forms of abuses. Violence is one weapon of the male specie to subjugate the female.

In fact:

Violence against women is said to be both universal and particular.

It is universal in that there is no region of the world, no country, no culture in which women’s freedom from violence has been secured. The pervasiveness of violence against women across the boundaries of nations, culture, race, class and religion point to its roots in patriarchy- the system of domination of women by men...⁷⁶

This research surmises that a second notable hindrance to the protection of the rights of the girl child in Nigeria is some provisions of customary law borne out of our various customs and traditions. Infringements of human rights especially the various discriminations against the girl-child are borne out the peoples’ customs and traditions although no custom which a party seeks to rely upon in a judicial proceeding shall be enforced as law if it is contrary to public policy and are not in accordance with natural justice, equity and good conscience as was stated in

⁷⁶ United Nations, ‘Ending Violence Against Women; From Words to Action;’ Study of the Secretary General, United Nations, (2007) p. 28.

Omaye v Omagu.⁷⁷ On the application of local custom, the various High Court laws of the States provide for its observance by the courts. Specifically, “the Court shall observe and enforce the observance of every local custom and shall not deprive any person of the benefit thereof except when such custom is repugnant to natural justice, equity and good conscience or incompatible either directly or by its implication with any law for the time being in force.”⁷⁸

Customary law is “the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. In *Mashuwareng v Abdu* customary law is described as regulatory in that it controls the lives and transactions of the community subject to it.”⁷⁹ Customary law is saved by the Constitution of Nigeria as an existing law.⁸⁰ The Nigerian Customary law is not uniform but is made up of those native laws applicable in Nigeria which are informal and unwritten agreements.⁸¹ Describing the nature of customary law, Obaseki, Jsc in *Yussuf v Dada*⁸² stated that “customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions.” It is autochthonous and has been in existence in Africa long before the coming of the European. This law is African law.

According to Eze:

The position of some writers that traditional societies did not possess a legal system was based either on inadequate information or lack of appreciation of the true nature of pre-colonial African societies. He argues further that

⁷⁷ *Op.cit* 5, see S. 14; [2008]7 NWLR, (pt 1087) p. 482.

⁷⁸ High Court Law Cap 62, Laws of Rivers State of Nigeria 1999, S. 18(1).

⁷⁹ *Supra*.

⁸⁰ SS 315(1) and 4(b) Constitution of the Federal Republic of Nigeria (as amended) 1999-“subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this constitution... s. 4(b) states that an existing law means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force...”

⁸¹ Discussions on Customary Law; and especially on Crime and Society in Nigeria available at <http://www-rohan.sdsu> accessed on the 28th of May 2014.

⁸² [1990]4 NWLR, (pt 1499) p. 657.

“law did exist outside the framework of a State in the modern sense. A contrary argument would imply that African societies operated in a legal vacuum before the advent of the Arabs and colonialists; a proposition that is totally untenable⁸³

These laws are mostly applicable in the various communities where they evolved and recognized as binding and regulatory of behaviour by the indigenous peoples. In *Oyewumi v Ogunesan* per Obaseki, Jsc stated that “as a mirror of the culture of the people, I would say that customary law goes further and imports justice to the lives of all those subject to it.”⁸⁴ Customary laws originate from native communities.⁸⁵ It is a body of customs and traditions which regulate the various kinds of relationships between members of the community.

This position is played out in the case of *Awudu v Daniel*⁸⁶ where the court in determining the existence of Jukun native law and custom relating to inheritance of the father’s house decided that a father is bound to provide for his children under Jukun Native law and Custom and so a person cannot dispose of the house which he provided for his children without an alternative provision and without their consent. Once a house is deemed a family house to which the children had lived in and may have started contributing to its further development such a house could no longer be alienated without the consent of children. The Ogba Speaking people of Rivers State in Nigeria have a similar custom which gives every bonafide child of a family the incontestable right to live in the family homestead; and which right can only be denied a person who has committed some heinous crimes like incest, rape and murder.

⁸³ O.C. Eze, *Human Rights in Africa, Some Selected problems*; Nigerian Institute of International Affairs in co-operation with Macmillan Nigeria Publishers Ltd (1984) p. 10.

⁸⁴ (1990), 2 NSCC, (pt II), p.257.

⁸⁵ E.C.Ngwakwe, *African Customary Law: Jurisprudence, Themes and Principles* (Ebony State, Nigeria: Ave Maria Academic Publishers, 2013) p. 92.

⁸⁶ [2005]2 NWLR, (pt 909) pp 206-207.

Customary law is the law relating to the customs and traditions of a group of people. It affects the character, attitude and culture of the people. Customary law is thus a rule or body of customary rules regulating rights and imposing correlative duties, being a customary rule or body of customary rules which obtains and is fortified by established usage and which is appropriate and applicable to any cause or matter, dispute, issue or question in a particular locality.⁸⁷ Customary law is therefore made up of customs, mores, values and traditions which identify the community and in some instances distinguish them from their neighbours although in some areas there may be some overlap of rules. These rules which govern human behaviour and relationships also carry approved sanctions in cases of breach whether willful or inadvertent.

The customary law so recognized by a group in Nigeria, although not being part of the received English law or a product of any competent legislature is enforceable and binding within Nigeria as between the parties to whom they apply. It is the law closest to the norms and values of indigenous African communities; and is a body of rules made of rights and corresponding duties recognized by a particular group and regulating the conduct of persons within that group.

Garner, describes customary law:

As law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practice and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws.⁸⁸

The customary law in question must be known, recognized and accepted by the people to whom they apply as regulatory of their behaviour and binding on them. It is trite therefore to state that

⁸⁷ S.81 Customary Courts Law; Laws of Rivers State of Nigeria, Vol.2, Cap 40, 1999, S. 8 whilst S.2 of the Customary Courts Law of Former Eastern Nigeria defines customary law as “a rule or body of rules regulating rights and imposing correlative duties being a rule or body of rules which obtain and is fortified by established usage and which is appropriate and applicable to any particular matter, dispute, issue or question.

⁸⁸ Black’s Law Dictionary: *op.cit.* 391.

customary law is not uniform across Nigeria because of disparity of language and history of communities. Also the dynamism of societies which are not static but evolving reflect on the applicable laws which may be altered, modified or expanded to accommodate the inevitable changes in the society.

To answer the question of persons who are subject to customary law, the Customary Courts Law of Rivers State provides that:

any person who (a) is an indigene of a place in which a customary law is in force; (b) being in a place where a customary law is in force does an act in violation of that customary law; (c) makes a claim in respect of property or estate of a deceased person under a customary law of inheritance in force in the area of jurisdiction of a Customary Court and the deceased person was an indigene of the place in which the customary law is in force; (d) institutes proceedings in any Customary Court or has by his conduct submitted to the jurisdiction of a Customary Court shall be deemed to be subject to the customary law in force in the area of jurisdiction of that Customary Court.

The characteristics of customary law have been identified by the court in *Ajisua v Aiyebilehin*⁸⁹

to include the following points, namely that:

- i. the law must be in existence
- ii. it must be custom as well as law
- iii. it must be acceptable to all the persons to whom they apply
- iv. it is largely unwritten
- v. it is flexible

⁸⁹ *Supra.*

- vi. it should be universally applicable within the area of acceptability.

The various State High Court laws in Nigeria contain definite provisions which demand the recognition of proven customs as part of our laws, the validity of these customs, the observance and enforcement of same where applicable. The High Courts of Rivers State are for instance enjoined to:

Observe and enforce the observance of every local custom and shall not deprive any person of the benefit thereof except when any such custom is repugnant to natural justice, equity and good conscience or incompatible, either directly or by its implication with any law for the time being in force⁹⁰.

For a customary law to be declared valid and be applicable in an area, it must not be contrary to the provisions of an existing law. A custom which deprives women of constitutionally guaranteed rights, for instance, the right against discrimination and the right to own property in any part of the country would be denied validity on this plank as it would be contrary to the provisions of the constitution of the country. Sections 42 and 43 of the 1999 Constitution provide respectively that

a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person be subjected either expressly by, or in the practical application of any law in force in Nigeria....to disabilities or restrictions...; and subject to the provisions of this constitution,

⁹⁰ Vol. 3, Cap 62 High Court Law of Rivers State, 1999.

every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

This situation was put to the test in *Uke v Iro*⁹¹ where the defendants argued that by virtue of Nneato Nnewi custom, a woman could not give evidence in relation to title to land. The Court of Appeal, per Pats-Acholonu, JCA held that:

The rights of all sexes are protected under the organic laws of the land, hence any laws or customs that seek to relegate women to the status of a second class citizen, thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the gabbage and consigned to history...

The combined effects of Sections 41 and 42 of the 1999 Nigerian Constitution clearly show in the words of the court in *Uke v Iro* that “any customary law which flies against decency and is not in consonance with notions, beliefs or practice of what is acceptable in a court where the rule of law is the order of the day should not find its way into our jurisprudence and should be disregarded, discarded and dismissed as amounting to nothing.”

Another related custom which sought to discriminate and disinherit a woman who could not give her husband a male child and which favoured the inheritance of the deceased estate by his brother rather than the wife was declared to be repugnant to natural justice, equity and good conscience. It is however curious that despite this position of our courts, such practices still thrive in our local communities. In *Mojekwu v Mojekwu*,⁹² the validity of the Olikpe custom of the Nnewi people which disinherited a woman because she did not give birth to a male child was put to test and declared repugnant. “For a customary law to discriminate against a particular sex

⁹¹ [2002] FWLR, (pt. 129) p.1453.

⁹² [1997]7 NWLR (pt 512) p. 281.

is to say the least, an affront on the Almighty God himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the *Oli Ekpe* custom of Nnewi is repugnant to natural justice, equity and good conscience” per Niki Tobi.

In *Motoh v Motoh*,⁹³ the dispute concerned the issue of the proper person to inherit the deceased estate according to native law and custom. The contention was between the purported son of the deceased born out of wedlock and the legitimate wife who had only daughters. The alleged native law and custom of *Umuana Awka* which discriminates against the female child on inheritance was declared repugnant. In the words of the court, “the native law and custom of *Umuana Awka* which discriminates against female children of the same parents and favours the male children who inherits all the estate of their father to the exclusion of their female siblings is repugnant to natural justice, equity and good conscience.”

Customary law which are essentially rules of behaviour accepted by a group of persons to regulate their daily lives and with approved sanctions to deter obnoxious and defiant behaviours are borne out of customs and traditions; twin words which have been identified as “recurrent decimals in issues affecting women in Nigeria... at both local and international fora; they have been identified as the major albatross hanging around the necks of the women-folk.”⁹⁴

Some customs promote superstitions which perpetually keep women-folk down with their rights violated. In fact superstitions of probable consequences of challenges to unprofitable customs have made women nonchalant about infringements of their rights and this inability of victims of gender discriminations, disinterest or refusal to press charges to remedy alleged violations have made the fight for the protection of the rights of the girl-child very difficult as victims would refuse to report infringements for fear of further reprisals. There are various acts

⁹³ [2011] 16 NWLR (pt 1274) p. 474.

⁹⁴ *Ibid.*

proscribed by society and termed criminal by various Statutes with appropriate sanctions for offenders. The acts referred to can of course be committed by males and females alike; even the offences of rape and assault. These offences however have a tinge of being deliberate women human rights violations when they are inflicted on a woman by a man or in some cases even by security agencies for no justifiable reason other than that the victim is a woman whose strength is inferior. The assailant in such situations takes advantage of his superior strength to treat the woman with disrespect and disdain. The subordination and marginalization of women in a patriarchal culture becomes supported by customary law which ascribes a role to women “as the property of their men; a property to be exchanged between men.”⁹⁵

The global concern for the need of gender equality makes the work on the rights of the girl-child and the influence of customary law apt because “in many cultures and societies, the girl-child is denied her human rights and sometimes her basic needs.”⁹⁶ According to Harr, “discrimination and harmful practices against the girl-child vary depending on the cultural context. For instance, intentional abortion of female foetus and female infanticide are common practices in Asia especially India and China, where sons are strongly preferred.”

Customary laws, that is, the body of rules that emanate from the customs of the Nigerian people and thrive in the rural areas have helped to hold down the girl-child from maximizing her potentials. Defined as ‘any system of law other than a common law or a law enacted by a competent legislature in Nigeria, which is enforced and binding in Nigeria as between the parties subject to it in *Zaiden v. K. Molissen FH*,’⁹⁷ the customary laws applicable in parts of the Niger Delta have not promoted women rights. According to Madu, the average “rural woman has been

⁹⁵ J Rifkin, ‘Towards a Theory of Law and Patriarchy’ (1980)3 Harvard Women’s Law Journal, 83.

⁹⁶ R N. Haar; ‘Overview: Rights of the Girl Child’ available at <http://ip.digital.usembassy.gov/st/English/publication/2012/02/201> assessed 10/09/ 2012.

⁹⁷ (1973)11 SC 1 referred to in *Ekeocha v. Ariataraonyenwa* [2009] ALL FWLR (pt.456) 1972 paras D-E.

and is still being exploited politically and economically.”⁹⁸ Her opinion is not usually sought even on issues that concern her neither is she permitted by custom to contribute to family discussions except upon the permission of the males, so that well considered opinions which could have been the solution to the problems discussed are lost.

In discussing the rights of the girl-child in the Niger Delta, it is imperative to support the call made by Madu that the “Nigerian Government as well as the State Governments should declare a State of emergency on the conditions of the Nigerian woman to liberate her from the shackles of poverty, diseases, illiteracy, superstition and evil cultural practices”⁹⁹ Different forms of abuses and domestic violence rob women of their human rights. They are cowed into submission to the superior strength of their male counterparts, and become afraid to speak their minds on issues. A repressive home and work environment become their reality. This ever present threat of violence in the home which may be customarily explained away leaves indelible emotional and psychological marks on the woman.

According to Simon¹⁰⁰ Islamic law is viewed as an aspect of customary law although it is not wholly indigenous because before the advent of Islam in Nigeria, there were already in existence indigenous laws regulating the lives of the persons living in the areas which today are governed by Islamic customary law. Many scholars have argued that Islamic law ought not to be regarded as customary law but as statutory law,¹⁰¹ and that Islamic law can be distinguished from

⁹⁸ A C Madu, *op.cit*; p.10.

⁹⁹ A C Madu, *ibid*, p. 11.

¹⁰⁰ E D Simon, ‘The Niger Delta Region and the Woman’s Predicament: A study of Kaine Agary’s Yellow-Yellow’ (2010) Vol 4, 3b African Research Review: An International Multi-Disciplinary Journal, Ethiopia: 29.

¹⁰¹ J A Yakubu , ‘Colonialism, Customary Law and Post Colonial State in Africa. The Case of Nigeria’ cited in Suzzie Onyeka Ofuani ‘Local Courts and Customary Law: The Case of Nigeria’ in *Legal Pluralism in Africa: A Compendium of African Customary Laws*, E Azinge, A Awah (eds), *Ibid* p.663; A N Modupe & R K Salman, ‘The Economic Rights of Women under Islamic Law: The Obstacles and Challenges in Contemporary Nigeria’ in *Human Rights Review- An International Human Rights Journal*, Vol.3, February 2012, page 121.

ethnic customary law in the sense that the former originated from outside Africa and therefore is not purely indigenous.¹⁰²

Customary law in Nigeria has thus been classified into ethnic or non-Islamic customary law and Islamic customary law.¹⁰³ It differs from tribe to tribe and from place to place and with about 250 ethnic nationalities in Nigeria,¹⁰⁴ there is no uniform set of customary laws in Nigeria but several rules of customary law operating in the different ethnic groups in the country. So for a law to be successfully enforced, the people for whom it was made should be able to relate to it. In *Eshugbayi Eleko v. The Officer Administering the Government of Nigeria* it was decided that for a practice to be regarded as the custom of a people, it must be widely accepted and in fact practiced by the people in question, for ‘it is the assent of the native community that gives a custom its validity....’¹⁰⁵ Customs administered by local chiefs, priests and elders in council metamorphosed into what are, today, regarded as customary laws.¹⁰⁶ Where a custom becomes obligatory, it acquires the force of law and can therefore be regarded as a rule of customary law. A learned author has stated that “in their interactions with one another Africans depend very much on customs. Many of these customs are regarded as “law” in the sense that people either censure the breach of any of them, or implicitly approved of them.”¹⁰⁷ Customary law is seen as

¹⁰² E Azinge ‘Codification of Customary Law - A Mission Impossible?’ *ibid*.

¹⁰³ D Olowu, F Lasebikan ‘Sources of Law in Nigeria’ in *Introduction to Nigerian Legal Method*, A Sanni (ed) *ibid* 252.

¹⁰⁴ B C Uweru, ‘The Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism’ p290 < www.ajol.info/index.php/afrrrev/article/viewFile/41055/8479 > accessed 15th April 2014; Suzzie Onyeka Ofuani ‘Local Courts and Customary Law: The Case of Nigeria’ in *Legal Pluralism in Africa: A Compendium of African Customary Law* E Azinge, A Awah (eds) (Lagos, Nigerian Institute of Advanced Legal Studies 2012) p.659.

¹⁰⁵ (1931) AC 662 at P673.

¹⁰⁶ Justice I A Umezulike, ‘Development of African Law Through the Courts’ in *Legal Pluralism in Africa: A Compendium of African Customary Laws*, E Azinge, A Awah (eds), *Ibid*, p.547.

¹⁰⁷ R.K Salman, *Ibid*, 4.

“no more than the sum parts of a selective presentation of claims by African male elites/elders and a selective understanding of said claims by male officials”¹⁰⁸

Alkali Umar¹⁰⁹ examined the provisions of the Child Rights Act 2003 and argued that they were in conflict with Sharia law and so cannot be adopted as law in the northern part of the country. Although both the Child Rights Act 2003 and our various cultural laws provide for the protection of the girl-child, there are conflicting rules which make the achievement of this goal of protection of the rights of a girl a mere mirage. The existing conflicts between the provisions of the Child Rights Act and Islamic law (an aspect of customary law) for instance according to Alkali, makes “the realization of the rights of the Nigerian child more difficult.”¹¹⁰

The effect of customary law (Islamic law) in this instance on the application of the Child Rights Act is clearly in the negative as it queries the provisions of the Child Rights Act especially its provisions on child marriages and declares it to be in conflict with Islamic law.¹¹¹ In fact, the non compliance of the Child Rights Act with Islamic law has been stated to be the reason for the refusal of most northern states in Nigeria to adopt the Act.¹¹² The writer advocated the compatibility of the Child Rights Act with Sharia law, “if we wish to make the Act of universal application in practice rather than in theory.”¹¹³ This position is adopted on the basis of custom (religion) regardless of internationally acclaimed rights of the girl-child to education and freedom from forced or early marriages. It thus becomes a further confirmation of the fears

¹⁰⁸ M.Chanock, ‘Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform,’ (1989) Vol 3 International Journal of Law and Family 72.

¹⁰⁹ A Umar, “An X-ray of the Conflicts between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy;” February 2012, Vol. 3, Human Rights Review; An International Human Rights Journal, 70.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, p. 70, where the writer declares that “the provisions of the Act are directly in conflict with the position of Sharia particularly in respect of minor’s age, consent and consummation of marriage” and he seeks for a revisiting of SS21, 22, 23 and 31 to conform to the provisions of Sharia or Islamic law.

¹¹² *Ibid.*

¹¹³ *Ibid.*, p.76.

previously expressed.¹¹⁴ Most of the cultural practices which support human rights infringements are in most cases approved by the society as a recognized way of life.

Writing in the same vein, Igwe states that “harmful traditional and cultural practices which discriminate against women still abound despite the constitutional provisions that can be interpreted as obligating the government to eliminate them.”¹¹⁵ Despite the global attention on women’s rights which of course makes a statement about the ever present and continuing violations of these rights by States, Governments, Groups and individuals, it is acknowledged that some countries of the world have actually achieved great milestones in protecting the rights of the child and women within these territories while for some others, as have been stated elsewhere in this work the fight against human rights violations are mainly media-based, and the legislations are mere paper tigers without the appropriate force of law to make an impact.

It is trite that most of the advanced countries of the world like the United Kingdom, France, Germany, and Canada etc have greatly reduced the human rights violations in their localities as their citizens to a large extent respect the rule of law, have become more conscious of their rights and also pursue same vigorously with the aid of better organized law enforcement agencies when confronted with violations. This high ranking in the protection of the human rights of their citizens have been attributed to factors such as increased enlightenment and awareness of rights, high literacy levels, greatly reduced reliance on superstitious beliefs and low poverty levels.¹¹⁶

Where the above factors are absent in the life and character of a nation, discriminations and infringement of rights would thrive. This may inform the position of Madu who stated that

¹¹⁴ H Barnett, *op.cit*; Mary Daly, *op.cit*, Oyekanmi, *op.cit*.

¹¹⁵ O W Igwe; ‘Cultural Impediments to the Realization of Women’s Human Rights in Igboland, Nigeria’ September 2014, Vol. 4, No 4, Journal of Private and Property Law, 161.

¹¹⁶ A C Madu, *op.cit*, p.84.

“in Nigeria, both the States and the Federal Government are guilty of women’s rights violations in various ways.”¹¹⁷ Also, most of the customary laws unfavourable to the promotion of the rights of the girl-child arise because women generally are not allowed to participate in many decisions and discussions regarded as the prerogative of the male. In fact, Onyekanmi has “identified quite clearly that the sexist constructions put on the various laws can be attributed to the absence of women in their formulations”¹¹⁸

Children are species of the human race with globally recognized fundamental rights to be acknowledged and protected by States, governments and private persons, organizations and the corporate world. The girl-child by her nature is one of the most vulnerable members of the society who should be shielded from molestation and violations by her parents/guardians and even the society itself through the promulgation of deliberate laws and regulations, effective enforcement of the said law with adequate controls and sanctions. In many instances, children become abused by their parents negating the very assumption that “adults and parents in particular had the best interests of the child at heart, thus there was no necessity to think in terms of children’s rights”¹¹⁹. Issues of child labour, child abuse, child prostitution, early child marriages which negatively affect the health and life of the girl child abound in many nations of the world especially in the third world countries.

The earliest known recognition of the rights of children was in the 19th century with a more concerted effort made by the Save the Children Fund, a movement for the rights of children in the early 20th Century¹²⁰. However the world through the United Nations in 1946 created the

¹¹⁷ *Op.cit*, p.85.

¹¹⁸ F. Oyekanmi, ‘Women and the Law; Historical and Contemporary Perspectives in Nigeria’ in A. Obilade (ed) *Women in Law* (Lagos, Southern University law Centre and Faculty of Law; 1993) p.28.

¹¹⁹ M Freeman, ‘Limits of Children’s Rights’ in *The Ideologies of Children’s Rights*; M. Freeman and P. Veerman eds (Martinus Nijhoff Publishers, 1992) p.30.

¹²⁰ P. Veerman, *The Rights of the Child and the Changing Image of Childhood* (Martinus Nyhoff. Publishers, 1992) p.6.

UNICEF which was a body charged with the responsibility of providing succor and relief assistance to children after Second World War of 1939-1945. A further step was taken in 1989 with the adoption of the United Nations Convention on the Rights of the Child which highlighted universally accepted standards.¹²¹ Describing the plight of women in Papua New Guinea, Towangdong stated that, "that men regarded women not as equal partners but as servants and expected them to be humble, patient, obedient and hardworking. The men were to make decisions and the women to implement them"¹²² ... It was an accepted value that a husband might physically cause bodily injury to his wife in the name of disciplining her to remain in her place. The infringement of the right of women takes various forms and includes physical violence and discriminatory decision making;¹²³ and this gives right to imbalance of development opportunities between the two sexes."¹²⁴

Women's rights are clearly on the World's Human Right agenda.¹²⁵ The need to protect human rights of persons in society led to the World Conference on Human Rights in Vienna which produced a consensus document called the Vienna Declaration and Plan of Action adopted by many countries in 1993. In its preamble, the declaration expressed concern about "various forms of discrimination which women continue to be exposed to all over the world. It restated the position that the human rights of women and the girl-child are said to be an indivisible and integral part of Universal Human Rights and all gender based violence and exploitation including that resulting from cultural prejudice must be eliminated"¹²⁶ Human rights are to be protected by

¹²¹ I.A. Ayua, I E Okagbue, *The Rights of the Child in Nigeria* (eds. Nigerian Institute of Advanced Legal Studies 1996) p.28.

¹²² Judy Towangdong; 'Papua New Guinea Violence Against Women and Tradition' in A. Gnanadason, M. Kanyoro and L.A Mcspadden, *Women, Violence and Non- Violent Change*(Geneva: WCC Publications 2005) p. 118.

¹²³ *Ibid* p.12.

¹²⁴ *Ibid* p.121.

¹²⁵ Conne Kuma-D, Suzah, 'The Universality of Human Rights Discourse' cited in *Women, Violence and Non-Violent Change: op. cit.* p. 34.

¹²⁶ See section C3 Part 3 of The Vienna Declaration.

the instrument of law whether national or international and the basis of this protection is “the vulnerability to attack from those who feel that certain individuals because of their conduct have forsaken their right to dignity.”¹²⁷ The rights of the girl-child are stated to include; the right to education, right to freedom of expression, right to health care, right to protection from abuse, right to protection from exploitation and neglect, the right to development, right to recreation, right to survival and equality etc.¹²⁸ Early marriages threaten the girl’s right to develop her potentials and contribute to nation building.¹²⁹

Confirming the above position, the Convention on the Rights of the child adopted by the United Nations General Assembly in 1989, sets out basic human rights of children under 18 years as right of non discrimination, the right to survival and development of potential, protection from harmful influences, abuses and exploitation. Some discriminatory practices against the girl-child are pre-natal sex selection, female genital mutilation and early marriage. These culturally imposed discriminations thrive in our societies and in the presence of the African Charter on the Rights and welfare of the child which states that such customs and traditions should not be used as excuses for violating the rights of children.

Rifkin in an article “Towards a Theory of Law and Patriarchy” writes that “women have been traditionally controlled and oppressed by men in differing societies and at different times.”¹³⁰ Furthermore, to show that oppression of womanhood had continued over the years and in different climes, Daly has described “the Chinese practice of binding the feet of young girls to emphasize their feminine attributes, the Hindu practice of widow sacrifice and the African

¹²⁷ C T Emejuru & F C Amadi, ‘The Best Interest Principles and Educational Rights of a Child: A Sleeker in Human Rights’ (2014) Vol 6, No 1 Port Harcourt Law Journal 8.

¹²⁸ ‘The Rights of the Girl-Child’ in <http://www.slideshare.net/ajsabm> 2012-13/the -girl-child rights

¹²⁹ *Ibid.*

¹³⁰ J Rifkin, *op.cit.* p.26.

practice of female circumcision as evidence of this control and oppression.”¹³¹ This practice of female circumcision in Africa “reveals the extent to which cultural demands determined by men can dictate cruelty and violence in the name of purity.”¹³²

Akinbuwa¹³³ in an article titled ‘The Concept of Women’s Rights in Nigeria’ discusses the “reality of the rights of women in Nigeria” amidst constitutional provisions and international treaties ratified by Nigeria. It is her position that despite the rights entrenched in the constitution and other international treaties; women are ‘still deprived even of their basic human rights.’ She posits that the disregard for the rights of women are manifested through rape and other forms of sexual aggression towards women, through forced marriages where the girl-child is bundled against her will and amidst protests to the home of the prospective husband who must have already paid her father the full bride-price demanded; through the deliberate disinheritance of the girl-child/wife on the grounds of custom and tradition despite her contributions to the family wealth; through dehumanizing widowhood practices etc.

Going further, Okogbule & anor¹³⁴ agree that “although international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), African Charter on Human and Peoples’ rights and the Protocol on the Rights of Women in Africa contain provisions relevant to gender-based violence, the cultural settings underpinning them make it difficult for the practices to be eliminated.” ‘Women continue to be treated in a subordinate manner and their basic rights violated under the guise of maintaining or protecting values and practices’. Culture was also fingered by the writers to generate a fertile ground for

¹³¹ M Daly, *Gyn/Ecology* (London: The Women’s Press, 1991) p.17.

¹³² H Barnett; *op.cit*, p. 31.

¹³³ A A Akinbuwa; ‘The Concept of Women’s Rights in Nigeria’ (2009) Vol. 15, No 2, East African Journal of Peace & Human Rights 18.

¹³⁴ N S Okogbule & B Okobule, ‘Culture and Gender-based violence in Africa: A Human rights Contextual Perspective’ (2012) Vol. 7, No 1, The Journal of Jurisprudence and Contemporary Issues, 214-215.

gender-based violence. In fact violence is “deeply embedded in cultural understandings of gender and sexuality as well as systems of kinship, religion and local governance structures in African societies”.¹³⁵

Our African culture and tradition emphasize the differences between the male and the female despite legal provisions¹³⁶ ensuring equal rights for men and women; and culture has to a large extent shaped and defined the issues concerning the rights of the girl-child in the Niger Delta. Custom and traditional concepts of who a girl-child is, her femininity and assigned roles inform or gave rise to the subordinate treatment given to the girl-child.¹³⁷ The Niger Delta area has its own customs and traditions that affect the rights of the persons living there. What are these customs and traditions? What is the interplay between the customary laws of the Niger Delta and the rights of the girl-child?

1.9 Definition of Terms

There is no one acceptable definition of legal terms as scholars define and describe relevant terms based on their individual perspectives. These descriptions and definitions however help our understanding of the nature and dimensions of these concepts.

1.9.1 Custom

What is custom? And how does it work against the application of the human rights of the girl-child in the Niger Delta? Custom has been variously defined. It is defined as a traditional activity or practice; the body of established practice of a Community; an established practice

¹³⁵ *Ibid.*

¹³⁶ S.16 CEDAW 1979; which provides inter alia “women have equal rights and the same advantages with men in matters relating to marriage and family relations. They also have the right to marriage and to freely choose their spouse, have equal rights during marriage and when the marriage comes to an end and also the right to share the same parental responsibilities as men in all matters relating to their children.

¹³⁷ B Abegunde, ‘Gender Inequality: The Society and the Law’ (2003) Vol. 7, No 2 Journal of International and Comparative Law, 51.

having the force of a law.¹³⁸ It is also defined “as a rule which in a particular district has from long usage obtained the force of law.”¹³⁹ “In *Mashuwareng v Abdu* the court defined it as the mirror of the culture of the people. It is a mirror of accepted usage.”¹⁴⁰ It follows that custom is actually made up of norms that guide the behaviour of persons in a community. It is the generally recognized and acceptable rules that govern the interaction of persons in a given locality. Custom, a community’s accepted rules guiding social, commercial, political relations reflect the common usage and practice of the people without necessarily carrying the force of law because a custom may exist without the element of binding force, coercion or sanction.

Custom which is the acknowledged practice of a group of people is traceable to their ancestors. It is anything which lots of people do and have done for a long time. It is “a right or duty which has come to exist through popular consent;”¹⁴¹ “a practice that by its common adoption and long unvarying habit has come to have the force of law.”¹⁴² According to the court in *Ojisua v Aiyebilehin*,¹⁴³ “custom is not the same thing as law. The element of law is important to make it customary law because it is the law which in reality carries the sanction in the event of breach.” This position of the court means that a custom may not necessarily be binding although regulatory except where it is recognized and accepted as binding on the people. The word custom has been giving a statutory definition to mean “a rule which, in a particular district has from long usage obtained the force of law.”¹⁴⁴ “It is the mirror of the culture of the people. It follows that custom is actually made up of norms that guide the behaviour of persons

¹³⁸ M Robinson & G Davidson; *Chambers 21st Century Dictionary* (ed. Chambers, 2007) p.331.

¹³⁹ S. 2(1) Evidence Act, 2011.

¹⁴⁰ [2003] 11 NWLR (pt 831) 409.

¹⁴¹ R Bruce, *Success in Law* (London: John Murray Publishers Ltd, 1978) p. 47.

¹⁴² *Black’s Law Dictionary* (7th edition West Group, St Paul, Minn, 1999) p.390; the 6th edition defines custom as ‘the practice of the people which by common adoption and acquiescence, and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place and the subject matter to which it relates.’

¹⁴³ [2001]FWLR (pt.66), p. 710.

¹⁴⁴ S.2 Evidence Act, 2011.

in a community. It is a people's accepted way of doing things; that is, of relating with each other, and is thus the generally recognized and acceptable rules that govern the interaction of persons in a given locality. Customs vary from one locality to the other, although proximity of villages, communities and a long history of interactions and inter-dependence can influence the customs of a people; causing mixtures and admixtures, similarities and possible dissimilarities even among contiguous groups. Custom is "a right or duty which has come to exist through popular consent."¹⁴⁵

1.9.2 Customary Law

Customary law is generally the law that is borne out of the culture of a particular group of people and which they recognize as regulatory of their behaviour in the community through long usage. It can change, be modified or even abandoned if it is seen not to be serving the current needs of the people. In *Owoniyin v Omotosho*¹⁴⁶ the court described customary law which is a rule of practice of a people as a mirror of accepted usage. Customary law derivable from customs and traditions is "the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. Customary laws are encapsulations of the customs and traditions of a group of people. Salacuse writing on native law and custom stated that:

native law and custom is unwritten, indigenous law; the only law which existed in the land now known as Nigeria before the coming of the British. It is a mirror of accepted usage, a reflection of the social attitudes and habits of various ethnic groups and it derives its validity from the consent of the community which it governs.

¹⁴⁵ R Bruce, *Success in Law, ibid.*

¹⁴⁶ (1961) All NLR, 304.

Because it has this basis, native law and custom is not static but a flexible body of rules and principles changing and developing to meet new conditions.¹⁴⁷

These laws are mostly applicable in the various communities where they evolved and recognized as binding and regulatory of behaviour by the indigenous peoples. It is said in *Oyewumi v Ogunesan* that “as a mirror of the culture of the people ... customary law goes further and imports justice to the lives of all those subject to it.”¹⁴⁸

Customary laws originate from native communities,¹⁴⁹ and is a product of their culture or way of life. Customary law is further defined as a body of customs and traditions which regulate the various kinds of relationships between members of the community.¹⁵⁰ Customary law is the law relating to the customs and traditions of a group of people. It affects the character, attitude and culture of the people. It is further stated to be:

A rule or body of customary rules regulating rights and imposing correlative duties, being a customary rule or body of customary rules which obtains and is fortified by established usage and which is appropriate and applicable to any cause or matter, dispute, issue or question in a particular locality¹⁵¹

Customary law is therefore made up of customs, mores, values and traditions which identify the community and in some instances distinguish them from their neighbours although in some areas

¹⁴⁷ ‘Selective Survey of Nigerian Family Law’ in A P Anyebe, *Customary Law: The war without Arms* (Fourth Dimension Publishing Ltd, 1985), p.21.

¹⁴⁸ (1990) 2 NSCC, (Pt II) 257.

¹⁴⁹ E.C.Ngwakwe: *op. cit.* p.92.

¹⁵⁰ M.C.Okanny: *The Role of Customary Courts in Nigeria*, (Enugu: Fourth Dimension Publishing, 1984) p. 39.

¹⁵¹ S.81 Customary Courts Law; Laws of Rivers State of Nigeria, Vol.2, Cap 40, 1999 whilst S.2 of the Customary Courts Law of Former Eastern Nigeria defines customary law as “a rule or body of rules regulating rights and imposing correlative duties being a rule or body of rules which obtain and is fortified by established usage and which is appropriate and applicable to any particular matter, dispute, issue or question.

there may be some overlap of rules. These rules which govern human behaviour and relationships also carry approved sanctions in cases of breach whether willful or inadvertent. The customary law so recognized by a group in Nigeria, although not being part of the received English law or a product of any competent legislature is enforceable and binding within Nigeria as between the parties to whom they apply.

It is the law closest to the norms and values of indigenous African communities. It is a body of rules made up of rights and corresponding duties recognized by a particular group and regulating the conduct of persons within that group. It is law consisting of customs that are accepted as legal requirements or obligatory rules of conduct. They are practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws.¹⁵² The customary law in question must be known, recognized and accepted by the people to whom they apply as regulatory of their behaviour and binding on them to be so called.

It is trite therefore to state that customary law is not uniform across Nigeria because of disparity of language and history of communities. Also the dynamism of societies which are not static but evolving reflect on the applicable laws which may be altered, modified or expanded to accommodate the inevitable changes in the society.

1.9.3 The Concept of a Right

The word 'right' is derived from the latin word 'rectus' meaning correct, straight, right as opposed to wrong. A right is the liberty to act in a certain manner protected by law. A right is generally explained to be "a power, privilege or immunity guaranteed under a Constitution, Statute or Case law or claimed as a result of long usage."¹⁵³ According to Oputa JSC¹⁵⁴ (as he then

¹⁵² Black's Law Dictionary: *op.cit.* 391.

¹⁵³ The Lawyers Chronicle; *The Rights of Women in Nigeria*; <http://the-lawyers-chronicle.com/the-rights-of-women-in-Nigeria>.

was), a right is a well founded claim; and when a given claim is recognized by the civil law it becomes an acknowledged claim or legal right enforceable by the power of the State.

1.9.4 Human Rights

Human rights like any other legal concept defy exact and comprehensive definitions as they can be looked at from different angles. It has been given judicial definition in *Ransome Kuti v Attorney General of the Federation*¹⁵⁵ where the Supreme Court per Kayode Eso JSC declared that a human right:

Is a right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independence is to have these rights enshrined in the constitution so that the right could be immutable to the extent of the immutability of the constitution itself.

“Human Rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other status.”¹⁵⁶

Human rights have also been explained to mean “the freedoms, immunities, and benefits that according to modern values all human beings should be able to claim as a matter of right in the society in which they live.”¹⁵⁷ Human right thus concerns freedom of persons in society. It concerns issues of justice, law, societal morality and values.

¹⁵⁴C A Oputa (JSC), ‘Human Rights in the Political and Legal Culture of Nigeria,’ Second Justice Idigbe Memorial Lecture, University of Benin, 1986.

¹⁵⁵ [1975]2 NWLR, (pt 6) p. 211.

¹⁵⁶ United Nations Human Rights available at www.ohchr.org/EN/Issues/Pages/whatareHumanRights.aspx

¹⁵⁷ B A Garner, *Black's Law Dictionary*: (7th edition, West Group, St Paul, Minn, 1999) p. 745.

According to David Miller:¹⁵⁸

Human rights are those claims which are mainly directed towards providing a minimum standard of decent living worthy of man as a human being (never as an animal). For this reason, human rights represent that very fundamental demands or claims which the individual or groups make on themselves and their society/government; which differ from appeals to benevolence and charity. The rights are the property of man as man without any exception.

To Henkins, human rights are those “liberties, immunities and benefits which by accepted contemporary values all human beings should be able to claim as of right of the society in which they live.”¹⁵⁹ The United Nations on the other hand defined human rights “as those rights which are inherent in our nature and without which we cannot function as human beings.”¹⁶⁰

According to the court in *F.R.N. v Ifegwu*¹⁶¹ “fundamental rights are regarded as part of human rights. The trend in every modern society where the rule of law operates is to protect them for the enhancement of human dignity and liberty. These rights inhere in man because they are part of man. If a hierarchical order of our laws is drawn, fundamental rights will not only take a pride of place but the first place.”

¹⁵⁸ D Miller cited in C M Chukwuodozie; *Introduction to Human Rights and Social Justice*: (Enugu: Ochumba Printing and Publishing Company, 1999) p. 3.

¹⁵⁹ L Henkin, ‘Human Rights’ in R Benhardt(ed), *Encyclopedia of International Law, Vol 8* (1985) p.268.

¹⁶⁰ T Ige & O Lewis; *Human Rights made Easy*:(3rd Edition, Legal Research and Resource Development Centre, Lagos, 1999) p. 6.

¹⁶¹ [2003]15 NWLR (pt 842) p.113.

Human rights is further defined as representing demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future.¹⁶² Human rights are thus:

Seen as deriving from the law of man's nature... and as an expression of the dignity of the human being- a dignity which is the splendor of the free rational nature of man. The dignity and the rights of the human person are seen with a universal eye which admits of no discrimination or disparity in their nature; nor of any force or fraud. Thus all human persons are seen as equal in their natural, inviolable and inalienable dignity and rights...¹⁶³

1.9.5 Girl – Child

A girl is defined as “a female infant or a young unmarried woman,”¹⁶⁴ while a child is defined as “an offspring of either sex of human parents... a young person of either sex at any age less than maturity.”¹⁶⁵ The girl has also been defined to be “a female child; a daughter; a young unmarried woman; a woman irrespective of age.”¹⁶⁶

A child is described to be a person under the age of majority;¹⁶⁷ “every human being below the age of eighteen years.”¹⁶⁸ Getting a clear direction on who a child is under our Constitution is difficult as it contains no clear definition of a child but by virtue of the provisions of S.29(4)(a) which provides “full age as the age eighteen and above,” one can safely locate the

¹⁶² O Eze, *Human Rights in Africa: Selected Problems* (Lagos: Macmillan, 1984) p. 5.

¹⁶³ N S Iwe, *The History and Contents of Human Rights* (New York: African ed. Peter Lang, 1994) p.161.

¹⁶⁴ *The New International Webster's Comprehensive Dictionary of the English Language; Encyclopedic Edition* (USA: Typhoon International 2004) p. 535.

¹⁶⁵ *Op.cit*, p.230.

¹⁶⁶ Chambers English Dictionary(13th edition, UK by TSP)p.599.

¹⁶⁷ B A Garner; *Black's Law Dictionary* (West Group, St Paul MINN, 8th Edition, 2004) p.254.

¹⁶⁸ Article 2, African Charter on the Rights and Welfare of the Child, 1999; Article 1 of the United Nations Convention on the Rights of the Child 1989.

age of the child within these parameters. The girl-child generally is not just a female child of less than 10years old but is a female gender from birth to maturity and womanhood.

1.9.6 Niger Delta

The Niger Delta is described as the delta of the Niger River at the Gulf of Guinea on the Atlantic Ocean in Nigeria.¹⁶⁹ According to Tayo¹⁷⁰ the Niger Delta is a prominent part of Southern Nigeria made up of 9 states and comprises of wetlands, swamp, mangrove forests and waterways which stretch over 300miles from the Benue River in the west to the Cross River on the east, and is described as the largest delta in Africa.

1.10 Organizational Layout

The dissertation is divided into six chapters and also contains an abstract.

Chapter one deals with introductory matters to the topic; ‘Customary law and the Rights of the Girl child in the Niger Delta: Challenges and Prospects.’ A background of gender issues and agitation of rights is laid; with the statement of the problem which is establishment of the rights of the girl –child, violations of these rights and the place of customary law. This chapter also contains objectives of the study, significance and scope of the study, methodology adopted, literatures reviewed, definition of critical terms in the work and the layout of the dissertation.

Chapter two of the work deals with the girl-child in the eye of customary law. This chapter starts with an introduction, characteristics, validity and proof of customary law; an examination of customary law and the rights of the girl-child especially political, economic and social rights of the girl-child under customary law; the work also considers violations to the rights of the girl-child under customary law. Finally, this chapter considers the girl-child among

¹⁶⁹ C M Hogan; ‘Niger River’ in M McGinley (ed), *Encyclopedia of Earth* (Washington DC: National Council for Science and Environment, 2013) p. 7.

¹⁷⁰ G Tayo, ‘Women, Environment and Food Production: The Challenge of the Niger Delta;’ A Paper presented at the 7th International Conference of Nigerian Sociological Association in Abuja on 14 November, 2007, pp.4-6.

major the Niger Delta groups such as the Ijaw, the Ikwerre, and the Ogoni, the kalabari, Efiks etcetera.

Chapter three deals with the issue of human rights and its universal application. This chapter has an introduction, discusses the nature of human rights, a discussion of relevant international human rights instruments, Constitutional provisions and an analysis of fundamental human rights in Nigeria; an examination of the Child Rights Act 2003 and enforcement of human rights in Nigeria and available remedies for violations.

Chapter four considers challenges facing the application of child rights in the Niger Delta. It looks at the location and peoples of the Niger Delta; application of child rights in the Niger Delta, it considers the challenge of the law, access to justice, cultural impediments etc

Chapter five is on the prospects of enforcement of the girl-child rights in the Nigerian legal system. This chapter has an introduction, then considers the role of the judiciary, domestication of international laws, international responses and agencies, the role of civil organizations and non-governmental organizations.

Finally, Chapter six deals with conclusion and suggested recommendations.

CHAPTER TWO

THE GIRL- CHILD IN THE EYE OF CUSTOMARY LAW

Who is the girl-child in the eye of customary law? Various authors¹ examining the place of the girl-child under customary law have described the girl-child as a female human being whom tradition has assigned roles ranging from being a domestic help from infancy to a home-maker at adolescence and adulthood. The girl-child ultimately becomes the woman; an essential part of an African home to ensure the continuance of the family line through child bearing and care. In the eye of customary law, the girl-child is not equal to a boy-child hence the preference in many parts of the Niger Delta for a male child to carry on the family name.

The girl-child is the one whose identity must change upon marriage as she is expected by society to abandon her identity and adopt her husband's by changing her name to the husband's name. She is the one who is by custom and tradition expected to abandon all that is familiar and especially her family to embark on a journey to join another family upon marriage. She is not permitted to sit in the gathering of men except on special occasions and with the clear permission of men. She is not permitted to speak on issues discussed by men even if she is directly affected by the issues except she is permitted to speak. She is most of the times not allowed to exercise her will in the choice of a husband as husbands are chosen for her by the men that is , by her

¹ M O Izzi, 'The Plight of the Girl-Child under Esan Customary Law' (2000)3 Journal of Commercial, Private and Property Law, p.93; O Udochukwu, UNCEDAW AND WOMEN SOCIO-POLITICAL RIGHTS IN NIGERIA; THE SOUTH – SOUTH EXPERIENCE(1999-2010) available at <http://www.Slideshare.net/udojoel/uncedaw> accessed on the 26th of May 2014; M Ducker, ' How to Empower Women' in Ducker M. (ed.) *Philosophy and Politics, Discourse on Values, Politics and Powers in Africa*, (Malthouse Press Lagos, 2006)p. 83; A.C.Madu, *Women Empowerment. Its Relation to National Development and Human Rights* (Snaap Press Ltd, 2010)p.99; H Alapiki; *Politics and Governance in Nigeria*: (Port Harcourt: Amethyst 2004)p.154.

father, uncles, and brothers even if younger than her. In the eye of customary law she is a priced commodity to be haggled over in the name of bride-price; she is not considered when inheritance issues are discussed but is rather treated as a specie of property to be inherited by the men. The girl-child under customary law is considered to be inferior to the male even if they were born twins and had shared the same womb. She is a “mere chattel who is useful for domestic chores and child bearing. She is owned by her husband.”² This customary disposition against the girl-child can be “traced to deep rooted unconscious systems of beliefs, attitudes and behaviours in which distinctions between peoples’ intrinsic worth are measured on the grounds of their biological sex and gender roles.”³ The perceptions of who the girl-child is and what she should be doing under our various customs inform the treatment she receives even today in the society.

Customary law promotes patriarchy in the Niger Delta, and it is agreed that “a male dominated society has created many cultural and social excuses, familial and caste traditions, religious and ethical customs which oppress and exploit women.”⁴ The customary law applicable in a community has a great impact on gender issues. Ndulo⁵ writes that “in its application, customary law is often discriminatory in such areas as bride price, guardianship, inheritance, appointment to traditional offices, exercise of traditional authority and age of majority” It tends to see women as adjuncts to the group to which they belong such as a clan or tribe, rather than equals.”

Customary laws infringe on the fundamental rights of persons. According to Udochukwu, “customary laws have continued to limit the rights of women in and out of marriage as they have

² M Ndulo, ‘African Customary Law, Customs and Women’s Rights’ (2011) 18, No 1, Indiana Journal of Global Legal Studies pp.88-89.

³ *Ibid* p. 88.

⁴ M Poudel ; ‘Nepal Devaki-Socio-cultural Violence Against Women’ in A Gnanadson et al (eds) *Women, Violence and Non-Violent Change*(Geneva: www Publications, 2005,)p.108.

⁵ *Op.cit.* pp.88-89.

no land rights, right to inheritance and succession but are subjected to all forms of cultural violence”⁶ The positions highlighted above will be discussed in detail subsequently.

2.1 Customary law and its application in Nigeria

Customary law is saved by the Constitution of Nigeria as an existing law.⁷The Nigerian Customary law is not uniform but is made up of those native laws applicable in Nigeria.⁸ Describing the nature of customary law, Obaseki, Jsc in *Yussuf v Dada*⁹ stated that “customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions.” It is autochthonous and has been in existence in Africa long before the coming of the European. And as Osita stated in his work, the position of some writers that:

Traditional societies did not possess a legal system was based either on inadequate information or lack of appreciation of the true nature of pre-colonial African societies. He argues further that “law did exist outside the framework of a State in the modern sense. A contrary argument would imply that African societies operated in a legal vacuum before the advent of the Arabs and colonialists; a proposition that is totally untenable¹⁰

These laws are mostly applicable in the various communities where they evolved and are recognized as binding and regulatory of behaviour by the indigenous peoples. Obaseki JSC

⁶ *Op.cit.*

⁷ SS 315(1) and 4(b) Constitution of the Federal Republic of Nigeria, 1999-“subject to the provisions of this constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this constitution... s. 4(b) states that an existing law means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force...”

⁸ Discussions on Customary Law; and especially on Crime and Society in Nigeria available at <http://www-rohan.sdsu>, accessed on the 28th of May 2014.

⁹ (1990)4 NWLR (1499) 657.

¹⁰ O.C. Eze: *Human Rights in Africa, Some Selected problems* (Nigerian Institute of International Affairs in Co-operation with Macmillan Nigeria Publishers Ltd (1984) p.10.

continuing in *Oyewumi v Ogunesan* stated that “as a mirror of the culture of the people, I would say that customary law goes further and imports justice to the lives of all those subject to it.”¹¹ Customary laws originate from native communities¹² and are a product of their culture or way of life. Highlighting the nature and place of culture in the life of a people, Olomola¹³ stated that “culture is dynamic; and the barometer for gauging any society’s progress is the extent to which it can decide on what to borrow and what to retain or throw away.

Customary law as a product of culture is further defined as a body of customs and traditions which regulate the various kinds of relationships between members of the community.¹⁴ This position is played out in the case of *Awudu v Daniel*¹⁵ where the court in determining the existence or non-existence of Jukun native law and custom relating to inheritance of the father’s house decided that a father is bound to provide for his children under Jukun native law and custom and so a person cannot dispose of the house which he provided for his children without an alternative provision and without their consent. Once a house is deemed a family house to which the children had lived in and may have started contributing to its further development such a house could no longer be alienated without the consent of children. The Ogba Speaking people of Rivers State in Nigeria have a similar custom which gives every bonafide child of a family the incontestable right to live in the family homestead; and which right can only be denied a person who has committed some heinous crimes like incest, rape and murder. In *Ajao v Obele* it was stated that under the Yoruba customary law, a customary tenant

¹¹ *Supra*

¹² E.C.Ngwakwe, *African Customary Law: Jurisprudence, Themes and Principles* (Ebonyi State, Nigeria: Ave Maria Academic Publishers, 2013) p.92.

¹³ O Olomola, ‘An Appraisal of Polygyny and Reproductive Rights of Women in Nigeria;’ *Journal of Law and Conflict Resolution*; Vol 5(1), January 2013, pp.6-15.

¹⁴ M.C.Okanny: *The Role of Customary Courts in Nigeria*, (Enugu: Fourth Dimension Publishing, 1984) p. 39.

¹⁵ [2005]2 NWLR, (pt 909) pp. 206-207.

is allowed to remain on the land in perpetuity subject to good behaviour although long possession cannot ripen into ownership of land under customary tenancy.¹⁶

The violation of a recognized custom in a particular area may however deny a party the right to institute action in court to protect a right as was decided by the court in *Obaro v Probate Registrar*¹⁷ where the appellant instituted an action for the grant of an interim preservation of the deceased property by the appointment of a receiver to manage and collect rent on the property only a month after the death of the deceased who at the time the action was instituted had not been buried. The court held that the Bini custom disallows the institution of any action until after the second burial ceremonies had been performed. According to the court:

Nothing can be done with regard to the estate of a Bini man, including litigation under Benin customary law until the second burial of the deceased has been performed. In the instant case, by instituting the action prior to the time of performance of the second burial of her deceased father, the appellant has violated the custom.

She has no locus standi to file the action.

Her appeal against the decision of the trial court was dismissed. Elucidating further on this acknowledged Bini custom of inheritance; and answering questions on whether the Bini rule of custom that inheritance should occur only after burial of the deceased in accordance with custom applies in all cases, the Court of Appeal in *Ibrahim v Osunde*¹⁸ stated that under the customary law of inheritance in Bini:

It is not in all cases the deceased must be buried in accordance with Bini Customary law before any other child apart from the eldest male child can

¹⁶ [2005]5 NWLR, (pt 918) 405.

¹⁷ [2001] FWLR (pt 59) 1382.

¹⁸ [2003] 2 NWLR (pt 804) 249.

inherit his or her father's property. The several cases of inheritance under Bini customary law on which the Supreme Court made pronouncements that the inheritance should be done only after the burial of the deceased in accordance with Bini custom have been limited to inheritance by the eldest male child.

No custom which a party seeks to rely upon in a judicial proceeding shall be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.¹⁹ On the application of local custom, the various High Court laws of the States provide for its observance by the courts. Specifically:

The Court shall observe and enforce the observance of every local custom and shall not deprive any person of the benefit thereof except when such custom is repugnant to natural justice, equity and good conscience or incompatible either directly or by its implication with any law for the time being in force.²⁰

In chieftaincy matters, where there is no formal declaration in respect of the appointment and selection to a particular chieftaincy, the custom and tradition of the people concerned must be strictly adhered to. And in determining who is qualified to ascend to any traditional title subject to customary law, it is a question of fact to be proved by adducing evidence unless it has attained such legal status or notoriety so as to be judicially noticeable as was decided in *Akande v Adisa*.²¹ Customary law is the law relating to the customs and traditions of a group of people. It affects the character, attitude and culture of the people. It is further stated to be:

¹⁹ *Supra*

²⁰ High Court Law Cap 62, Laws of Rivers State of Nigeria 1999, S. 18(1).

²¹ [2012]4 NWLR (pt 1324) 545.

A rule or body of customary rules regulating rights and imposing correlative duties, being a customary rule or body of customary rules which obtains and is fortified by established usage and which is appropriate and applicable to any cause or matter, dispute, issue or question in a particular locality²²

In *Amusan v Olawuni*²³ the court held that “under Yoruba customary law, all children, male and female are entitled to inherit their parents’ land. In cases of intestacy, the property devolves on all the surviving children in equal shares. There are circumstances in which the female could also be the head of the family.” This particular Yoruba customary law is not found applicable in some parts of Igboland and the Niger Delta where females are denied the right to inherit parents’ property.

Customary law is therefore made up of customs, mores, values and traditions which identify the community and in some instances distinguish them from their neighbours although in some areas there may be some overlap of rules. These rules which govern human behaviour and relationships also carry approved sanctions in cases of breach whether willful or inadvertent. The customary law so recognized by a group in Nigeria, although not being part of the received English law or a product of any competent legislature is enforceable and binding within Nigeria as between the parties to whom they apply. It is the law closest to the people, their norms and values as African communities; and is a body of rules made up of rights and corresponding duties recognized by a particular group and regulating the conduct of persons within that group.

This agrees with the statement that:

²² S.81 Customary Courts Law; Laws of Rivers State of Nigeria, Vol.2, Cap 40, 1999 whilst S.2 of the Customary Courts Law of Former Eastern Nigeria defines customary law as “a rule or body of rules regulating rights and imposing correlative duties being a rule or body of rules which obtain and is fortified by established usage and which is appropriate and applicable to any particular matter, dispute, issue or question.

²³ [2002]FWLR (pt 118)1391.

It is law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practice and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws²⁴

The customary law in question must be known, recognized and accepted by the people to whom they apply as regulatory of their behaviour and binding on them to be so called. It is trite therefore to state that customary law is not uniform across Nigeria because of disparity of language and history of communities. Also the dynamism of societies which are not static but evolving reflect on the applicable laws which may be altered, modified or expanded to accommodate the inevitable changes in the society. In *Olubadan v Lawal*,²⁵ the Supreme Court stated that what it believes or is persuaded to believe by evidence presented by parties in court is the customary law operative in that area. This position was equally reiterated by the Appeal Court in *Ajikande v Yussuf*²⁶ where it stated that:

By the combined effect of S.14 and S.73 of the Evidence Act, a given custom is a question of fact; and where material to a party's case, the same must be necessarily pleaded and proved. Where however the very custom has been acted upon by a Superior Court in the area from which the claim evolved or the custom has acquired such notoriety that judicial notice of the custom is taken, the court thereby dispenses with its proof.

Customary law derivable from customs and traditions is the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not

²⁴ Black's Law Dictionary: *op.cit.* 391.

²⁵ [2008]17NWLR (pt 1115)1.

²⁶ [2008]2NWLR (pt. 1071) 307.

static. It is regulatory in that it controls the lives and transactions of the community subject to it.

This position on customary law confirms that:

It is a rule or body of customary rules regulating rights and imposing correlative duties, being a customary rule or body of customary rules which obtains and is fortified by established usage and which is appropriate and applicable to any cause or matter, dispute, issue or question in a particular locality.²⁷

The customary law in question must be known, recognized and accepted by the people to whom they apply as regulatory of their behaviour and binding on them. According to the court in *Hirnor v Yongo* questions on what amounts to a customary law in an area would be answered by the courts in making a decision in respect of a question of customary law especially “when the controversy involves a determination of what the relevant customary law is and the application of the customary law so ascertained to the question in controversy.”²⁸ For instance, in establishing the existence or not of a valid sale of land under customary law, it is trite that only the applicable custom of the community in question would be relevant. The courts have stated also that “for a sale to transfer title under customary law, the transaction needs to be concluded in the presence of witnesses who witnessed the actual handing over of the property. It is also a pre-requisite as stated in *Adedeji v Oloso* to a valid sale under customary law that the purchaser must be let into possession.”²⁹ What is important here is that the sale was concluded in the presence of the witnesses who actually witnessed and were ready to testify to the handing over of the land

²⁷ S.81 Customary Courts Law; Laws of Rivers State of Nigeria, vol.2, cap 40, 1999 whilst S.2 of the Customary Courts Law of Former Eastern Nigeria defines customary law as “a rule or body of rules regulating rights and imposing correlative duties being a rule or body of rules which obtain and is fortified by established usage and which is appropriate and applicable to any particular matter, dispute, issue or question.

²⁸ [2003] 9 NWLR (pt 824) 77.

²⁹ [2007]5 NWLR, (pt 1026)140.

to the purchaser. Even where such witnesses were dead and could not be brought to testify, it was still important for the party relying on them to plead their names and testify concerning them.

In *Agboola v U.B.A. Plc*³⁰ the court stated that “under native law and custom, the requirements of a valid sale of land are (a) payment of purchase price; (b) letting purchaser into possession by the vendor in the presence of witnesses.” Continuing, the court held that it was not necessary to have a written contract or conveyance as is the case under English law. Persons who are subject to a particular customary law are statutorily provided. For instance to answer the question concerning persons subject to customary law, the Customary Courts Law of Rivers State provides that:

any person who (a) is an indigene of a place in which a customary law is in force; (b) being in a place where a customary law is in force does an act in violation of that customary law; (c) makes a claim in respect of property or estate of a deceased person under a customary law of inheritance in force in the area of jurisdiction of a Customary Court and the deceased person was an indigene of the place in which the customary law is in force; (d) institutes proceedings in any Customary Court or has by his conduct submitted to the jurisdiction of a Customary Court shall be deemed to be subject to the customary law in force in the area of jurisdiction of that Customary Court.

³⁰ [2011]11 NWLR, (pt 1258)384.

2.1.1 Characteristics of Customary Law

The characteristics of customary law have been identified by the court in *Ajisua v Aiyebelehin*³¹

to include the following points, namely that:

- vii. the law must be in existence
- viii. it must be custom as well as law
- ix. it must be acceptable to all the persons to whom they apply
- x. it is largely unwritten
- xi. it is flexible
- xii. it should be universally applicable within the area of acceptability.

These characteristics so identified are constant in the sense that any practice or norm that regulates the life of a particular group of persons must first of all still be practiced by the people at the relevant time. It must be regarded by the same group of persons as regulatory of their behavior and so is applicable to them. It is largely not written down and is dynamic and changeable in the course of time for instance, the killing of twins was a customary law thought to purify the communities from the curse of the gods. But this practice has since been abandoned as barbaric and not in tune with modern practices.

In some communities, although customary laws are largely unwritten, there are recent attempts to put down the marriage requirements commonly referred to as “list” in writing for would be suitors. Since customary laws are not uniform practices; these characteristics may also vary from place to place and even alter with time to accommodate the peculiar needs of the communities for which the law is made. It should be noted that for a practice to be considered law by a group of people, it must not necessarily be acceptable to every person but to the

³¹ *op.cit.* 4.

majority and principally to the leaders and the recognized custodians of their collective history, destiny and mandate. These characteristics will be further considered.

1. The law must be in existence: This means that a particular customary law must be in existence and practiced in the community at the relevant time it is sought to be applied by the court. The practice of such a custom means that the custom is alive and not dead. It must be the prevailing custom known and recognized by indigenes of the place. It should not be a custom that was in existence but is no longer practiced at the time a party seeks to enforce it in court. In explaining this requirement that the custom must be one that is in existence at the material time, the court in the earlier case of *Eshugbayi Eleko v Government of Nigeria*³² reiterated that the court is bound to apply the custom of the people that is, the recognized and approved custom of the people and not to modify same before application or select aspects of the custom to apply while jettisoning the rest. The court per Lord Atkins stated that:

Whether the custom is barbarous or not, it is not the duty of the court to transform it into a milder one. The court has to apply the custom as it is being practiced by the people provided it does not offend any of the other statutory provisions.

2. It must be custom as well as law: the practice under contention must be one that is recognized as a custom affecting all persons in the community and not just a section of it. It must be recognized as binding on all persons. It was in accordance with this principle that the court in *Owoniyin v Omotosho*,³³ held that the piece of ancestral land

³² (1931) A.C, 662-673.

³³ (1961)1 ANLR (Pt 304) 10.

in dispute between the parties belonged to both families as the first settlers according to native law and custom which is a mirror of accepted usage.

3. It must be acceptable to all the persons to whom they apply.
4. It is largely unwritten: Customary law unlike the common law, local legislations and statutes are mainly unwritten, depending on oral history and traditions as remembered and handed down by chiefs, elders family heads and other members of the kindred groups from generation to generation. This dependence on the memory of persons to establish the existence or otherwise of a custom may introduce arbitrariness and inconsistencies with regard to the existence and efficacy of such customary laws. Due to reliance on human memory to establish a custom when questions of its existence arise, what custom that may be presented before the courts may just be products of failed memories of elders or distorted versions of the custom twisted by individual prejudices of persons relied upon to prove the custom.
5. It is flexible: Customary law is dynamic and not static. It goes through a development process and so can be modified to accommodate changes in the social environment and to meet new challenges hitherto not experienced due to interactions with other cultures and people. So a native custom which originally was barbarous and therefore one to which a court would not give effect may have become recognized by the native community in a milder or acceptable form without losing its essential character of custom. In such circumstances the courts are enjoined to apply such customs but the court cannot itself transform a barbarous custom into a milder one.³⁴ According to Osbourne, C.J in *Lewis v Bankole*³⁵ “one of the most striking features of the West

³⁴ *Op.cit.* 17.

³⁵ (1999) 1 NLR P. 100.

African native custom is its flexibility; it appears to have been always subject to motives of expediency and it shows unquestionable adaptability to altered circumstances without entirely losing its character.” Customs change with time since change is inevitable. Old customs die to give place to new ones which sometimes may acquire new characters and attributes to accommodate the developmental stages of the society. These practices and rules continue to guide and regulate human relationships in later years and even beyond the contemplation of the originators of the rule.

2.1.2 Validity and Essentials of Customary Law

The various State High Court laws in Nigeria contain definite provisions which demand the recognition of proven customs as part of our laws, the validity of these customs, the observance and enforcement of same where applicable. The High Courts of Rivers State are for instance enjoined to:

Observe and enforce the observance of every local custom and shall not deprive any person of the benefit thereof except when any such custom is repugnant to natural justice, equity and good conscience or incompatible, either directly or by its implication with any law for the time being in force³⁶.

The validity or otherwise of customary law is derived from these statutory provisions and are based on the fact that the customary law in question must not be, (i) repugnant to the principles of natural justice; (ii) repugnant to the principles of equity; (iii) should not be

³⁶ High Court Law of Rivers State, 1999, *op.cit*

against good conscience; (iv) must be compatible with existing laws; (v) should not be contrary to public policy.³⁷

We shall examine some Nigerian cases dealing with the validity or otherwise of a customary law. It is apposite to state that most of the reported cases do not isolate the major kernels of the repugnancy principle but considers the validity of the native law and custom in question on the broad principles of natural justice, equity and good conscience.

The important ingredients in the principles of natural justice are the *audi alterem parten rule*; that is the right to fair hearing and *the nemo judex in causa sua* rule which is essentially against self interest and bias in decision making as no man should be a judge in his own cause. Any person who is accused of any wrongdoing should not be condemned unheard nor should the accuser seat in judgment over the accused. An alleged customary law sought to be proven in court which does not allow fair hearing and imports bias and self interest will have no validity.

In *Solomon v Gbobo*,³⁸ the plaintiff sought a declarative judgment to set out his rights under the Okirika native law and custom relating to the Iya marriage and claiming that he was entitled to compel the husband of his daughter to receive the repayment of the dowry he paid to him in respect of a marriage which had since broken down and the daughter had remarried and had issues for the new husband. The court held amongst others that (i) the Iya marriage in Okirika native law and custom gives the father the right to sue the husband in respect of the marriage contracted with his daughter. (ii) that a custom under which the husband can divorce his wife at will but the wife cannot obtain a divorce unless the husband consents, is contrary to natural justice, equity and good conscience. The court

³⁷ See proviso to S.14 (3) Evidence Act, Vol. 6, Cap. E.14 L.F.N, 2004.

³⁸ (1974) 4 UILR, p. 396.

made the declaratory judgment that the plaintiff's daughter could divorce her husband at Will. In *Edet v Essien*³⁹ the native law and custom which allowed the applicant who married his wife under native law to claim the children born by his wife with another man as belonging to him because the dowry he paid had not been returned was declared by the court to be contrary to natural justice, equity and good conscience to give out the children to a non biological father.

A custom that is contrary to public policy would not be declared valid by the courts. In *Re Adadevoh*,⁴⁰ Verity, C.J stated "that if a suggested custom was found to encourage promiscuous intercourse, such a custom would be contrary to public policy and therefore void." The claim of fishing rights over the New Calabar River by a community and to the exclusion of other communities close to the river was held in *Amachree v Kalio* to be inconsistent with public policy by the court.⁴¹ For a customary law to be declared valid and be applicable in an area, it must also not be contrary to the provisions of an existing law. A custom which deprives women of constitutionally guaranteed rights, for instance, the right against discrimination and the right to own property in any part of the country would be denied validity on this plank as it would be contrary to the provisions of the constitution of the country. See sections 42 and 43 of the 1999 Constitution which provide respectively that:

a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person be subjected either expressly by, or in the practical application of any law in force in Nigeria....to disabilities

³⁹ (1932)11 NLR, p. 47.

⁴⁰ (1951)13 WACA, p. 304.

⁴¹ (1914) 2 NLR 108.

or restrictions...; and subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

It is trite that the above constitutional provision is the position of the law on gender and other forms of discriminations. There is however a great hiatus between the provisions of the law, the practicability and enforcement. A woman and citizen of Nigeria is disabled even in her workplace because of her gender. She is a constant subject of sexual harassment and may not even be allowed to have a career by her parents and husbands prompting Okeke⁴² who lamented that “women are still restrained by social expectations...even when they have employment opportunities, tradition in Nigerian society dictates that career can be secondary to a woman’s primary role in the family as a mother or housewife;” or the career can be abandoned where she is discriminated against and sexually harassed at the work place.⁴³

Another practice which questions the applicability of the above constitutional provision was the abandoned property saga which labeled the immovable property of the Igbo speaking peoples of Nigeria acquired in parts of Nigeria such as in Lagos and Port Harcourt before the outbreak of the civil war as “abandoned property” and to which they could lay no claims despite their constitutional right to same. And of course our various customary laws which to varying degrees are inconsistent with this constitutional provision when they deny the girl child the right to own or inherit real property in her father’s or husband’s family. In fact citing the cases of *Shodipo v Shodipo*;⁴⁴ and *Nwanya v Nwanya*⁴⁵, Ifemeje⁴⁶ describes the two cases as “an eye

⁴² P Okeke; ‘Reconfiguring Tradition: Women’s Rights and Social Status in Contemporary Nigeria;’ Africa Today, 2000 available at <https://en.m.wikipedia.org/wiki/Human-rights-in-Nigeria>, accessed on 7/8/2015.

⁴³ Ejieke Maduka v Microsoft Nigeria Ltd & Ors NICN/LA/492? 2012(culled from the International Labour Organization Website).

⁴⁴ (1990)5 WRN 98.

⁴⁵ [1987]3 NWLR (pt 62) 697.

opener to the unpalatable fact that the property rights of women in divorce proceedings are being trampled upon by some of our judges.”

A custom must be known to the people it regulates and where for instance the defendants in a land dispute sought to establish a custom that a woman had no right to give evidence in relation to land subject to customary law, such a custom was rejected by the court as being incompatible with existing law and also against public policy. This situation was actually put to the test in *Uke v Iro*⁴⁷ where the defendants argued that by virtue of Nneato Nnewi custom, a woman could not give evidence in relation to title to land but the Court of Appeal, per Pats-Acholonu, JCA held that

the right of all sexes are protected under the organic laws of the land, hence any laws or customs that seek to relegate women to the status of a second class citizen, thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the gabbage and consigned to history. A custom which strives to deprive a woman of constitutionally guaranteed rights is otiose and offends the provisions that guarantee equal protection under the law.

The combined effects of ss.41 and 42 of the 1999 Nigerian Constitution clearly show in the words of the court in *Uke v Iro* that “any customary law which flies against decency and is not in consonance with notions, beliefs or practice of what is acceptable in a court where the rule of law is the order of the day should not find its way into our jurisprudence and should be disregarded, discarded and dismissed as amounting to nothing.”

⁴⁶ S C Ifemeje; *Contemporary Issues in Nigerian Family Law* (Enugu: Nolix Educational Publications (Nig) 2008) p.176.

⁴⁷ [2002] FWLR (pt 129)1453.

Another related custom which sought to discriminate and disinherit a woman who could not give her husband a male child and which favoured the inheritance of the deceased estate by his brother rather than the wife was declared to be repugnant to natural justice, equity and good conscience. In *Mojekwu v Mojekwu*,⁴⁸ the validity of the Olikpe custom of the Nnewi people which disinherited a woman because she did not give birth to a male child was put to test and declared repugnant. “For a customary law to discriminate against a particular sex is to say the least, an affront on the Almighty God himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the Oli Ekpe custom of Nnewi is repugnant to natural justice, equity and good conscience” per Niki Tobi.

In *Motoh v Motoh*,⁴⁹ the dispute concerned the issue of the proper person to inherit the deceased estate according to native law and custom. The contention was between the purported son of the deceased born out of wedlock and the legitimate wife who had only daughters. The alleged native law and custom of Umuanaga Awka which discriminates against the female child on inheritance was declared repugnant. In the words of the court, “*the native law and custom of Umuanaga Awka which discriminates against female children of the same parents and favours the male children who inherits all the estate of their father to the exclusion of their female siblings is repugnant to natural justice, equity and good conscience.*”

Where an emancipated slave who continued to live on the communal property dies intestate, the court in *Re Effiong Okon Attah*, had to answer the question, whether it was the deceased sister who was also slave born or the head of the House to which they belonged that had the right to take out letters of administration of the deceased estate. The court held that “the mere fact of the slave continuing to reside on the communal property confers any rights whatever

⁴⁸ [1997] 7 NWLR, (pt 512) 281.

⁴⁹ [2011] 16 NWLR, (pt 1274) 474.

on the Head of the House in respect to his personal property would be very largely to render a negation to the provisions of the Slavery Abolition Ordinance of 1916 and to import a native custom to that effect would be contrary to natural justice, equity and good conscience.”⁵⁰

One principle of customary law is that it must be pleaded. The party seeking to rely on the existence of a customary law must plead same in the processes, and once it is proved and ascertained by evidence, the court is required to apply such a custom provided that (i) it is not a rule or custom that is repugnant to natural justice, equity and good conscience; and (ii) it is not incompatible either directly or by implication with any law for the time being in force.

2.1.3 Proof of Customary Law

The burden or onus of proving the existence of a customary law rests on the person claiming its existence as was decided in *Egbuta v Onuna*.⁵¹ However, in *Ogolo v Ogolo* the persons to prove the existence of a customary law are those who have a personal knowledge of the particular custom and it is only when such custom becomes notorious as a result of frequent proof in courts that judicial notice of it is taken without further proof.⁵² Customary law is described in *Omaye v Omagu* as largely unwritten and it depends on what the appropriate authority believes or is persuaded to believe is customary law.⁵³ And where such customary law is canvassed before the court to prove a claim, such customary law shall be established in either of two ways; namely (i) by the court taking judicial notice of its existence or (ii) by the party relying on its existence “leading evidence in the particular case” as stated in *Oyewunmi v Ogunesan*.⁵⁴

⁵⁰ (1930) 10 NLR, P 65.

⁵¹ [2007] 10 NWLR, (pt 1042) p. 302.

⁵² [2003]18 NWLR (pt 852) p. 494.

⁵³ [2008] 7 NWLR (pt1087) 482.

⁵⁴ *Supra*

Where the declaration of a custom is not registered and its notoriety has not led to appropriate judicial notice, cogent evidence of the custom must be adduced through credible witnesses. To prove such a custom, more than one witness is required to give evidence as to the existence and practice of such a custom in the area it is sought to be applied. This brings to the fore the question of credibility of witnesses. The evidence of the witnesses must be cogent, corroborative and verifiable and where evidence of good character of the witnesses are adduced to show credibility, this fact established in *Eyo v Onuoha* equally gives the other party the right to adduce contrary evidence as to the good character of the witnesses.⁵⁵

It is trite states the court in *Okarike v Samuel* that “native law and custom not judicially noticed, must, to make it acceptable, be proved by evidence of witnesses belonging to the community to show that the community in that area regard the alleged customary law as binding upon them...”⁵⁶ In the above case, the native law and custom sought to be established was their community’s reliance on arbitration before a shrine and on oath taking before a ‘juju’ to resolve disputes over ownership of land. The parties actually went before the shrine to swear an oath; four persons from the appellants’ side subscribed to the oath that if they were not the owners of Mbide land, there would be casualty within one year. One of the oath takers died by accident within one year; and whilst the respondents claimed that the death proved their title, the appellants contended that such proof of native custom required all the oath takers to die within the period and not just one person out of the four. This position shows to an extent the difficulties and inconsistencies that may arise in the application of customary law.

Where the testimonies of the witnesses are contradictory of each other or of the claimant, such contradictions would vitiate their testimonies and fail to prove the custom presented to the

⁵⁵ [2011]8 NWLR (pt. 257) 1-47.

⁵⁶ [2005]7 NWLR, (pt 924) 370.

Court. For a piece of evidence presented to the court as declared in *Obiaso v Okoye* to be accepted as cogent and credible “it must be strong and uncontroverted by the opposing party who may in the process of cross examination attack and debunk it.”⁵⁷ Also the court stated in *Osolu v Osolu* that it is desirable in adducing evidence of the existence of a customary law that “a person other than the person asserting the existence of such customary law should also testify in support of its existence as it is unsafe to accept the statement of the only person asserting its existence as conclusive.”⁵⁸ However, “if there is a registered declaration of a custom, proof of it is by production of the registered declaration; in which case, a single witness would suffice.”

In *Eyo v Onuoha*, the case between the parties centred on ownership of land. The Claimant/ appellant sued the defendant/ respondent seeking a declaration that he was entitled to the certificate of occupancy in respect of the land in dispute. The appellant relied on the proof of a custom in establishing his title to the land in question. He traced ownership of the property to one Udo Ekpo Ikpa who deforested the land and whose daughter the appellant’s grandfather sought to marry. The custom sought to be proved was the Ibibio custom of payment of a betrothal fee to the girl’s mother without the knowledge of the father who upon failure of the marriage to take place because it was discovered that they were cousins, was required to refund the betrothal fee. Udo Ekpo Ikpa who could not afford the refund, gave eight parcels of land in lieu of the money. The issue of interest here is the proving of the custom relied on by the appellant. One of the witnesses he called PW2 differed from the position of the appellant when he stated that the betrothal of Udo Ekpo Ikpa’s daughter to the appellant’s grandfather was not in accordance with the normal practice of Ibibio land. The Supreme Court after considering the evidence before it unanimously dismissed the appeal, upholding the decision of the two lower

⁵⁷ [1989]5 NWLR (pt 119)80.

⁵⁸ [1998]1 NWLR (pt 535)532.

courts that the appellant failed to establish his claim to the land in dispute by not sufficiently giving evidence of the traditional history of the land.

The question of whether corroboration was required for proof of customary law was answered in *Usiobaifo v Usiobafo*⁵⁹ where the court stated that “proof of customary law is not one of the areas in the adjectival law that needs corroboration. While it is desirable that a person other than the person asserting the customary law should testify in support of the customary law, it is not a desideratum. The Evidence Act does not provide so, as its section 14(1) only states that customary law can be proved to exist by evidence. Evidence can be led on the existence of the custom by a single witness or more witnesses.” The courts are at liberty to resort to relevant books, documents and opinions of chiefs in proving the custom of the people sought to be relied on by parties before it. *S.59 of the Evidence Act*⁶⁰ provides that:

In deciding questions of native law and custom, the opinions of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognized by the natives as a legal authority are relevant”. Going further, the Evidence Act in S.62 states that “ when the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of its existence if it existed are relevant.

In resolving the dispute between parties before it and answering questions of inheritance, succession and right to alienate the family house (Igiogbe) which formed part of the estate of their deceased father according to Esan native law and custom, the trial court in *Usiobaifo v*

⁵⁹ [2005]3 NWLR (pt. 913) 672.

⁶⁰ *op.cit* 5.

*Usiobaifo*⁶¹ relying on different pages of Dr. C.D. Okojie's book entitled *Ishan Native Law and Custom with Ethnographic Studies of Esan People* from the pages cited by the appellants' counsel ruled that the sale by the first defendant was void as the property according to Esan custom belonged to the Usiobaifo family and he had no power or authority to sell family property as his own. Both the appeals of the defendant to the Court of appeal and the Supreme Court were dismissed. Responding to one of the issues raised before it, to wit, whether the trial court should have been limited to the pages of the book cited by the party relying on it, the Supreme Court decided that "a trial court is free to use any book cited by a party or *suo motu* make reference to any book which is relevant to the issue or issues before it. A party cannot gag the court as contended by the appellants herein to rely on the portions of the book cited by the parties."

Proof of native law and custom which is regarded as a question of fact to be pleaded by the parties relying on them is necessary. It can only be unnecessary where through frequent proof and notoriety it has become judicially noticed. The party that has the burden to prove the existence of a custom is the person alleging it. This is the position of the Evidence Act S.14 (1), which states that "the burden of proof of custom is on the person alleging its existence. In other words, the onus is on the party who claims the existence of a particular customary law to be applicable to the situation to call evidence to establish the custom." This was the position of the court in *Temile v Awani*.⁶² Where an appellant fails to discharge the onus to prove the custom so alleged, his appeal is dismissed for lacking in merit.

According to the Supreme Court in *Sokwo v Kpongbo*:

⁶¹ *Op.cit*, p. 671.

⁶² [2001] FWLR (Pt. 62) 211.

It behoves on a party to give testimony in support of his pleadings if he wants to succeed in his case. It is a cardinal principle of law that he who asserts must prove his case with credible and unchallenged evidence... It is after a plaintiff has proved his case in this manner that the burden of proof shifts. In the instant case, the appellant was not consistent in his evidence as he developed the habit of approbating and reprobating. His evidence was not credible and reliable and they were also full of contradictions. Therefore by evidence he did not prove the averments in his pleadings in accordance with the law of evidence.⁶³

In *Onwuchekwa v Onwuchekwa*,⁶⁴ the Supreme Court of Nigeria stated four major ways of proving customary law and they are:

- i. through the opinions of native chiefs who are acquainted with the native law in question;
- ii. through books;
- iii. through manuscripts and
- iv. through people having special knowledge of the custom.

In proving custom, it is trite that a single decision of a court on a point of customary law, sufficiently cogent and authoritative would be enough to enable the courts to take judicial notice of its existence without further proof. The courts are also at liberty to invite assessors and other persons with special knowledge of the custom of a particular area to offer legal opinion and advice to the court when the existence of a particular custom is to be proved in court.

⁶³ [2008] 7 NWLR, (Pt 1086) 342.

⁶⁴ [1991], 5, NWLR (Pt 194)739 -742.

The customary law to be applied by the courts is those relevant and appropriate to the given community where it is sought to be applied; and such appropriate laws in Rivers State include

- (a) “with respect to land matters, the law of the place where the land is situate⁶⁵
- (b) with respect to causes arising from inheritance, the law applying to the deceased;
- (c) with respect to civil causes or matters where both parties are not indigenes of the area of jurisdiction of the court, or one of the parties is not an indigene of the area of jurisdiction of the court and the parties agreed that their obligations should be regulated wholly or partly by the customary law applying to that party, the law binding on the parties; and
- (d) with respect to all other civil cases, the law of the area of jurisdiction of the court.”

2.2 Customary Law and the Rights of the Girl- Child

The rights of the girl-child are human rights which are globally recognized and protected. These rights are generally categorized into political, economic and social rights and include right to life, right to free movement, right to peaceful assembly, right to express oneself, thoughts and opinion, right to dignity, right to a name, etcetera. Some of these rights have always existed under various customs. But customary law by its very nature while recognizing some of these rights such as the girl-child right to life, right to shelter, right of association,(albeit somewhat qualified)etcetera, it downplays and even ignores many others and it also permits many practices which qualify and limit these rights.

For instance whilst the right to life is protected under customary law as most traditional societies hold life as inviolable and sacrosanct, the reproductive rights of the girl-child is generally unrecognized “as available traditional practices do not suggest that women enjoyed

⁶⁵ Customary Courts Law, Laws of Rivers State of Nigeria, Vol.2, Part 3, 1999, S.10 (2)a-d.

much of this right.”⁶⁶ The girl-child has a qualified right to education that is, informal education which equips her to carry out the traditionally imposed roles of wife, mother and home maker as more formal trainings were reserved for the male child who would continue the family name while the girl would be married off to another family. The disposition towards the education of the girl-child is fuelled by the unfounded notion that no matter the level of training given to a girl-child, she would only end up in the kitchen. The girl-child’s right to freedom of expression under customary law is highly proscribed as she can only express her views on issues on the invitation and permission of men.

The political rights of the girl-child under customary law are encapsulated in the particular attitudes, beliefs, sentiments and orientation of a given set of people towards a system of governance and control. It embodies concepts of power and authority; legitimacy and performance of societal approved roles. It establishes rules of behaviour and enforcement of appropriate sanctions for behaviours considered deviant. Under customary law however, women (a term in this work which includes the girl-child) do not have nor do they exercise equal rights with the males in the political processes of their various communities in the Niger Delta.

This position that culture that is, customs and traditions of our communities in the Niger Delta have continually eroded the girl-child political and other rights have been confirmed by Ducker⁶⁷ who stated that “culture is indestructible and the culture that placed the Nigerian woman at the lower level on the societal ladder cannot be destroyed... the goal of women should not be to create a forum for sharing political positions with men...” It is argued⁶⁸ that “a strong index to gender discrimination in Nigeria is the strong root of custom.” Armstrong supports the view that

⁶⁶ S O Oyelade & B Odunsi, ‘Right to Sexual and Reproductive Health in Indigenous Africa: Nigeria in Focus’ (2012) Vol. 3 Rivers State University Journal of Public Law 24.

⁶⁷ *Op.cit.* p 83.

⁶⁸ Y Olomjobi ; *op.cit.*; p. 38.

gender discriminations which breed infringements of fundamental human rights are rooted in our various customary practices. And that these customary practices were evolved and administered by men displaying their perceived roles in society. According to her, “custom has been in the sphere of influence of men. It is perceived that men are the custodians of a peoples’ tradition. This is seen from the fact that the status and control over customs are held by traditional rulers and religious leaders.” With such positions as expressed above, the march of women to full emancipation under a patriarchal system is fraught with grave challenges as displacing opinions on the “natural” positions of men and women in society is a monumental task.

The enforcement of the rights of the girl-child in the Niger Delta faces a major challenge. This challenge is that despite the constitutional provisions on the protection of human rights, and other similar international provisions in protocols and Conventions, the Nigerian society refuse to let go of cultural practices that are clearly not in consonance with human rights provisions but continue to merge the traditional roles of women with modern trends. It is this admixture that greatly hampers the exercise of rights and has led to a denial of the girl-child’s rights as confirmed by Wokocha⁶⁹ that “a plethora of civil and political rights have continued to elude womenfolk the world over in diverse forms and varying degrees according to each polity.”

2.2.1 Political Rights of the Girl- Child under Customary law

The girl-child’s political rights include the right to life,⁷⁰ right to dignity of the human person,⁷¹ right to personal liberty,⁷² right to fair hearing,⁷³ right to privacy and family life,⁷⁴ right to freedom

⁶⁹ R.A Wokocha; “Juriprudential Pitfalls in the Quest for Gender Equality” (2003) Vol 2 Port Harcourt Law Journal, 123.

⁷⁰ S. 33(1) 1999 Constitution of Nigeria as (amended) 2011.

⁷¹ S. 34(1) *ibid.*

⁷² S.35(1) *ibid.*

⁷³ S.36(1) *ibid.*

⁷⁴ . S.37(1) *ibid.*

of thought,⁷⁵ right to freedom of expression,⁷⁶ right to freedom of association,⁷⁷ right to freedom of movement,⁷⁸ right to freedom from discriminations ,etc. How has the girl-child fared under customary law in the protection of these rights?

The girl-child under customary law has a general right to life as any other person because human life is precious, sacrosanct and to be protected. Customs and traditions do not provide for the intentional deprivation of a person's life except in circumstances where the deprivation of life is the traditional sentence or punishment for a crime. This applies especially for the offence of murder where customarily, the people believe that the "spirit" of a murdered person can only rest and be at peace when his or her death is avenged. Also, it is generally believed that the death of a human being in the hands of another person whether inadvertently or intentionally brings a curse on not just the accused alone but his entire family and generation. So, the only way to erase the curse and avert impending doom on the family and the community is to give a life for life. In this kind of situation the person who killed another or a member of his family is demanded by custom to commit suicide usually by hanging or be intentionally killed may be through poisoning to appease the land.

This customary position raises very critical human rights issues ranging from denial of the right to fair hearing of the party alleged to have killed another, especially the right to defend himself, as the fact of death is all that is customarily required to condemn the 'killer. It also leads to surrogate killings where a member of his family who did not commit the act frowned upon pays the ultimate penalty of death for no just cause other than the fact of blood relationship to the culprit. In such extra- judicial killing, custom condemns the killer immediately death is recorded.

⁷⁵ S.38(1) *ibid.*

⁷⁶ S.39(1) *ibid.*

⁷⁷ S.40 *ibid.*

⁷⁸ S.41 *ibid.*

He is denied an opportunity for defense as reasons are not allowed to be adduced to justify the act of killing another person. Herein lies the plight of the girl-child under customary law as they are usually the 'scape-goats' used to 'appease the angry gods and the land in such cases. The usual justification for this position is that such appeasements were always and better done with the virgin blood of a girl-child. This clearly puts the girl-child in a regular position of sacrifice of her life and in some cases her freedom and future to save the life of her family.

There are other cultural practices which threaten the girl-child's right to life despite the protection of the Constitution. These practices include the female genital mutilation which though supposedly carried out to prevent female promiscuity and also aid childbirth, sometimes actually lead to the death of the girl-child through uncontrollable bleeding and the contracting of various diseases from the crude process of chopping off the genitals. A second customary practice that may threaten the girl-child's right to life is the customarily approved early marriage with the attendant introduction to sexual relationships before physical maturity. This forced and early marriage invariably leads to health hazards, impaired reproductive and urinary organs and culminating into a condition called *vesico vagina fistula* and eventual death.

In a similar vein, the girl-child's right to life is constantly breached by customs and traditions which inflict punishment even to the point of starvation on a woman who lost her husband to make her show grief and pain. Custom demands that such a bereaved woman sleep beside the corpse of her dead husband, drink the water used in washing the husband's dead body to establish her innocence of any culpability in the husband's death. These practices of course expose her to health hazards which can become fatal. In addition to causing the woman health hazards, these practices which subject women to torture (physical and mental), to inhuman and degrading treatment violate her right to dignity of the human person. The forced imprisonment of

women to their homes in obedience to the dictates of custom that forbid appearance of females at some cultural displays is a violation of the girl-child's right to personal liberty and freedom of movement. To Madu⁷⁹ "that woman whose freedom is unlawfully curtailed by way of being forced to sleep with a corpse...that young girl who is forced to marry an old man too old to be her grandfather is another deprivation of the girl-child's right to personal liberty as the freedom to make a choice of a partner is denied her with the consequences that she has to live with a man she does not love.

The Constitution of Nigeria has provided for the girl-child's right to freedom from discrimination. Despite this provision however, the girl-child faces different forms of political, economic and social discriminations; all borne out of the practice of custom and traditions. The plight of the girl-child is aptly captured by Alapiki⁸⁰ when he stated that:

The Nigerian woman has been debased and dishonoured by the belief that every woman is supposed to consider motherhood as the principal purpose of her existence; she is supposed to produce children, cook, wash clothes and take care of male authority. By tradition and culture the woman in Nigeria is expected to play a second fiddle...

Women's political participation in Nigeria is very low.⁸¹ Olomjobi writes that "in terms of political participation of women... Nigeria was listed number 127 out of 142 countries with women having 24 seats out of 360 in the 2011 elections." Currently in the 8th Assembly, we have only 20 female legislators. The girl-child is politically discriminated against in the Niger Delta.

⁷⁹. A.C.Madu, *Women Empowerment. Its Relation to National Development and Human Rights* (Snaap Press Ltd, 2010) p. 99.

⁸⁰ *Op.cit* p.154.

⁸¹ Y Olomjobi; *op.cit*; p. 3.

She has little or no role to play in the governmental process as such leadership roles traditionally belong to the men. The girl-child cannot aspire to become the family head or community Chief or king. She cannot be a leader in the Niger Delta where the men hold sway in their God endowed positions of dominance as natural leaders.

Even in the isolated matrilineal communities of *Nembe* in the *Bayelsa* State of Nigeria, a woman cannot rise to be crowned the head or king as such a position is non negotiably reserved for the men. The tragedy of this cultural position is that leadership skills, wisdom and tact which a woman may possess remain unrecognized and so unprofitable to her and to her generation. These cultural practices have continually remained repressive of the girl-child rights. “This repression of women and their rights continue to be part of unequal social structures and the lack of freedom, thereby holding back human development of women in Nigeria.”⁸² This cultural relegation of the girl-child to the kitchen and the continuing subordination to the man under customary law is a violation of her human rights to achieve her potentials and so, has become a fundamental impediment to her political development as a person.

Men dominate the political scene under customary law as family heads, village or community heads and chiefs. Only males are recognized as viable emissaries to interface between one community and another in cases of conflicts. The council of chiefs which is the main organ of native administration and power is not open to females in most communities of the Niger Delta. The uninvited presence of a woman in their meetings and proceedings is perceived as sacrilegious, a defilement of the land which is to be discouraged with stiff sanctions.

⁸² M O Izzi; ‘Political Development of Women in Nigeria: The Human Rights Perspective’ (2013), Vol. 4 Rivers State University Journal of Public Law, 130.

Izzi⁸³ agrees with the assertion that women were and are still excluded from political administration and decisions of communities. According to her, even up to the period of the colonial rule in Nigeria, “women had no role to play in public affairs or politics” Continuing, she stated that “gender equality at present is denied the girl-child, the unmarried woman, the female spouse and the widow by some prevailing laws and customs which have been largely made by legislatures and village councils almost always completely constituted by men.”⁸⁴ The plight of the girl-child especially concerning her role in society is aptly described by Wokocho⁸⁵ who states that:

As adults with tasks and views already blurred and coloured by social perceptions and institutions, the man and woman begin to live life at a social polarity that leaves the woman prepared to live as an inconsequential attachment to society designed to procure the happiness of the other to find happiness of the other, to find happiness in no other source than dutiful procurement of the happiness of the man and in dutiful if not servile obedience and subservience to the dictates, whims and caprices of man. Masqueraded in the guise of responsibility, civility, virtue and courtesy; docility and anomy are distilled into the woman who subterfuged in the circumstance, finds delirious happiness and satisfaction in the increasing loss of personality which erodes herself existence. Very soon she can no longer tell the difference between

⁸³ *Ibid*; p.131.

⁸⁴ *Op.cit*; p.121.

⁸⁵ R A Wokocho; *op.cit*, p. 123.

her 'human' self determined happiness and the society induced (decreed) sub-existence.

This position of the writer underscores the fact that the violations of the rights of the girl-child is actually master minded by the society itself through age long manipulations of the thinking processes of men and women alike. For the former, the manipulations are targeted at re-emphasizing his dominance over the woman while the latter is 'schooled' by society to accept her secondary role and to even be critical of other females who dare to be "human" and breakout of the cocoon of nothingness. Women clearly face discriminations in Nigeria on many fronts as they:

Tend to have less access to education, justice and opportunities for employment than men" the stigma of discrimination on women is mainly present in institutions such as marriage, inheritance, politics, reproductive health and real property.⁸⁶

Writing on the status of women in African societies, T.O Elias stated:

It is a notorious fact that women in Africa, as in even many a modern society play little if any part in public life. Their place is in the home, looking after the husbands and children. This somewhat restricted sphere of a woman's social functions is not, as is often supposed, due to the fact that so called 'bride price' is paid on them by their prospective husbands before marriage.... The position of women can, therefore, only be the result of the

⁸⁶ Y Olomjobi ; *op.cit*; p.32.

particular mode of ordering social, economic and even military affairs in a given African society.⁸⁷

The girl-child therefore “undergoes a socialization process that celebrates the self fulfillment of the male while undermining the autonomy of the female. A woman’s education while precluding female social and political growth is primarily directed towards the affirmation of the external female virtues such as docility, self abnegation and chastity.”⁸⁸

The right to human dignity emphasizes the globally acknowledged right of persons to liberty and the deserving of respect. Under customary law, the girl-child’s right to personal dignity is generally acknowledged as certain gestures and touches on some part of the female anatomy especially by the opposite sex are frowned upon by custom as indecent and declared to be a taboo. It is however very curious that the same culture sees nothing wrong in the physical violence meted to the girl-child by her husband, her brothers and fathers alike in the name of discipline to remind her of her place in the family system. The girl-child is subjected to the indignity of her private parts touched, mutilated and altered without her consent in circumcision rites to prepare her for marriage. The girl-child is usually held down by more mature women while her legs are prised open for the traditional circumcision to be carried out. This is a clear invasion of her privacy and an abnegation of her right to dignity.

Violence meted to the girl-child in any guise is a violation of her right to human dignity, freedom from all forms of oppression and torture. Our customary laws condone one form of violence or the other on the girl-child either as an approved form of punishment or as a show of control or as an assertion of power and dominance by fathers, spouses and siblings. Wife beating is justified by many customs especially to punish behaviours such as disrespect and disobedience

⁸⁷ T O Elias, *The Nature of African Customary Law* (Manchester, Manchester University Press 1956) 100.

⁸⁸ O Chioma, ‘Hunters and Gatherers, Poetics as Gender Politics’ in Sam Ukala’s ‘The Slave Wife and the Log in Your Eyes’ *Review of English Literary Studies*, Vol. 17, No 1, 2004.

to husband, challenging and confronting the husband's unfaithfulness, refusing sexual relations, adultery, inability to cook well, engaging in witchcraft, using love portions on husband etc.

Among the Ikwerre, the Ogba, the Ijaws, the Ogoni and the Etche peoples of the Niger Delta areas, wife beating as a form of correction and discipline is a common practice which is variously acknowledged.⁸⁹ The list is actually in-exhaustive as different forms of punishment exist in different communities of the Niger Delta. Supporting this position on the incidence of violence at home, Abduraheem et al⁹⁰ stated that "women in Nigeria are subjected to multiple forms of domestic violence...and that the perpetrators use several tactics to maintain power and control over the spouse, generally women." Further details on variants of domestic violence in Nigeria were given by Menkiti⁹¹ on studies from Enugu and Ondo States to include physical, verbal, emotional abuse, rape, sexual harassment, exploitation and prostitution. Izz⁹² also cites the "case of Nkechi Ngene, a housewife and mother of two minor children who was beaten to death by her husband with an eight month old pregnancy in Enugu. Some customs therefore promote domestic violence which threatens the girl-child's right to life and safety in the guise of correction of behaviour. In fact in sections of the country, flogging is legally recognized as a corrective measure used on women by their husbands."⁹³

The right to human dignity enshrined in our Constitution remains unprotected and jettisoned in the series of forced marriages against the girl-child's will for instance among the

⁸⁹ Oral interviews conducted on Chief Welimati Weli of Elemenwo of the Ikwerre tribe in Rivers State; Chief Nwobo Nwoloko of Ede from the Ogba tribe in Rivers State; Chief Okoni Ogoriba, an Ijaw from Sagbama in Bayelsa State.

⁹⁰ N M Abduraheem et al, 'Domestic Violence Against Women in Nigeria: A Scourge Devoid of Solution?' (2014) Vol. 17, No 2 The Nigerian Law Journal 84.

⁹¹ M C Menkiti; 'Domestic Violence Against Women-A Story of Community Prevention Strategies from Two States in Nigeria, Enugu and Ondo' stated in N M Abduraheem, *ibid*.

⁹² M O Izz; 'Domestic Violence and the Human Rights Challenge in Nigeria' (2012) Vol. 3 Rivers State University Journal of Public Law, R/S UJPL 211.

⁹³ For example S.55 of the Penal Code justifies violence to women. It provides that "a man can correct his wife by flogging so long as it does not amount to grievous bodily injury and such correction is in line with native law and custom"

Abua people of Rivers State where early betrothal of the girl child, even at birth is practiced leading to early marriages and excluding the girl-child right to choose who and when to marry. Among the *Njua Kaku* people of *Boki* Local Government Area of Cross River State the girl-child under customary law has no general right to choose a husband of her choice as the choice is made for her by her father, uncles, and male siblings on considerations other than love between the parties. She is often negotiated away to a suitor for considerations of money, farm products, farmland, cattle, promise to train her male siblings etc without regard to her personal feelings and even abducted by the would be suitor without reprisals from her family as it is an acceptable cultural behavior.

Forced marriages tolerated by our various customs and traditions do not promote the right of a woman to self dignity and respect as some of the women are dragged screaming to their prospective husband's house and against their will. In fact a father under customary law in parts of the Niger Delta can refuse the daughter's choice of husband while insisting on his or the family's choice of husband, and the usual justification for such an action is that the girl child is under his control and so must do his bidding, coupled with the fact that at the customary level the girl-child is not generally credited with the ability to know what is good for her and particularly for the family. The girl-child thus enters a form of 'slavery' where her wishes do not count, where she is parceled off to a suitor to please her family; and above all is expected to accept her fate with docility and obedience as is customary. In *Osamwoyi v Osamwoyi*,⁹⁴ the Supreme Court frowned at the actions of the respondent's father who sought to dissolve a marriage he did not approve of. The court stated that the woman's right to dignity is non-negotiable and so she has the right of choice to choose a husband of her own freewill.

⁹⁴ (1972)All NLR 792.

Despite the efforts of the courts disallowing archaic and unprogressive customs, they are still implemented in our various communities. In fact these decisions are generally not followed as they are dismissed by the populace as concerning the immediate parties to the suit and their particular families and communities.

The girl-child's constitutional right to privacy and family life is denied her by the customary practice in many parts of the Niger Delta such as among the Ikwerre people (who have the practice of "ibitaeteke"⁹⁵ of a girl-child); the "sira" custom of the Ogoni people all of Rivers State. This practice denies the girl-child of the right to marry but remain as a kind of 'man' in her father's house to produce children for the family. This violation of the girl-child's rights also exposes her to multiple sex partners. In such situations the paternity of the children is glossed over by custom so long as the unmarried state of the girl-child was orchestrated by her father or other male relatives. She is thus seen as a sex tool because her usefulness is firstly procreation especially in the face of a father's inability to have many children or to have the preferred male sex.

The girl-child's right to sexual and reproductive health is not respected by custom which turns her to a sexual symbol whose main purpose in life was to reproduce sufficiently to populate the father's house. The fact that she may not want to live that type of life is irrelevant to customary law; and though an adult human being, her will to decide what to do with her body is clearly taken away in such circumstances by custom. This clearly justifies Howard's opinion that

⁹⁵ "ibitaeteke" or the "sira" custom permits a father under the Ikwerre and the Ogoni customary laws to deny their daughters usually the first daughter the right to marry insisting that they remain under his roof to procreate and have children that would belong to him and answer his own rather than their biological father's name.

cultural practices have ensured that men retain “a material, sexual and moral dominance over women that they are simply unwilling to voluntarily relinquish.”⁹⁶

2.2.2 Economic Rights of the Girl -Child under Customary law

The girl-child under customary law has the right to farm, engage in any trade approved for women, and even sell her labour. Sadly, however, it has been observed that:

Nigerian women have always worked on farms yet have never been allowed to own any land. Their role is seen as solely domestic...as customary law assists this process by further marginalizing women. Every Nigerian citizen has a constitutional right to own property yet in practice women have absolutely no right to own property or land by virtue of being females.⁹⁷

Women in our rural communities alongside their men but even more so than the menfolk in some cases till the ground for agricultural purposes, plant, uproot and carry heavy loads of farm produce on their heads to the closest market outlet for sale to ensure the sustenance of the family.

Despite this support for rural agriculture they face very serious impediments which hamper their productivity. Examples of these impediments include the inability to access enough land for agriculture as they have to depend on the men to provide land for farming each year.

As the girl-child under custom cannot inherit land she is not in control of the size of land she can use for farming, neither is she in control of the necessary inputs for agriculture for which she must be given direction as to use by her father or husband. This is why Anyogu summarized that

⁹⁶ R Howard, ‘Women’s Rights in English-Speaking Sub-Saharan Africa’ in C. Nelch Human Rights and Development in Africa (1984) p. 60; R Howard, ‘ Human Rights and Personal Law: Women in Sub-Saharan Africa’(1982)Vol. 12(1/2)*A Journal of Opinion Cambridge University Press*,45-52 available at <http://www.jstor.org/stable/1166538>.

⁹⁷ Madu, *op.cit*; p. 117.

women's economic rights are further mortgaged and "inhibited by lack of access to farmland, capital and control over their own time and products of their labour."⁹⁸

The girl-child's economic rights are further limited by the fact that since custom places on her the responsibility of cooking and feeding the entire household, the girl-child who is engaged in subsistence farming would hardly have enough to sell in the market and improve her capital to purchase more and better seedlings for the next farming season because most of her products would go into feeding her immediate and extended family while the man farming what is regarded as 'male' crops and which would be primarily sold, leaving a small quantity for consumption increases his economic base to marry more wives and acquire chieftaincy titles.

It is generally acknowledged that "Nigeria is by tradition a patriarchal society in which women are discriminated against from infancy and the violation of their human rights continues throughout their life cycle."⁹⁹ Patriarchy threatens the girl-child's economic rights as her economic efforts are often managed and regulated by the men having rule over her at any particular time. The major issue here bothers on the treatment of the results of her labour. What happens to the proceeds of her fruitful efforts? Who manages the proceeds under customary law? Under our various customs, the proceeds of the woman's economic venture are 'confiscated' by the man that is by the father or husband, uncles and other male siblings. It becomes part of the family's wealth and is managed on her behalf for the good of all. This control of the woman's personal resource is a show of control by the men which further impoverishes the womenfolk. Olomojobi posits that:

The main purpose of inflicting economic violence on women by men is
to acquire power and control over women...and this can take the form

⁹⁸ F Anyogu; *Access to Justice in Nigeria: A Gender Perspective* (2nd edition, Enugu: Ebenezer Production Ltd, 2013) p. 332.

⁹⁹ *Ibid.*

that man puts all family property and joint account of both partners into his name only, leaving the woman with nothing to survive in situations where separation or divorce occurs.¹⁰⁰

The notion that a woman's place is in the kitchen or backyard and not in the gathering of men has greatly hampered the full exercise of the girl-child's economic rights. This cultural hangover still limits the girl-child in the modern era as most parents still prefer to train a son with skills for survival and independence than train a girl child who would be married off to another family and lose her family's identity. Wokocha writes that "the natural consequence of this unnatural subjection has of course been poverty, pervading poverty amidst the industry and enduring labouriousness that characterize the woman folk's day to day living."¹⁰¹

The girl-child in the Niger Delta is generally denied inheritance rights under customary law which forbids her from succeeding the father as head of the family or the family chief. She is also precluded from inheriting the father's or family's property especially land as it is reserved for the male children. This position is justified by patriarchy as only the males whom custom regard as custodians of the family lineage and name are eligible to inherit family land. In fact, the girl-child's right to land whether in her father's or husband's house is only *usufructural* (right to use) and not to own. The girl-child has no right to alienate the property given to her for farming purposes because she has no valid interest to alienate. She can also not create further interests in the property in question without the permission and consent of her father or in his absence, the consent of her male siblings or that of her husband if she is married; although girl-child can inherit personal property from the father especially if they are *inter vivo* gifts.

¹⁰⁰ *Op.cit*; p. 64.

¹⁰¹ *Op.cit*; p.151.

If the girl-child is married, her personal property in the event of death is automatically inherited by her husband or in his absence by his male relatives but the reverse is not the case if it is her husband who dies. Among the *Ikwerre* people of Rivers State, if a woman had only female children, they will equally not be allowed to inherit their mother's property including her room and kitchen as these would be shared amongst the male members of the family to the total exclusion of the girls who would only be entitled to her personal things like wrappers, pots and jewellery. The girl-children can only remain in their mother's room at the pleasure of their brothers. The right that custom therefore imposes on the male child to be the vehicle for the perpetuation of a peoples' lineage has continually placed the girl-child at a disadvantage as less attention is given to her in terms of training and welfare as she is perceived not to be very critical to the continuance of her family's name and existence but is rather an enhancer of the fortunes of another family.

In *Mojekwu v Mojekwu*¹⁰² the court observed that the denial of property rights through disinheritance leads to the violation of a woman's human rights as it is discriminatory and unjust. The violation of the economic rights of the girl-child has led to destitution, impoverishment of women and the continuous dependence of women on the men-folk which in turn lead to conflicts in the home. It has been stated that "women married under Yoruba and Ibo customary law systems cannot inherit their husband's property and one can hardly find Ibo women inheriting their father's estate."¹⁰³

2.2.3 Social Rights of the Girl -Child under Customary Law

The girl-child enjoys a general freedom of association. She can freely associate with her mates especially females in the family, kindred and communal groups. This freedom to associate is

¹⁰² *Supra*.

¹⁰³ B Akinrimisi, *Women and Right to Inheritance in Nigeria*; (Shelter Right Initiative, 2001) p 2.

however censored by custom which frowns at associations and fraternities with the opposite sex except they are persons with whom she has blood relationships. The girl-child's social rights are thus somewhat proscribed and ordered by tradition.

Some cultural practices expose the girl-child to intimidation and violence which invariably affects her physically, emotionally and psychologically. An example of such social events with customary approvals are masquerade dances which present the cover men use to harass the womenfolk; chase and flog them to show masculinity. Some masquerade performances even demand and restrict the movement of women and children who are customarily forbidden to see such special masquerades within the period of their display. The girl-child's freedom of movement guaranteed under our Constitution is violated by such 'forced imprisonment' sanctioned by custom as the women and children become confined to the recesses of their homes for fear of huge penalties and cultural repercussions of viewing masquerades which incidentally are the preserves of the men. The girl-child's venture to the stream and farm for food and water is only under special escort of their men-folk whose freedom of movement on the other hand is always guaranteed by the same custom.

The girl-child's right to marry a person of her choice and to have a family life is denied her by custom which approves early and forced marriages to suitors chosen for her by her parents either at birth, in her teenage years and at puberty. The girl-child so married off is further denied her rights to the children of the marriage at divorce because the custom recognizes patriarchy and insist on the father's right of custody of the children unless they are so tender that the mother is given a qualified right to keep the child for a period. Divorced wives under the customary law of most communities in the Niger Delta are at a disadvantage and virtually have no right when it comes to the custody of children. In fact the woman's right to be provided with a home

recognized under customary law terminates upon divorce even if the house was jointly acquired.

Her position is not even helped by the provisions of the Matrimonial Causes Act with respect to maintenance and settlement of property which expressly excludes the application of its provisions to marriages under customary law.¹⁰⁴ The married girl-child's right to freedom is threatened at the point of divorce if she and her family cannot refund the bride-price paid on her head. She can only regain her freedom from the husband upon the repayment of the bride-price despite the number of years she has committed to the marriage or the number of children she has with the man, if not she cannot validly marry another person under customary law and any issue of the subsequent marriage in the eye of customary law in most communities of the Niger Delta except among the Ogba people would be seen as the child of the original husband.

Customary law restricts the girl-child's education to the acquisition of skills of home management, farming and petty trading which will keep her at home and available to cook and clean for the men-folk. The major form of recreation available to the girl-child is the going to market where they could freely associate with others. Under customary law, the designated market days were seen as days of holidays from labour in the farm and freedom from household chores. The rights of the girl-child are further restricted by the series of taboos; for example, the girl is not by some customs allowed to climb trees, sit astride a wall or fence, eat certain parts of the fowl which traditionally belong exclusively to males or she will be liable to pay customary fines where she dares to succumb to the temptation of consuming such delicacies.

2.3 Violations of the Rights of the Girl -Child under Customary Law

The rights of the girl-child are violated on a daily basis by parents, older siblings, teachers, relations etcetera. In fact the issue of violations of the girl-child's rights is global. The recent

¹⁰⁴ See S.69 Matrimonial Causes Act, Cap M7, Vol. 8, 2004.

Child Rights Act 2003 in Nigeria is a legislative response to curb some of the noticeable and notorious infringements of the rights of the child in Nigeria. This Act¹⁰⁵ provides that:

In 'every matter concerning a child, whether undertaken by an individual, public or private body, institution of service, court of law or administrative or legislative authority, the best interest of the child shall be the primary consideration.

Despite this provision of the law, the Nigerian girl-child's rights are still violated and infringed upon. She is violated physically, sexually and emotionally through intentional maltreatment and neglect of parents, guardians and other persons responsible for the welfare of the child. Sexual abuses of the girl-child include various forms of indecent molestations, rape and exposure of the girl to pornography and early prostitution. On the other hand, willful neglect may include abandonment of the child, refusal to give the child food, medical care or clothing.

The girl-child in the Niger Delta is passing through a process of de-personalization where her individualism is not recognized and respected. Her personality as a human being with rights is none existent in the eyes of custom as she is always treated as an adjunct to the human specie called man. She is constantly used by man; her reproductive rights denied and bogged down by all sorts of cultural inhibitions and barriers which have become so ingrained in her psyche. These unnatural practices described as barbaric in other climes become normal to her and others even to the point that it would be her fellow women in the various communities who would insist on her performance of these customary rites to the letter. This is why Ukhun and Inegbedion¹⁰⁶ maintain that:

¹⁰⁵ S.1 Childs Rights Act 2003.

¹⁰⁶ *Op.cit* p.129.

The issues of human and women's rights in African countries have always been complex. This is so, not because of a lack of recognition of these rights, but rather because of cultural barriers and practices that have made the realization of these rights a rather more difficult task in Africa than is the case in the western world.

2.3.1 Child Labour

The girl-child under customary law is a ready tool for many jobs within and outside the home.

Child labour under customary law can take various forms; such as

- (i) the parents of the child selling the child's labour to other persons to work as agricultural helpers in farms; or
- (ii) using the girl-child as unpaid labour in the family's farm;
- (iii) domestic helpers in various homes other than theirs from a tender age.
- (iv) It can also include street selling and hawking of wares; and (v) unpaid labour in the home.

She is always the available and free labour for menial task which were deemed demeaning for men especially for domestic jobs of sweeping, cleaning, cooking, fetching water, even the nursing of younger siblings. A girl-child starts very early to be given a younger sibling to carry even before she is fully developed to do so. And when her own legs would be wobbling under the weight of the child, she has to struggle to maintain her balance to ensure that the baby did not slip from her as such 'weakness and frailty' attracted very serious censure and ridicule. The girl-child under customary law is expected at the crack of dawn to carry pots which may be too big for her age to trek good distances in the cold to fetch water for the use of the family. These demands on her are all in the bid to train the girl-child to be a home maker, future wife

and mother. Her morning tasks for the day do not end there as she is expected to sweep the compound, sweep the house and start the process of preparing food for the family with the mother and other female siblings. These early tasks would of course involve going to the farm with the parents and carrying baskets of yam, cassava, etc or even bundles of fire wood which may be too big for her age while her male siblings follow their father to the village square for meetings, tap wine, repair the roof tops and generally learn to be men or they may be given the opportunities of going to school.

Hawking of different kinds of items on the streets and in the market places is usually the task of the girl-child to augment the resources of the family and assist in the training of her brothers although the male child in some families are equally exposed this form of exploitation. She is more readily sent to extended family members and other persons as housemaids to ‘help’ her family while the boys are usually sent away from homes as apprentices to learn specific skills. This position was adequately captured by the 2012 Gender in Nigeria Report.¹⁰⁷ Underlying the use of the girl a ready source of labour is the fact that she will one day leave her father’s house to go and improve another family through marriage and so should be used to improve her biological home before being given out in marriage. Girls from poor and rural communities are especially more likely to be denied education as knowledge and skills needed for employment and advancement were often withheld from the girl-child due to the cultural attitude that the exposure of the girl-child to outside influences will ‘spoil’ the girl and bring shame to the family name. Putting the girl-child to early labour is mainly as a result of economic

¹⁰⁷ The Report published by the British Council reveals that “gender inequality not only exists in the country but at high levels. There is lack of gender balance in the economy, education, politics, health, access to justice and almost all areas of human development. Nigeria’s 80.2 million women and girls have a significant worse life chances than men...; 60 to 79 percent of the rural workforce is women but men are five times more likely to own land... Nigeria ranks 118 Of 134 countries in the gender Equality Index” culled from The Guardian Newspaper of Sunday, February 28, 2016, p.15.

considerations as most families driven by poverty will resort to sending their children to hawk wares or go to live with strangers as baby nurses to make ends meet. Child labour according to Potter and Lloyd-Evans¹⁰⁸ is “rooted in poverty, history, culture and global inequality.”

2.3.2 Child Marriages

Child marriage is another form of human rights violations as the girl-child before she understands the meaning of marriage is sent away from the love, familiarity and security of her home to another family sometimes forcefully and amidst much wailing and at other times with docility borne out of the non comprehension of the nature of the transaction going on around her.

Child marriages which have been defined as the union of an adult male and a girl-child of less than 18years of age as husband and wife¹⁰⁹ is violative of the girl’s human rights as it dispenses of the prerequisite of the girl’s consent to validate such unions. In child marriages the girl’s consent is not sought but offered on her behalf by parents and other male relatives who would have cemented the union by accepting an agreed bride-price. Consent is critical to the validity of any marriage; and that is why the practice of some customs which ignore the will of the girl and force her into a marriage is to be jettisoned. Even the Nigerian courts have frowned at this non recognition of the right of the girl-child to decide when and who to marry. In the old case of *Osamwoyin v Osamwoyin*¹¹⁰ the Supreme Court in answering questions on the validity of marriage under the Bini customary law reiterated that consent of the bride was a condition precedent to the union. Child marriages are common in most communities in Nigeria especially among communities in the northern part of the country where girls are married as early as 7years but definitely before they are 15 or 18years old. Child marriage is actually a

¹⁰⁸ Cited in S Lloyd-Evans, ‘Child Labour,’ in V Desai & R B Potter, *The Companion to Development Studies* (2nd edition, London, UK: Hodder Education, 2008) p.225.

¹⁰⁹ O Nwankwo, *Child Marriages as Child Abuse* (Enugu, Nigeria: Civil Resource Development and Documentation Centre, 2001) p 1.

¹¹⁰ (1973)1 NMLR 25.

sexual abuse which separates the girl-child from her family, makes education impossible as she starts early in life to bear the responsibilities of womanhood while her mates elsewhere are in school, and isolates her from familiar friends thereby destabilizing her emotionally. It can also lead to domestic violence as the husband who cannot relate and understand her 'withdrawn' state possibly from psychological problems imposed on her by the early marriage would naturally beat her into submission.

Child marriages expose the girl-child to many health hazards including the dreaded *vesico* vagina fistula (VVF) and possible death. They are forced into having premature sex and may be scarred for life by the possible brutality of their usually older husbands. Early marriages thus violate the reproductive rights of the girl-child. They are detrimental to the physical, mental and emotional health of the child as they deprive the girl-child from their rights to have control over their bodies and reproductive health. By the dictates of custom they do not have a say about sexual relations with the husbands neither can they decide on when to get pregnant or refrain from getting pregnant as they become over dependent on their husbands.

Some reasons have been advanced for the incidence of early marriages in our various communities. These reasons range from the cultural requirement to present the girl-child as a virgin to her husband (and the chances of achieving this is greater with younger girls than the more mature who may have had more opportunities of compromising their virginity); to the need to forestall promiscuity of an adolescent girl-child who at puberty may have become sexually active. It may also be to other none altruistic reasons such as the desire of families to "sell" their daughters to rich men for financial gains and general societal upliftment. Arinze- Umobi

summarized the reasons for early child marriages to be “poverty and greed on the parent’s part, misplaced priority, ignorance and adherence to mundane culture.”¹¹¹

No matter the reasons adduced for early marriages, they distort the girl-child’s developmental processes especially with regard to her education and training. They affect her physical and emotional development as her introduction to sex at an early age may make her scared of men for life. They can even lead to the destruction of some of her lower abdominal organs like the bladder, her uterus which may become displaced and may also lead to the possible rupturing of the vaginal walls. This cultural unintentional permission to stultify the growth of the girl-child through early marriage has been described as a “legalized defilement unfortunately aided by the parents of the poor child who becomes exposed to the mental and physical assault in the form of sexual intercourse and the ensuing childbearing.”¹¹²

2.3.3 Disinheritance of the Girl-Child

On issues of inheritance under customary law, the general principle is that the girl-child cannot inherit her father’s property or her husband’s property upon his death as his widow without a male child or without marrying any of her deceased husband’s brothers. Women in Nigeria have suffered discriminations in inheritance, succession and property-sharing both for economic and other purposes. This is due to the mainly patriarchal nature of the Nigerian society which in fact treats the women from birth as subservient to the men and actually as a property to be owned and possessed by the male gender.¹¹³

¹¹¹ *Op.cit*; p. 92.

¹¹² B C Umerah & N Esege, ‘Sexual Offences’ in *Medical Practice and the Law in Nigeria*(ed) B.C. Umerah, (Longman Nigeria Ltd, 1989) p. 58.

¹¹³O D Udoh; “The Beijing Declaration, Women and Property Rights in Nigeria,” Thesis.covenantuniversity.edu.ng>udoh visited on 7/21/15.

The plight of the women is made worse by our various customary laws which despite the copious provisions to the contrary in international Conventions and Protocols; and in our Constitution still insist on practices which promote unequal treatment of the girl child and women in the Nigerian society. This unequal treatment of the female gender when viewed against the background of human rights which has universal application without bias to gender, race, class or religion actually go to show and underscore the fact that the marginalization of women, the disinheritance of women for any ridiculous and obnoxious cultural practice has no basis and should be done away with.

According to Adepaju¹¹⁴ women suffer discriminatory practices under customary law with regard to ownership of property and inheritance despite constitutional provisions to the contrary. He stated further that discrimination against women is worse in the case of widowhood “when women usually end up without inheritance rights and find themselves subjected to harrowing rites” while to Udoh¹¹⁵ “although women under statutory law have ownership and inheritance rights, under customary law these rights are not upheld.” Customary law of succession of various groups override the women’s capacity and right to inherit the husband’s property after his death even when she was contributory to the purchase or acquisition of the said property. Iruonagbe acknowledges that it is almost universal in Nigerian customary law that widows have no capacity to inheritance;¹¹⁶ and this is not withstanding the right of every Nigerian to own immovable property enshrined in the Constitution.¹¹⁷

¹¹⁴ A Adepaju, *Family Population and Development in Africa. Development Studies*; (edited, Africa, London: Zed Books Ltd, 1997) p.15.

¹¹⁵ *Op.cit*; p. 35.

¹¹⁶ C Iruonagbe; *Land Ownership Patterns and the Economic Life of Women: A Study of Ozalla Community, Edo State, Nigeria*; (Germany: VDM Verlag 2009) p. 1.

¹¹⁷ Constitution of the Federal Republic of Nigeria (as amended) 1999, S. 43.

Property rights are embedded in the Constitution of every developed society as an “immutable inviolable right of its citizens;”¹¹⁸ with the declaration that “all human beings are born equal.”¹¹⁹ Article 5 of the Convention on the Elimination of all forms of discrimination against women (CEDAW) which was adopted by the UN General Assembly in 1979 and ratified by Nigeria in 1987 states clearly that nations should “modify the social and cultural patterns of conduct of men and women with the view to eliminate inferiority and superiority of either sexes or stereotype of roles of men and women.” By these provisions, the world recognizes that women are constantly discriminated against in society. The African Union recognizes the rights of women. Whilst Article 4(1) of the Act, talks about gender equality; Chapter 7 of the Constitutive Act of the African Union enjoins members “to actively promote the implementation of legislation to guarantee women’s land, property and inheritance rights including the right to housing” and Article 18 states that “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women...”¹²⁰ Article 21 of the Protocol to the Charter on Human and People’s Rights on the rights of women in Africa (which was ratified in 2004 by Nigeria) provides that “a widow or widower shall have rights to inherit each other’s property in the event of death whatever the matrimonial regime, and to continue living in the matrimonial home.” Article 7 of the Protocol to the Charter on Human and People’s Rights on the rights of women in Africa provides for both parties of the marriage to enjoy equal rights within and outside the marriage on issues of custody and access to an equitable share of the joint property deriving from the marriage.

In Nigeria, the story is different despite the guarantees and ratification of various Protocols, Conventions and Charters. One major problem militating against the freedom of

¹¹⁸ O Oliyide; *Rights*; (Throne of Grace Publishers Ltd, Lagos, Nigeria 2006) p. 32.

¹¹⁹ Universal Declaration of Human Rights 1948 Art. 1.

¹²⁰ African Charter on Human and People’s Rights (Enforcement and Domestication) Act Cap 10, 1990.

women in Nigeria is the patriarchal system of the Nigerian society. A woman married in Nigeria both under the customary law and in statutory marriage is supposed to be taking care of by her husband. She can use her husband's property but cannot dispose of it as her own. Under customary marriage, a woman who jointly built a house with the husband has no claim over the house jointly owned by her husband. The right to be provided with a home by her husband terminates upon divorce and she cannot claim the house she jointly owned with her husband.

The Married Women's Property Act of 1882 gave married women rights to own their own property but discriminatory cultural practices hinder this. It is stated in *Dawodu v Danmole* that among the Yoruba people a widow does not inherit the husband's property as a man's property at death is inherited by his direct children with the eldest son called Dawodu as head.¹²¹

Among the Igbo people, women (widows and daughters) generally do not have a right to inherit their husbands' or father's property.¹²² These discriminatory practices are played out when our cultures allow a man to inherit his wife's property at her death but where her husband dies the wife is only allowed to continue to live in the matrimonial home if she is of good behavior but she cannot inherit his property. According to Obi¹²³ "nowhere in Southern Nigeria does the customary law give a widow the right to inherit or share in the intestate estate of her husband... even where a husband in his lifetime allots a farm or house... for her use or enjoyment, the latter does not thereby acquire inheritance right in it." Among the Idoma people, a widow does not have the right to inherit the husband's property although she may be entitled if her children usually male children are grown up and she can inherit through them.

¹²¹ (1958)3 FSC 46.

¹²² UNCHS, "Law relating to inheritance in marriage in Nigeria"-http://www.facebook.com/The_reading_nation accessed on 11/6/2015.

¹²³ S N C Obi; *Modern Family Law in Southern Nigeria*, (London: Butterworths 1966) p. 28.

It should be noted that intestate succession is primarily based on blood relationship, and under customary law it flows from the father's line so that land even acquired by a family in modern times is generally registered in the father's name. And according to Udoh¹²⁴, "registration of land in husband's name is also another cause for denial of right to property... after divorce women have to prove that they contributed to the family holdings while after death, the family property is divided among his heirs." It is acknowledged that women's right to own property and inherit same is more acknowledged on paper than in reality. "There is a growing recognition globally that women's lack of rights in access to and control over land, housing and property constitute a violation of their human rights."¹²⁵ Women in sub Saharan Africa, face a distinct social predicament because their rights to property are denied.¹²⁶ Continuing, she stated that once the women got married they lost their "independent rights to family property neither can they protect or retain their land, houses or immovable property after going through divorce or the demise of their husbands".

A major contributory factor to the disinheritance of women's right to own property is the application of various customary laws. In most, African society's women themselves are treated as property to be owned by men so they cannot own or inherit land which is seen as the preserve of men who are the societal acclaimed custodians of the family name and lineage. These men control the "household land and property because communal authorities who are mainly men have allotted landed property to male household heads who in turn pass the lands to their male children."¹²⁷ It has been stated that "under customary law....all the properties acquired by the

¹²⁴ Udoh ; *op.cit* 35.

¹²⁵ UNCHS, 'Women's Rights to Land, Housing and Property in Post Conflict Situations and during Reconstruction. A Global Review' UNCHS (Habitat) United Nation Centre for Human Settlements Land Management Series, No 9, Nairobi.

¹²⁶ Udoh; *op.cit*, p. 35.

¹²⁷ *Ibid*, p. 36.

spouses, except personal goods belong to the husband who is entitled to retain all of it at the dissolution of the marriage. Oftentimes, couples buy property jointly in the husband's name. Registration of land in the husband's name is another cause or source of denial of right to property."¹²⁸ In many sub-Saharan countries, the idea of women inheriting land is seen as a threat to the community of clan land. Cultural attitudes and lack of clarity about implementation of such provisions go hand in hand to prevent the implementation of joint titling for spouses. Laws related to marital property and inheritance rights remain discriminatory in most sub Saharan African and various other countries"¹²⁹

Writing on this issue, Njoku¹³⁰ stated that "the world belonged to men because most traditions gave premium to men. Women's primary duty was to bear children and their prowess at carrying out this duty endeared them to their husbands. Women generally played subordinate roles to the men folk. They had recognized rights termed "personal rights" like right to use land for farming purposes.¹³¹ Women in pre-independence Nigeria "were not entitled to own land; neither were they eligible to inherit family property, women were considered property to be inherited or shared at the death of their husbands."¹³² This fact of being the custodians of property ahead of the women gave men a higher status than women.¹³³ In some ethnic groups particularly in the South East, widows cannot inherit land or other property upon their husband's death, although they may be allowed to hold them in custody for their sons, depending on the agreement with their in-laws. Among the Igbo, women also cannot take away property

¹²⁸ UNCHS, *op.cit.*

¹²⁹ M Beschop, 'Women's Right to Land and Property' in *Women in Human Settlements Development: Challenges and Opportunities*, Commission on Sustainable Development, UN-Habitat (2004) p.41.

¹³⁰ J Njoku, *The World of Africa* (London: Scarecrows Press, Inc. 1980) p.28

¹³¹ N M Abdulraheem, 'Rights of Women in Pre & Post- Colonial Era in Nigeria: Challenges for Today' (3)2 *Journal of Public law*; Department of Public Law, Kogi State University, Anyigba (Nigeria) pp 83-93.

¹³² J Akande, '31 Years of Nigerian Womanhood' in Sakande J. *Miscellany at Law and Gender Relations*, (M.J Professions Publishers Ltd. Lagos 1999) p. 114.

¹³³ O Omoruyi, *Democratization in Africa- Nigeria Perspectives* (Vol. 2, Benin City, Centre for Democratic Studies, 1994) p.101.

acquired during marriage without their husband's consent. Among the Yoruba however, daughters have a right to inherit a share of their father's land and other property. Also, under the Islamic law, a woman is better protected as she can own property in her own right as well as inherits property from parents or husbands. Upon divorce however she loses all rights to her husband's property.¹³⁴

“Women do not own and inherit land. They gain access to the land through men that is through husbands, sons, fathers, brothers, uncles and cousins.” The property a woman acquired before marriage comes under the absolute control of the husband and in divorce she loses the property to the husband.¹³⁵ She holds the property in trust for male children; and a married woman cannot dispose of her property without the consent of her husband¹³⁶

Writing on gender and women's inheritance rights, Ikpeze¹³⁷ stated that:

the societal attitude is that it is a man's world and the males dominate every given society. It is a barrier to ensuring and actualizing human rights of women globally. Of particular importance is that this masculine dominance fosters discrimination under patriarchy and impedes women's economic objectives.

Patriarchy sustains gender discrimination in any society as well as non-inheritance rights of the females. In *Davies v Davies*,¹³⁸ the court per Buckley J. held that “Yoruba native law and custom

¹³⁴ UNICEF: Children and Women's Rights in Nigeria: A wake-up call, Situation Assessment and Analysis 2001, National Planning Commission Abuja and UNICEF Nigeria, p.180.

¹³⁵ J O Gbadebo, 'Are we married into poverty? Denied women land ownership in Nigeria' 2014, Vol 4(3) International Research Journal of Agricultural Science and Soil science, pp. 51-56.

¹³⁶ N M Abdulaheem, 'Women's Marital Rights, Perspective From Nigeria Legal System;' 2012, Vol. 3, Journal of Law and Conflict Resolution, pp. 31-44.

¹³⁷ O V C Ikpeze, *Gender Dynamics of Inheritance Rights in Nigeria. Need for Women Empowerment*, (FOLMECHN Printing & PUB.CO.LTD, 2009) p. 31.

deprived the widow of inheritance rights in her deceased husband's estate because devolution of property follows the blood. Consequently unless property given to a wife is proved to be an outright gift during the life time of the husband it will devolve on the husband's death as family property to be inherited by the deceased husband's children or relatives where there are no children."

In *Oke v Oke*,¹³⁹ the Urhobo custom which permitted only the eldest son of a man to inherit the house where his father lived and died together with the wife or wives as part of the estate of the deceased was upheld by the Supreme Court. Some of these decisions actually worsen the fate of the females in their struggle for full emancipation. Even in the more recent case of *Akinnubi v Akinnubi*,¹⁴⁰ the Supreme Court confirmed that the custom in most Nigerian communities is that a widow is regarded as a mere chattel, a part of her deceased husband's property and is inheritable by her deceased husband's male relatives.

In *Nezianya v Okagbue*¹⁴¹ the court held that under the native law and custom of Onitsha, a widow's possession of her deceased husband's property is that of a stranger and however long it is, it is not adverse to her husband's family and does not make her the owner. She cannot deal with his property without the consent of his family and furthermore if he died without a male issue, his real property descends to his family and his female children do not inherit it on the basis of custom. In *Nzekwu v Nzekwu*,¹⁴² the Supreme Court restated the principle that the widow's dealings over her deceased husband's property must receive the consent of the family and she cannot by the effluxion of time claim the property as her own. She has a right to occupy the building or part of it during her lifetime but this is subject to her good behaviour. The courts

¹³⁸ (1929)2 NLR, p. 79.

¹³⁹ (1974)3 SC. 1.

¹⁴⁰ [1997]4 NWLR, (pt 486)44.

¹⁴¹ (1963)ALL NLR 352.

¹⁴² [1989]2 NWLR (pt 512) 373.

toed the same line in *Onwuchekwa v Onwuchekwa*,¹⁴³ when the Court of Appeal refused to reject as repugnant a custom in which a husband is said to own the wife along with her properties.

It is however conceded that the Nigerian courts' attitude to this issue is changing although at a slow and inconsistent pace. Despite the courts change of attitude towards the issues of disinheritance of the girl-child and woman as displayed in *Mojekwu v Mojekwu*¹⁴⁴ where the Court of Appeal held that the '*Oli-kpe*' custom of the Nnewi people of Anambra State under which only male children inherit their father's property is unconstitutional and that customs which discriminate and deny women their rights are repugnant to natural justice, equity and good conscience, the problem of disinheritance of the girl-child has not gone away. Slow progress is however being made by the judiciary in this regard as the court of Appeal in *Mojekwu v Ejikeme*¹⁴⁵ held that a female child can inherit from the deceased father's estate in Igbo land without performance of the *Nrachi* ceremony. And in *Ukeje v Ukeje*¹⁴⁶ it was held that:

No matter the circumstance of the birth of a female child, she is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in her deceased father's estate is in breach of section (42)1 and (2) of the Constitution of the Federal Republic of Nigeria, 1999 a fundamental right provision guaranteed to every Nigerian.

The disinheritance of the girl-child goes beyond real property as custom precludes her from succeeding her father to a chieftaincy stool. Generally in the Niger Delta region of Nigeria, the girl-child at the father's demise could never be crowned a chief or head of the family even if she

¹⁴³ [1991]5 NWLR, (pt 194) 739.

¹⁴⁴ [1997]7 NWLR, (pt 512) 238.

¹⁴⁵ [1997]7 NWLR, (pt 517) 283.

¹⁴⁶ (2001)27 WLRN, 142.

is the most senior of her father's children or if her male siblings were still infants. By the dictates of custom such an infant male would be preferred to ascend the throne of their fathers to an adult girl-child.

This customary stance is clearly against the provisions of the Protocol to the Charter on Human and Peoples' Rights on the rights of women; ratified by Nigeria in 2004 and which states that 'women and girls have same rights as men and boys to inherit in equal shares their father's properties.'¹⁴⁷ The Protocol also stated that a "widow and widower shall have the right to inherit each other's property in the event of death; and whatever the matrimonial regime to continue living in the matrimonial home"¹⁴⁸ The customary law which denies the girl-child the equal opportunity and right given to the male-child is discriminatory and should be condemned and abandoned.

2.3.4 Female Genital Mutilations

Issues of mutilations of the female sex organ are rife in our various communities. This process has been defined variously to mean the cutting or traditional surgical operations carried out on the female genitalia and involving the total or partial removal of some of the external parts of the female sex organ. It is "a violent damage caused to the outer sex organ of a group of people that can bear children or produce eggs like girls and women, by excising (removing) parts of the organ or causing substantial damage."¹⁴⁹

The World health Organization has reportedly defined female genital mutilations to include "all procedures which involve partial or total removal of the external female genitalia and (or injury to the female genital organs), whether for cultural or any other non-therapeutic

¹⁴⁷ See Art. 21(2).

¹⁴⁸ *Ibid.*

¹⁴⁹ C Arinze-Umobi, *Domestic Violence Against Women in Nigeria: A Legal Anatomy* (Onitsha: FOLMECH PRINTING & CO. LTD, 2008) p. 59-60.

reasons.”¹⁵⁰ While some justify such practices as being cultural and for the wellbeing and productivity of the girl-child, others have consistently made calls for the legal abolition of such practices as it is carried out against the will of the child. The girl-child faces stigmatization for any refusal to comply with such tortuous exercise that may lead to unforeseen health hazards and even eventual death. The arguments for and against female genital mutilations on cultural grounds notwithstanding, the practice is a violation of the privacy and dignity of the human person of the girl-child who in most cases is forcefully restrained, held down with their legs prised open to the invasion of an unauthorized male or female styled ‘circumcisionist’ who fiddles away at the female’s private part with crude instruments and possible unsanitized hands.

The female genital mutilations can be described as a purely circumcision rite which involves females; as a preparation of the girl-child for sexual life and motherhood or as the completion of womanhood in traditional societies. No matter how it is described it usually lacks the vital element of consent of the girl-child. Female genital mutilations (referred to as FGM) has no scientific basis but is firmly rooted in cultural beliefs, values and religious considerations. It is generally believed by custom that such cutting off of the female genitalia will help to control the girl-child’ sexual urges, ensure virginity before marriage and fidelity after marriage. Most communities in the Niger Delta see FGM as part of the girl’s initiation into womanhood and as an intrinsic part of the community’s cultural heritage and tradition. Actually various myths exist about the female genitalia such as that the uncut clitoris will continue to grow to the size of a penis and would obstruct childbirth.¹⁵¹ These stories justify the pains the girl-child is subjected to (not even at infancy which would have been more tolerable) from generation to generation to

¹⁵⁰ *Ibid.*

¹⁵¹ Oral Interview conducted on Chief Cheta ThankGod of Ubio Clan in the Ahoada East Local Government Area of Rivers State on December 15, 2015 at 12noon.

justify and perpetuate a barbaric act. Some communities will even go further to reject a girl whose genitals have not been cut off for marriage.

FGM is thus seen as a prerequisite for marriage.¹⁵² The age of mutilation varies from community to community but is usually from 10 to 17 years or just after the first pregnancy. With increased enlightenment however some persons who still insist on the necessity of the cultural practice seek the help of some medical personnel to cut off the female genitals at birth or in the first 3 months of the birth of the child. Generally the crude methods are still employed especially in remote communities who insist on the traditional methods claimed to have served them 'well' over the years. These crude and unhygienic methods expose the girl-child to infections such as the HIV, uncontrolled hemorrhaging, pain, shock, exposure to tetanus, formation of cysts and keloids, pelvic inflammations, urine retention etc.¹⁵³

2.3.5 Assault and Rape

Assault and rape are variants of violence against women and the girl-child. In traditional societies and even in modern times, once there is a conflict between families or between communities, women and children become easy targets of assault and rape. This is more so because of the vulnerability and weaker physical strength of the girl-child which is no match for the males; and also as an evidence of the lack of respect of some persons for womanhood.

Rape generally is a taboo under customary law and is highly punished but clearly the male folks are not deterred when tempted to use their superior strength to subdue the girl-child. In most communities of the Niger Delta, assault especially sexual assault is abhorred and severely punished as it is generally perceived to be an infringement not only on the victim but an affront on her family's reputation and a desecration of the land. As a result of the severe

¹⁵² Oral Interview of Elder Ovili U.Emeke of Ukwani Community in Delta State on the 10th of December 2015.

¹⁵³ Arinze- Umobi, *op.cit*; p.60.

customary punitive measures meted rapists, this crime is not rampant. However where they occur, the culprit is compelled to marry the girl-child if she is willing in addition to paying various sums money to the family clean the ‘insult’ of sexually assaulting their daughter.

Among the *Ogba* people of the Niger Delta, if a girl who is so assaulted becomes pregnant or was betrothed to another person, the culprit will carry out a ceremony known as ‘*iyi*’ (involving goats, yams, wrappers, hot drinks and even money) which will be used to appease the family of the girl or the man to whom she is promised in marriage. If the assault is carried out on a married woman, the appeasement will first of all be done to the husband who will be at liberty under customary law to make his demands which may include the ceding of some land rights and agricultural produce or the deployment of the culprit’s labour for farming purposes.

2.3.6 Child abuse

Child abuse is the unfair, wrong, malicious use and treatment of the child in a person’s custody. It involves the exploitation of the vulnerability of the child due his or her age and the need for dependence on the adult who becomes the ultimate abuser.

The World Health organization¹⁵⁴ defines child abuse as:

All forms of physical and/or emotional ill-treatment, sexual abuse, neglect, negligent treatment, commercial or other exploitation resulting in actual or potential harm to the child’s health, survival or development or dignity in the context of a relationship or responsibility, trust or power.

A child by his/her nature is trusting especially as they have not acquired enough experience to teach them otherwise and of course are not aware of their rights as human beings, nor that such

¹⁵⁴ World Health Organization Report (2007) culled from <http://www.yesican.org/definitions/WHO.html> accessed 12/12/15.

rights are enforceable. They are thus gullible; naïve and so malleable older persons for sinister and selfish reasons capitalize on their innocence to exploit and maltreat them. To some children such treatments though painful have become so regular that the child may start to see those character traits as the norm to be endured and possibly repeated on other children leading to a circle of vicious bullying and deviant behaviours.

Child abuse is manifested in many forms such as physical abuses through flogging and various forms of violence, sexual abuse through indecent assault, rape, neglect and negligent treatments, emotional abuse and exploitation.¹⁵⁵ It therefore includes all physical and emotional ill-treatment (for example, starvation of both food and love) that result in actual or potential harm to the child's health, dignity, personal development and growth. Physical ill-treatment of the child described by the World Health Organization is defined as involving:

Hitting, shaking, throwing, poisoning, burning, or scalding, drowning, suffocating or otherwise causing physical harm to a child.”¹⁵⁶ And continuing, the “persistent emotional ill-treatment of a child such as to cause severe and persistent adverse effects on a child's emotional development is an emotional abuse. It may involve causing children to feel frequently frightened or the exploitation or corruption of children, threatening a child or refusal of medical treatment;¹⁵⁷ whilst neglect is the persistent failure to meet a child's physical or psychological need which is likely to result in a serious impairment of the child's health. It may involve a parent failing to prevent or protect a child from physical harm or

¹⁵⁵ World Health Organization on Child Maltreatment, 2013

¹⁵⁶ World Health Organization Report; *op.cit*; p.5

¹⁵⁷ *Ibid.*

danger. And sexual abuse is the engagement of a child in sexual acts that they do not fully understand, or for which the child is not developmentally prepared and so cannot give consent, or that violates the laws or social taboos of a society. This may be in form of the exploitative use of the child in prostitution or other unlawful sexual practice.¹⁵⁸

The child under customary law can be physically abused. Custom teaches the correction of a child for misdemeanors and character traits that may trail the child to adulthood if not nipped in the bud as an infant. Such character traits that would attract instant punishment include stealing, abuse and disrespect of an elder, lying, bearing false witness, disobedience to instructions, refusal to carry out assigned chores etc.

In correcting these deviant behaviours however customary law has no measure as the correction can transmute into physical abuse of the child where neither the sticks, canes and rods commensurate with the age of the child in question nor equitably and clearly connecting the punishment are meted to the child for the misdemeanor displayed. Most of the time the mother will flog the child on an issue and the father upon being told of matter goes ahead to flog him also. And even other members of the family, uncles and aunties will be free to give their own punishment for the same offence at different times to ensure that the child did not forget the negative experience he received for exhibiting such behaviours. The child under customary law thus goes through multiple jeopardy, making corrections now appear to be hatred of the child and to have negative emotional and psychological effects on the child.

¹⁵⁸ *Op.cit.*

Punishments which may result in actual or potential physical harm to the child are clearly abusive. Other forms of corrections which may be excessive and injurious to the child are the deployment of pepper to the eyes, anus and the genitals of an erring child. And these are all common forms of customary discipline of the child. These forms of punishment are especially so because of the vulnerability of the child especially against the superior strength of the adult who would be able to administer the pepper against the child's will. Another commonly administered punishment under customary law is to strip the child naked and tie bits of the items stolen by the child usually food items around the child to 'shame' him before his peers. This form of punishment is abusive of the rights of the child to dignity of the human person.

Furthermore, some customs permit the "temporary ostracization of the child to ensure that he realizes the gravity of his conduct and also to serve as a deterrent to other children."¹⁵⁹

Among the *Esans* of *Edo* State a ritual called *atukhiuki*¹⁶⁰ was performed for a juvenile delinquent,¹⁶¹ and involved the performance of some rituals and the seclusion of the child even in the house as he is prevented from mixing with the other members of the family especially other children. It is important to note however that child abuse is not limited to the homes as they can occur in the neighbourhood, in the extended family setting, in the school environment and even in the church where persons taking care of children may abuse them in the guise of correction. Child abuse, maltreatment and neglect are social menaces whose negative impact on the child's development cannot be over-emphasized.

¹⁵⁹ N J Uche-Eboh, 'Crime and Punishment in African Indigenous Law' in E Azinge and A Awah, (ed) *Legal pluralism in Africa: A Compendium on African Customary Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 2012) p.440.

¹⁶⁰ A special seclusion programme involving special rituals to re-train a problematic and troublesome child to fit into the society. The items for the ritual were provided by the child's parents who equally have the responsibility of ostracizing the child from the rest of the household until he learns good behaviour.

¹⁶¹ P I Abumere, 'Atukhiuki Among the Esans in Bendel State: A Case Study of Belief System in Customary Law as A Means of Social Control' cited in N J Uche- Eboh, *ibid.* p. 442.

The consequences of child abuse are myriad. They can lead to the death of the child; constant beating and starvation will surely cause health challenges for the child because his growth and development would be stunted. It can also lead to the social dislocation of the child who will learn violence and other forms of anti-social behaviours. In the bid to ‘defend’ and protect himself he can become withdrawn, fearful and uneducable. So, child abuses have adverse effects on the chances of survival of the girl-child, her development, health conditions, self esteem as well as her ability to achieve to her fullest potentials

2.4 The Girl- Child amongst the Peoples of the Niger Delta- Who is the Girl- Child?

She is the female daughter of the family who may be married or unmarried but generally under the age of 21years. She is the child who from birth is controlled by her mother, her brothers, father and a whole lot of relations both male and female. She is the child who from infancy knows that her stay in her biological parents’ home is temporary and so is not given any major stake in the family although she is required to contribute to the family’s upkeep from infancy to adolescence and adulthood. She is conditioned to look after the younger siblings, the home and the kitchen. She is taught to be obedient and to internalize the notion that she will always be someone’s property and responsibility. She is her family’s responsibility from infancy to her husband’s at adulthood.

The girl child among the Niger Delta peoples is a farmer, a fisherwoman, a pot and basket maker etcetera depending on the economic mainstay of her family and the tasks approved for her. She is the home maker early in life preparatory to marriage which most of the time is contracted on her behalf by her male relations and father who negotiate a price on her head called bride-price and which benefit does not go to her but to the family members. The girl-child thus describes that infant female born to a family and grows through infancy amidst several

cultural rules emphasizing her subordinate position to the males to adolescence with very strict rules of behaviour and complete non recognition of her individualism. And she finally enters into her married state where the husband replaces the father and brothers and continues with new cultural demands of subordination and possible subjugation as she embarks on another journey of living for her husband, her children and the husband's relations.

2.4.1 The Girl- Child among the Kalabari People

The *Kalabari* people of Rivers State have been stated to be of *Ijaw* extraction and according to the *Kalabari* native law and custom, there can be no rights to property without marriage rights, whether it is the right of the female or the male.¹⁶² It is the right a person's mother has within the family, compound or kindred group that would determine the rights the person would enjoy under *Kalabari* native law and customs. This tying of the girl-child's rights to the form of marriage entered into by her mother is discriminatory and a violation of her fundamental rights as enshrined in the constitution.¹⁶³

For the *Kalabari* girl-child, the treatment of her rights by culture is somewhat different from the position of the girl-child in other parts of the Niger Delta area. It is actually the kind of marriage she enters into that determines the extent of her rights to the family property. If she enters into an incomplete marriage rite called the '*igwa sime*', she and the products of the marriage will have no inheritance from the husband's family but only from her own biological family, and these rights would be secondary to the rights of other family members whose mothers had completed their marriage rites. The *Igwa-sime* form of marriage confers on the husband limited rights over the woman and the children because customarily the wife and

¹⁶² Oral interview conducted on Chief Ibim West of Buguma in the Asari Toru Local Government Area of Rivers State on the 25th of January, 2015.

¹⁶³ See generally S.35 – 45 of the 1999 Constitution of Nigeria (as amended).

children born into this kind of marriage belong to the woman's family. This type of marriage confers on her male children the right to inherit in her family and not in their father's family as they are still technically regarded as belonging to her family.

The *Iya* Marriage is the highest form of marriage under *Kalabari* law and customs and it is considered to be "the buying of the flesh and bone" of the woman.¹⁶⁴ The other forms of marriage among the *kalabari* people can only confer the husband with life and flesh rights over his wife and their offspring and not the bones. It is the *Iya* marriage rights that cloak him with total ownership of his wife and their children.¹⁶⁵ The foregoing is admitted by learned author Nwogugu when he rightly submitted that the children of the *Iya* (or big-dowry) marriage and their mother belong to their father's family and have succession right in that family.¹⁶⁶ The fact that custom permits the 'ownership' of the woman by the man upon a certain form of marriage is a violation of right to liberty and dignity of the human person. In the *Igwa-sime* (or small-dowry) marriage, both the children and their mother belong to their mother's family¹⁶⁷. The children of such marriages will inherit from their maternal uncles or other maternal relations.¹⁶⁸

The rights of the girl child under *Kalabari* custom are submitted not to be special rights.¹⁶⁹ She may inherit landed property where her father has a lot and where all the male children have already inherited.¹⁷⁰ This customary fact underscores the second fiddle position assigned the girl-child in relation to the males. Her right to inherit after the males is a limited right and does not however extend to the "*Amongono-Wari*" or the "family house" or house

¹⁶⁴ Oral interview conducted on Chief Opi Benoni of Obuama in Degema Local Government Area of Rivers State on 15th January 2015.

¹⁶⁵ *Ibid.*

¹⁶⁶ E. I. Nwogugu, *Family Law in Nigeria* (Ibadan: HEBN Publishers Plc. 2001) p.412.

¹⁶⁷ *Ibid* p. 412

¹⁶⁸ *Ibid.* p. 413.

¹⁶⁹ *Ibid.*

¹⁷⁰ Oral interview conducted on Mrs Minjigba A. Yellowe of Akuku Toru Local Government Area of Rivers State on 3rd December, 2015.

where the father resided until his death¹⁷¹ because according to native law and custom, the family house can only be inherited by the males. This custom is discriminatory of the girl-child's rights to equality of all persons. But where her father does not have enough property to go round all his children, the girl-child is usually given a life interest in his property and can live there until her death but cannot inherit the property.¹⁷² Her right to inherit is always subject to that of the males. A woman has rights to participate actively and still be seen as a member of her father's family even if she is married except she was married under the *Iya* rights¹⁷³. She has rights to stay in her father's house and live there with only a life interest but cannot inherit. Again, a woman can likewise perform similar functions in her mother's house if her own mother was not married by the *Iya* rites.

Male children rank over and above female children under *Kalabari* native law and custom.¹⁷⁴ In a particular family, children of male descent (that is, products of *iya* marriages) have greater rights than their counterparts of female descent (that is, products of *igwa sime* marriages). Only males become Chiefs as females are not made Chiefs.¹⁷⁵ The male children of a female child of a family can become a chief in their mother's houses and even head such houses, but this right could be subject to a competing interest of a child of male descent.¹⁷⁶

Evidences abound that a woman is not debarred from owning either personal or real property but a question of who is entitled to the rights of inheritance over these properties upon her demise would always arise. According to the *Kalabari* custom, a widower is not entitled to inherit his deceased wife's property rather upon her death, her eldest son and other younger sons will inherit

¹⁷¹ Chief Opi Benoni *Op. Cit.*

¹⁷² Mrs Minjigba Yellowe *Op. Cit.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Chief Opi Benoni *Op. Cit.*

these. Curiously too, a daughter is not also considered eligible to inherit alongside the sons in the distribution of their deceased mother's personal property. It is only where there are no sons that custom allows the first daughter to assume the role of the oldest son and be conferred with rights of inheritance as would be with respect to an eldest male child. Apart from this scenario previously cited, daughters like mothers do not have any right of inheritance of their deceased parents' real estate. A female child, whether married or unmarried when there exist male children, has no right of inheritance to a deceased parent's estate particularly landed property.

A woman by whatever form of marriage to a deceased husband has no right of inheritance upon his death to his property under the customary law among the *Kalabari* people. She can only live in his house upon his demise until she dies or remarries. The female daughter is still being discriminated against as her rights to inherit are still dependent on the non existence of a male sibling in her father's immediate family.

Kingship in *kalabari* land is the preserve of the males. A woman cannot be installed as a chief because of the rituals involved.¹⁷⁷ To be a chief in *Kalabari* the person must be a member of the '*Ekine Sekiapu*' (a secret cult) and since no woman is allowed entrance into the *ekine sekiapu*, she cannot be a chief either. Till date no *kalabari* woman has been made a chief in the kingdom.

To the *Bille*¹⁷⁸ people custom and tradition is sacred and sacrosanct thus the adage; '*billeinbo billeinbo bira sime*'¹⁷⁹ (meaning a *Bille* man must live his life like a *Bille* man bound by the customs of *Bille* kingdom). This fact underscores the importance of custom in regulating the lives of persons within a particular area. According to Chief Iworima, although the *Bille*

¹⁷⁷Oral Interview conducted on Madam Siya Oruwari of Abonnema Town in Akuku Toru Local Government Area of Rivers State on the 15th of December 2015.

¹⁷⁸ Bille is a kingdom within the Kalabari group of the Ijaw tribe in the Niger Delta.

¹⁷⁹Oral Interview conducted on Chief Iworima Boisa of Bille kingdom on the 15th of December 2015.

customs are liberal on the girl-child because the *Bille* settlement was founded by a woman, aspects of the culture infringe on the fundamental rights of the girl-child in the following areas:

- i. On the restrictions placed on the movement of the girl-child as she is not generally allowed access to certain places in the community nor is she allowed to cross certain waterways or gutters called *tubu*. Offenders of these restrictions are made to undertake certain cleansing rituals (*gwo*) or were told that such breaches attracted heavy consequences like death, loss of pregnancies and even the womb etc. The girl-child is also not allowed free movement during certain festive celebrations, especially very early in the morning until the spirits are said to have gone round cleansing the community. Even after the masquerades are displayed for festivities, the women are usually directed to run back to their homes for protection with a shout of *ere suo o* from the town criers. Offenders of this directive are subjected to canning. This is obviously a violation of the girl-child's right to freedom of movement, right to liberty and dignity of the human person.
- ii. No girl-child can be made a chief in the *Bille* kingdom as chieftaincy is the exclusive preserve of the men.
- iii. Women are not granted audience in the gathering of men except on invitation and as witnesses to testify before the traditional council. A *Bille* woman is not regarded as an equal of the man; she is subject to her husband and if unmarried to her father and other male siblings.

The *Okirika* people of Rivers State are of the *Ijaw* extraction and have similar culture with the *Kalabari* but with some variations. The *Okirika* girl-child whether as a daughter or a widow suffers discriminations in terms of inheritance and succession which is borne out of the *Okirika* customary land tenure system and the nature of marriage entered. The girl-child as daughter or widow can only inherit land by succession where the late husband or father had

specifically directed or granted her a piece of the land inter vivos.¹⁸⁰ Confirming this position, Opuogulaya¹⁸¹ describing succession in *Okirika* stated that:

In the *Wakirike*¹⁸² settlement, land is held by individual male members of the family groups constituting a war canoe house. The chief of the war canoe held the title of all lands possessed by individuals in trust for all such family groups but had no right to dispossess any individual of his ancestral land... if the holder of an ancestral land died, the immediate title to that land was inherited by his next male heir, either his son, or in the absence of his son, his daughters, son or his brother.

The *Okirika* customary law of inheritance operates through the male descent. The male children born through the 'iya' marriage have precedence over products of 'igwa' marriage.¹⁸³ In the "absence of a male descendant, inheritance goes to a brother or to the first born son of the deceased first daughter provided that she is either married under the *iya* type of marriage within the same family or under *igwa* within or outside the family. If the first daughter had no male child, descent for the purpose of inheritance climbs down the line of daughters." So generally speaking, in *Okirika* customary law, the men take precedence over the women thus negating the fundamental right of all persons to equality. It is agreed¹⁸⁴ that:

In transactions concerning land among *Okirika* people, women are not totally on equal footing with men. Customarily the position of women is

¹⁸⁰ Oral Interview conducted on Chief Ngo Sekibo of *Okirika* in Rivers State on January 4, 2016.

¹⁸¹ Chief E.D.W. Opuogulaya, *The Cultural Heritage of the Wakirike* (Port Harcourt: Press Printers Ltd, 1975) p.23.

¹⁸² *Wakirike* is a name describing persons from *Okirika*.

¹⁸³ 'Iya' and 'Igwa' marriages represent the complete and final marriage rites which entitle the products of the marriage to inheritance from the father's family and the incomplete marriage rites which make a man's children belong to his wife's family and allow them to inherit only from the mother's family and not the father's respectively.

¹⁸⁴ Hon. Justice A. Fiberesima, *Customary Land Holding at Okirika* (Nigeria: Newspaper Communication 1999) p. 6.

inferior because transactions over land is similar in some ways to transactions in marriage where men marry women, not otherwise; in dealings with land certain transactions require the performance of special ceremonies...so that transactions over land is for men; it was for men only and because of this situation it was believed that women were not entitled to land allocation.

2.4.2 The Girl- Child among the Ikwerre people

The Ikwerre people are found in the four local government areas of Port Harcourt, Obio/Akpor, Ikwerre and Emohua. According to Ozomekari Ndimele and Kay Williamson,¹⁸⁵ the Ikwerre people belong to the Igboid language group and are in fact the “largest language of the Igboid group represented in Rivers State”. The *Ikwerre* language is not monolithic but is rather made up of mutually intelligible though varying dialects. Generally speaking, the girl child under the *Ikwerre* native law and custom does not have any recognizable rights of inheritance in her father’s house. She is not regarded as an equal to the boy child who in the absence of the father can hold and maintain the homestead while the girl child is expected to leave her father’s house upon maturity and marry into another family who will ‘own’ her so long as the bride price paid on her remains with her family under the concept of ‘*nye nwe nwere nwe ekwua*.’¹⁸⁶

The girl child cannot inherit landed property in her father’s house. She does not have a right to share in the family property in any form and is not allowed to join the males in any discussions affecting family or carryout any rituals or ceremonies on behalf of the family.¹⁸⁷

¹⁸⁵ O Ndimele and K Williamson cited in E.A.Alagoa and A.A.Derefaka, (ed) *The Land and People of Rivers State: Eastern Niger Delta* (Port Harcourt: Onyoma Research Publications, 2002) pp 149-173.

¹⁸⁶ This means that the man who owns or marries a woman owns all she has or proceeds from her including children born to other men during a period of separation.

¹⁸⁷ Oral interview conducted on Hon Justice E. Agbara (Rtd) of Choba in Obio/Akpo Local Government Area of Rivers State on December 6, 2015.

Per chance the girl child attains maturity but remains unmarried albeit not by design of the family, she has no right of inheritance of anything but must derive sustenance only through her mother's kitchen. This rule is somewhat altered in the case of the girl child who upon maturity is refused the right to marry, that is, she remains unmarried by the design of her father through the process of *ibita etekne* (kept as unmarried) in the father's house. Under this scheme, the female child who is asked to stay unmarried in her father's house is regarded as a male and so can inherit her father's property in the absence of any males in the family.¹⁸⁸

These categories of women are called '*nwerekarima*'¹⁸⁹ and their children are referred to as '*omunoro*'. In Egbeda¹⁹⁰ however these category of children are called 'orachi.' While the girl-child so denied her right to marry is granted a limited right of inheritance, (usually land to build and farm), the children born to her so long as she retains the family name only are entitled to inherit family property like any other bonafide male in the family with the exception of holding the *owhor*.¹⁹¹ Inherent in this practice are different levels of discriminations. It is however conceded that this scheme practised in Ikwerre land is used to preserve and protect the property of families facing possible extinction due to incessant deaths, or inability to produce male children to carry on the family line. The girl child who is so mandated to stay unmarried in her father's house is expected to repopulate the father's lineage. The children she has in her unmarried state belong to her father's family and will be treated as bonafide members of the kindred group. Any son born to her will inherit her father's property and perform any other functions expected of a male in the family. This girl child formally made a man in her father's

¹⁸⁸ Oral Interview conducted on Madam Janet Wali of Elelenwo in Obio/Akpo Local Government Area of Rivers State on December 5, 2015.

¹⁸⁹ Unmarried daughters of the family who become single parents by design of their biological families while "omunoro" is a term used to describe children born to such unmarried daughters.

¹⁹⁰ Egbeda is an Ikwerre Community in Rivers State.

¹⁹¹ The symbol of authority and headship of the family.

house by remaining unmarried by design can inherit her father's personal property including the homestead and which in the absence of any males (brothers and direct uncles) she can pass on to her children.

But where there are other males in the family, such a girl child has only a right to portions of land to farm for her survival and the maintenance of her children. She can be given a small portion to build a house for shelter but does not have equal rights of inheritance with the other males in the family. However, it is the male children who proceed from her that would have the right of inheritance in the family as any other male. It is interesting to note that although a male child from her has rights of inheritance with the other males in the family, he cannot be given the 'owhor' (symbol of family authority, title and ancestry) to hold. He cannot be made the family chief. It is rather his own male child that is the girl-child's grandchild that has the full rights within the family.

Marriage in Ikwerre land does not entitle any woman to inherit anything. Her interest in the family is only protected through her male and not the female children. The woman's relevance therefore in her family is determined by the presence or absence of male children.¹⁹²

It should be noted that such a girl child may be consulted on issues concerning the family and invited to the *obiri or obokoro* (family hall) for discussions. It should however be noted that despite being regarded as a 'male' in the family she cannot hold the 'owhor' (family staff) as head of the family although her male offspring can do so in the interim in the absence of any other male in the family. In the ancient kingdom of Isiokpo, women generally are precluded from joining some socio-cultural groups on sacred grounds especially they are not allowed to join the

¹⁹²Oral Interview conducted on Chief Nwenenda Collins of Elelenwo in Obio/Akpo Local Government Area of Rivers State on December 5, 2015.

‘oboni’ sacred cult of men. They are not allowed to enter the ‘ihnu ali’(the front of the family gods and shrine).¹⁹³

A woman who is married under *Ikwerre* custom has no right to inherit any property of the husband at his demise because she is regarded as the property of her husband’s family to be inherited by her husband’s next of kin. Like her counterpart in Ogbaland, as a responsibility of her husband she is allowed access to family land for farming purposes to take care of her needs and those of her immediate family. She can neither inherit such lands nor build on them as of right nor transfer title to them to another person. Where a woman has male children for her husband, the property of the husband would be inherited by the children if they are of age. Where the children are infants, their father’s next of kin who is supposed to marry their mother or be their ‘protector’ would hold their late father’s property on trust for them and look after their mother until they come of age. If she does not have male children, the late husband’s property will go to the next of kin who would also inherit the woman and is required by culture to provide for her, share and clear farmlands for her to crop.

One common rule of customary law which permeates Africa society is that in customary law of intestate succession the widow has no place in the sense that she can never inherit from her husband on intestacy. In fact, the portion of land given to her to use by her husband is inherited only by her male children upon her death and not the females. In the absence of male children the property goes back to her husband’s male relatives. The first female child called ‘ada’ by custom defers to the decision of the first son and other male siblings even if she is senior to them. The ‘obiri’ which is the official hall for family meetings is restricted to the girl-child as it is believed that her menstrual cycle will desecrate the presence of the ancestors.

¹⁹³Oral Interview conducted on Elder Nsirim E. Segum of Isiokpo Town in the Ikwerre Local Government Area of Rivers State on January 7, 2016.

Among the *Omuawanwa* people of the *Ikwerre* extraction the girl-child does not inherit landed property at all, she is entitled to a share of her mother's personal property, her opinion is always secondary and she is always required by custom to ask the man for forgiveness even if she is not at fault.¹⁹⁴

The closest tribal group to the *Ikwerre* people is the *Etche* people who are found in the two local government areas of *Omuma* and *Etche*. Certain customary practices among the *Etche* people violate the rights of the girl-child and they include:

- i. The cultural insistence on puberty rites which is usually forcefully performed on the girl-child. These practices include periods of separation from the public, various forms of virginity tests, female genital mutilation in the name of circumcision to protect her chastity and prevent promiscuity.
- ii. Early and forced marriage of the girl-child is permitted by *Etche* custom where a child of 12years old is married off to an older man to raise money to train the boys and to ensure that she does not get 'spoilt' and bring disgrace to the family.
- iii. The girl-child in *Etche* is not allowed to inherit her parent's property after their demise even in the absence of any male child because customarily the inheritance of the property goes to the father's brother. She cannot also succeed her father in kingship positions, neither is she allowed to belong to any traditional society considered to belong to only men. She is thus not free to associate by the demands of custom, not free to witness initiations into those groups or sight certain masquerades. An *Etche* girl-child cannot carry palm wine on her head like her male counterpart, neither is she permitted to put snuff in her nostrils. They are barred from coming out at night in certain periods of the year and also barred from entering some parts of the forests. All these amount to various forms of discriminations as such rules do not apply to the males. The

¹⁹⁴Oral Interview conducted on Elder Azuogbo ThankGod of Egwi Clan in Etche, Rivers State on January 12, 2016.

Etche woman accused of adultery is by custom forced to publicly dance naked round the village as punishment but the same punishment is not meted to the man. This is an obvious violation of her right to dignity of the human person.

The customary law of *Etche* precludes the girl –child from inheriting the father’s property or the married girl-child who is widowed from inheriting the late husband’s property especially where she does not have a male child. In the customary court at *Egwi* in *Etche* Local Government Area, in *Agbam v Amadi*¹⁹⁵ a woman filed an action against her in-laws (the brothers of her husband who died intestate) for the property of her husband. The woman’s only son had also died leaving her with four girls. She brought this action to restrain her in-laws from laying claims to her husband’s estate. The court however held that under the *Etche* native laws and custom only a surviving male can lay claim to the estate of his father; and in the instant case the deceased had no surviving male child so the brothers were entitled. The custom of the *Etche* people therefore recognize the superiority of the male child over the female.

2.4.3 The Girl-Child among the Ogoni people

The *Ogoni* people are a tribe found in the four local government areas of *Khana*, *Gokana*, *Tai* and *Eleme*, all in the Rivers State of the Niger Delta. As a distinct ethnic nationality, the people have their own culture, values, belief system, and their own peculiar ways of doing things and organizing themselves.¹⁹⁶ In the United Nations Environmental Programme (UNEP) Report released in 2011 it is stated that:

Ogoniland is a region covering some 1,000km² in the South-east of Niger Delta Basin. It has a population of close to 832,000, according to the 2006 National Census, consisting mainly of the

¹⁹⁵ (Unreported) Suit No. CC/EE/23/2005.

¹⁹⁶ See Ogoni Bill Of Rights presented by the Ogoni People in December 1991.

Ogoni people. The region is administratively divided into for local government areas: *Eleme, Gokana, Khana and Tai...*¹⁹⁷

Among the *Ogoni* people specifically, the *Bunubangha* community in Khana Local Government area of Rivers State, the girl-child does not have a general right of inheritance of the father's property especially land. Land is key and material to every *Ogoni* man. The importance and the treatment of this specie of property is captured by Wifa¹⁹⁸ when he stated that:

Succession is patrilineal in nature. Where a man dies, the house where he lived with his family is usually inherited by the eldest son to the exclusion of his other brothers. The custom is still that where the eldest son predeceases his father, his son will step into his shoes and will still inherit his grandfather's house. Any other property the man had is inherited by his son. A man's married daughters cannot succeed to their father's land. Where a man dies living behind his widow without children, the custom of the *Ogoni* is that since she is answering her husband's name, she inherits his property to the exclusion of her husband's brothers. On the death of his widow, his brother will inherit his land.

Where a spinster who owned landed properties dies, her father succeeds to her properties. If her father is dead, her brothers succeed and if she had no brothers her mother will succeed to it.

Where a married woman who owned properties dies, her husband will succeed to her properties and if her husband is dead, her

¹⁹⁷ See UNEP Report on *Ogoni Land* 2011 at p.23-24.

¹⁹⁸ B M Wifa, 'The System of Landholding in *Ogoni*' in J A Fiberesima, *Indigenous Land tenure of Rivers People*: (Port Harcourt: Newsfair Communications Ltd, 1999) p.110-111.

children and if she had no children, the brothers of her husband will succeed to it.

Where a man dies leaving no sons, if he had a daughter, the *Ogoni* custom is that she will not marry for the purpose of raising males in the name of her father, thus putting herself in the position of son. Such a girl is entitled to succeed to her father's land, to the exclusion of her uncles. If she has no sons, but has a daughter, the daughter will not marry and will step into the shoes of her mother and will succeed to her maternal grandfather's properties. At best, she can be allowed the occupation of the family house subject to her good behaviour. It is pertinent to add at this juncture that under the *Ogoni* system of land holding, matrilineal succession is unknown to the custom of the people. It must be noted that where a member of a family dies without marrying, his share of the family property is inherited by the surviving members of the family.

Also, where a man has children outside his marriage, such children cannot succeed to his property.

One aspect of inheritance under *Ogoni* native law and custom which is worth mentioning in addition to the above is the position that while the eldest child is given priority in the sharing of the deceased's properties, other members of the deceased's family will also benefit from the sharing. The eldest son will therefore not inherit the deceased's properties exclusively. These

principles were highlighted in the case of *Nyaara Aafaa v. Dimkpa Natom*¹⁹⁹ where the court on inheritance and succession in *Ogoni* land stated that:

- (a) If a man dies intestate his sons inherit the land in succession beginning with the eldest son.
- (b) A brother may succeed in preference to a minor or younger child.
- (c) Females have no succession rights and cannot inherit their deceased father's landed property, particularly upon marriage.
- (d) However, a practice under "*sira* concept" would allow a *sira* (first daughter) who remains at home to inherit her father's properties including land in the absence of a male child in the family.

The position of customary law on the right of the girl-child to inherit her father's property was put to test in the *Bori High Court* in *Salome Dezua & Anor. v. Ledon Dezua & Anor*²⁰⁰ wherein the 1st defendant counter claimed and sought for a declaration that as the eldest child and notwithstanding that she is a female, she is the person to be recognized as the heir and the head of late Chief Benjamin *Dezua* immediate family having not married out of the family. Against the background that the 2nd claimant in the suit is a male child of the family, the court rejected the contention of the 1st defendant that she is to be recognized as the heir and the head of late Chief Benjamin *Dezua* immediate family. While declaring the 2nd claimant as the head of the said family, the court however held that the 1st defendant should be considered for the sharing of the properties of the family since she was not married out of the family. It was observed that the fact that the 1st defendant was not married weighed heavily on the mind of the court and swayed the court to the view that she should be considered and provided for in the sharing of the

¹⁹⁹ (Unreported) Suit No. PHC/397/76 of 21/8/1980.

²⁰⁰ Unreported) Suit no BHC/587/2012 of 26/3/2014.

property. The court however recognized the fact that there was a male child in the family hence the 1st defendant though acknowledged to be the eldest child could not be declared as the heir and head of the Benjamin *Dezua* immediate family.

Though the decision of the court was not put to test by way of an appeal, it will follow from the said decision that in a family where there is a male child, the “*sira*”²⁰¹ concept may not be accepted since the whole essence of the concept is merely to allow the female child to remain at home and procreate and also take the position of a son. The 1st defendant in the said case pleaded and relied on the *sira* concept but the court refused to uphold same since the 2nd claimant was a male child in the family. From this established custom, the girl-child declared to be a ‘*sira*’ faces double jeopardy. She is made to be a ‘man’ in her father’s house against her will and the exercise of her right of liberty to marry; and having been denied this right, she is denied a further right of equal treatment with the men in the family.

In *Ogoni* land however a widow relatively enjoys better treatment than her counterparts in other parts of the Niger Delta as one significant feature of the *Ogoni* rules of inheritance is the right given to a widow to succeed to the husband’s property to the exclusion of her husband’s brother, though this is only for her life time. Under the *Ogoni* customary law a woman may not be allowed to get married. The ‘*sira*’ custom which insists that the first daughter should not marry is a violation of the girl-child’s right to marry and enjoy a family life.²⁰² Usually, the first

²⁰¹ The term ‘*sira*’ explains a customary concept which allows families where there is no male child to turn their first daughter to a kind of male; and so requires a first daughter to remain unmarried and to take the position of a first son in the family. In Gokana, it is called “*gbeabe*.” It should be noted however that the *sira* concept is now dwindling on various grounds including religious beliefs but in any event, it has not been declared by any court so far to be barbaric, anachronistic and repugnant to natural justice, good conscience and equity and not even on ground of public policy. The *sira* concept is the same as the “*ibietekhe*” among the Ikwerre people, the *Nrachi* custom of Nnewi which has now been declared repugnant to natural justice, equity and good conscience as well as unconstitutional by the court in the case of *Mojekwu v. Ejikeme* [2000] 5 NWLR (PT. 657) 402.

²⁰² See. Article 16 Universal Declaration of Human Rights which provides that “men and women of full age, without limitation of race, nationality or religion have the right to marry and form a family. They are entitled to equal rights as to the marriage and its dissolution.”

daughter is not allowed to get married. She is seen as the one who will look after the family. She tends or cares for the family / ancestral gods. The extent of the violation of her right to marry and have a family life is that custom even permits the father to choose the man the *sira* should cohabit with although with the permission of the father she can choose her own sex partners and is entitled to have as many children as she wants from as many men as she desires²⁰³. In *Khana* and *Gokana*, such a woman is called *biake* and *gbeabe* respectively. Her children belong to her family and not to their father's family. Thus, her children bear her maiden name. Her first son is called *Deegbara* while her first daughter is called *Deenwa*. *Deegbara* is seen as the Prince of the family.²⁰⁴

Women are allowed to attend family meetings. Although a woman may make her contributions respectfully through her husband or brother or directly when permitted by the men to do so. A *biake* must however attend and participate in family meetings as any other man. A married woman who is unable to bear children may marry another woman for her husband or for herself. A woman who is unable to bear children or male children may marry another woman and the woman so married is at liberty to have children from any man including the woman's husband²⁰⁵. The first son of a *biake* is respected by the family²⁰⁶ and has more authority than his cousins because he is seen as a permanent person in the family. In Ogoni land, the girl-child is however put through a lot of dehumanizing treatment. When her husband dies, custom demands that she mourns him for five years. Within these years she is only permitted to wear black cloth, lie on a mat and not on the bed, she is not to be seen laughing or smiling and of course not be

²⁰³ Oral Interview conducted on Ms. Veronica Tuanee, an indigene of Kpaen in Khana Local Government Area, Rivers State.

²⁰⁴ *ibid*

²⁰⁵ Ms. Veronica Tuanee, *op.cit.*

²⁰⁶ Oral interview conducted on Elder Charles K. G. Wugate of Kpaen in Khana Local Government Area of Rivers State on the 10th of January 2016.

seen close to any man. At the expiration of five years she is made to undergo a cleansing ceremony at the community shrine before she can mix freely with society. This practice is a violation of her rights.²⁰⁷

The girl-child in Ogoni land does not enjoy the right of kingship. She cannot be made a chief or the paramount ruler as it is believed that a woman cannot pour libation and commune with the ancestors in the presence of a man. The Ogoni proverb '*needam naawe le be sa neewa ba bee yor*' (meaning that a man will not be at home and a woman eats the head of snake) explains this cultural position. The only exception to this is the '*gbeabe or sira*' that is, the girl-child turned to a man in her father's house upon the completion of customary rituals not required to be performed by men which may qualify her to do certain things. She does not also have a right to speak in any formal gathering unless she is invited for questioning; and when invited she must answer the questions with humility and avoid giving her opinion on the issue at hand or she may be fined. She is traditionally allowed to speak in public through the voice of a man.

In issues of divorce the girl-child has no customary right to divorce a man. It is the man who decides whether there will be a divorce or not, hence no matter how the woman feels about her marriage to a man, custom will not allow her to divorce the husband. Even where she wants to exercise her rights in the customary courts against the husband, it is her father or her male siblings who will sue the husband on her behalf. In *Chief Maxwell Lekagha & 2 ors v Bealemabari Giima*²⁰⁸ the claimant/petitioner was the elder brother of the respondent's wife and he instituted the case alongside the sister and on her behalf for the dissolution of her marriage. The court granted the petitioner's request after hearing from the parties and their witnesses.

²⁰⁷ Article 5 Universal Declaration of Human Rights provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

²⁰⁸ (Unreported) Suit No. CCK/26/2011.

The *Eleme* customary laws equally show the various forms of discriminations and violations of the rights of the girl-child. A girl cannot inherit her father's building or land even in the absence of male siblings because she is expected to get married and leave the biological family according to the customary saying that 'a girl can only know where she was born but cannot know where she would die and be buried.'²⁰⁹ Furthermore the girl-child no matter her status in *Eleme* cannot speak and give evidence at an arbitration panel even if she is an eye-witness to the events discussed without permission and only upon invitation. Even where she is invited, she cannot stand while addressing the chief like her male counterparts but is by custom required to sit down or squat while giving her oral testimony. The girl-child under the custom of the *Eleme* people does not have the right to speak in the 'egbere-oe' or the community square.

2.4.4 The Girl -Child among the Ogba people

The Ogba people are found in Ogba / Egbema / Ndoni Local Government Area of Rivers State in the Niger Delta region. The tribe is located in the North of Rivers State with the Ikwerre, Ekpeye, Egbema and Ndoni people as closest neighbours. The *Ogba* girl-child like her male counterpart has a recognized right to life as life is generally precious and should be protected. She has a right to food, clothing and shelter. Her right to life is however threatened by some cultural practices as early marriages, female genital mutilations and circumcision rights, the voluntary sale of infant girls with physical deformity or bad manners to usually adult *riverine* men and women to be used as slaves (sexual and otherwise) etc. These approved customs expose the girl-child to higher health risks and possible death. An Ogba girl-child may be married off from ages 11-17 depending on her physical development and the financial needs of the family. She has no recognized right to choose a husband. Her right to liberty in this regard is not

²⁰⁹Oral Interview conducted on Elder Nkajima Ikodie of Aleto Community in Eleme Local Government Area of Rivers State on December 12, 2015.

recognized by custom. She has little or no option in her choice of a spouse. She is usually married off to a man introduced to her by her family and she has no choice than to comply.²¹⁰

Under Ogba custom, the girl-child's upbringing is usually the responsibility of her mother and other women in the immediate and the kindred families. She is tutored by her mother to learn domestic chores, respect, submission and all the traditionally approved roles and duties of motherhood. The girl child is excluded from enjoying shares from immovable properties such as lands and houses. The Ogba girl-child is denied every right of inheritance of real property. She has no customary right to own immoveable property and can only enjoy the right to use which must be conferred on her by father or other male relatives. Women do not inherit landed properties from their fathers or husbands. They may however enjoy properties given to them as gifts by their fathers (or loved ones) during their lifetime, although such a property would immediately revert to the giver or his estate upon the death of the woman. She has no right to alienate such property under custom nor does she have the right to make a gift of same to another person. A hardworking woman may however purchase and acquire a property in her own name if the husband permits her to do so. If permission is not granted, the property will be acquired in the name of the husband or her son although she would have right of use in her lifetime. Upon her death, such a property will be shared only by her male children to the exclusion of the females. Under custom the property belongs to her and her direct male descendants and not the husband, or step children.²¹¹ Under Ogba native law and custom step-children cannot inherit a married woman's personal property. In the absence of any direct descendant of the woman, the property will devolve on the husband's family.

²¹⁰ Oral Interview conducted on Chief Nwobo Nwoloko, an indigene of Ede Community in Ogba / Egbema / Ndoni Local Government Area, Rivers State on December 1, 2015.

²¹¹ *Ibid.*

According to Nwoloko, a woman in Ogbaland does not enjoy any right of succession. And women cannot be conferred a chieftaincy title.²¹² They cannot be appointed as village chiefs. The girl-child has no right to inherit properties from their parents. The male children take all. However, gifts (including landed property) may be given to them by their parents. Such gifts remain in their possession and pass on to their biological children upon their demise²¹³. Her freedom of association and expression are also limited by the males as she is usually excluded from family meetings and her views are not allowed to be expressed except they are passed to the family forum through a male child.²¹⁴ The traditional role for the woman is in the kitchen called “*akawhuge*” and her entrance into the “*obri*” or *parlour* where family issues are discussed and decided was only to serve the menfolk with the traditional kola of welcome. Here the woman is strictly denied participation in the decision making process except on the clear, specific and usually rare invitation of the men folk. She is not expected to hold opinions on family issues nor is she expected to express them in the gathering of men. In fact doing so without authorization is an offence which is punishable by the payment of a fine.

As a general rule, inheritance in Ogba land is patrilineal that is, inheritance is only through the male line. The female child cannot be a successor in title to the father especially with respect to land, palm groves and ponds. The female child has no right of inheritance in her father’s house because she is expected to marry and leave the family. There is no customary rule that accommodates the female child in issues of inheritance in her family. She has no rights whatsoever and is not even by tradition allowed to be present at the discussions of the *obodo* (kindred group). Whether she marries or not she is not allocated any plot of land from the family for farming purposes or for shelter but must survive only from the mother’s kitchen since in

²¹² *Op.cit.*

²¹³ *Ibid.*

²¹⁴ *Ibid*

Ogbaland, land traditionally belongs to the larger kindred group and only the married male children have rights of inheritance. However, there are peculiar circumstances which provide an exception that is, where a man has no male heir or successor he can confer rights of inheritance of his personal property on his female child. It should be noted that it is the personal property acquired by the man himself that can be so inherited if he desires but not that of the kindred group or the family as a whole which may be in his custody as the oldest man. The property that the man can in special circumstances pass to his female child must have been personally acquired in his lifetime through deforestation of virgin land, building of ponds, purchase of palm groves etcetera.

Under the Ogba native law and custom, the girl child cannot inherit anything from the father as of right or custom but can only inherit indirectly as a way of gift; and such gifts must pertain to only his personal property which is not derived from the family. The fact that the girl child in Ogbaland can scarcely inherit from the father is typified in a situation where a man and his wife die leaving their three female children behind. These children are not left to fend for themselves, rather the kindred family will step into the shoes of their parents and take care of them until they come of marriageable ages and are given out in marriages. The late man's homestead reverts to his nearest kin in the larger kindred family. The girl child is regarded as a "temporary" member of her father's family and so is not allowed to participate in crucial decision making and general labour such as clearing the farm paths, bush or bailing of ponds. These duties are reserved for the males only as the female child is considered to be the property to be inherited by another family. The girl child or the unmarried woman who remains in her father's house cannot succeed her father to any chieftaincy stool or the headship of the family or the larger kindred group. She cannot preside over any family meeting and may not even be

allowed to participate in some meetings except upon an invitation and if she is directly involved nor is she permitted to carry out any traditional rituals and sacrifices on behalf of the family even if she is the oldest person in the family or kindred group. She is subject to her male siblings and on a daily basis displays her acceptance of her traditional role by “bowing”²¹⁵ to them in recognition of their superiority over her in their father’s house.

Women do not have any recognizable rights of inheritance in Ogbaland. As a rule, a woman marries not just her direct husband but is married into the larger husband’s kindred family. She is regarded as the property of the kindred group so that when her husband dies she is not free but is expected after the mourning period to choose another husband from among her husband’s younger brothers. If such a chosen one refuses to marry her, other choices would be made for her and the new husband would step into her late husband’s shoes and be a father to her children whether born to him or to his late brother. The new husband would also inherit the late husband’s property and hold same on trust for the children until they attain maturity. But where the woman upon the death of her husband fails to remarry within the kindred group, she will be left alone and free to marry outside the kindred group but the would-be husband must return the entire bride-price paid on her to the kindred family in acknowledgement that she is their property.

The woman’s right to property in her husband’s family is limited to usufructural purposes that is, she will be allocated portions of family land in her husband’s name for farming. If her husband dies, she is not allowed to inherit any of his property as such property would go to the kindred group for management until her male children come of age. She will be allowed to live

²¹⁵ Bowing is symbolized by a special greeting by the females; kamdo or mahduo in Egi and Igburu languages respectively meaning “I bow to you” and the response from the male would depend on the particular family name of the girl.

in the homestead, fend for herself and the children except she agrees to marry another of the husband's surviving younger relations.

Conversely where a woman acquires personal property in her husband's house, the property upon her death is inherited by the husband if he is alive or by her husband's kindred group if the husband has died since she is considered to be property to be inherited herself. In *Ogbaland* a woman has the general right to participate in cultural festivals called the '*nchaka*' for the *Omoku* areas and '*igbogwe*' for the *Egi* clans of *Ogbaland*. This right is however still limited by custom as she is permitted to participate only in the junior *nchaka* described as the small dance for women and children. They are not permitted by custom to participate in the main festival but to remain at home cooking for the male members of the family. They are also not allowed to freely move around within this period so as not to see the dreaded masquerade '*Okorosu*'. Any female caught looking at the masquerade is made by custom to pay fine.

In *Ekpeyeland* the closest tribe to the *Ogba* people, the story is not substantially different as the girl-child is customarily regarded to be subordinate to the male-child. She is generally under the control of her father, or brother and later of her husband and at his death, she is further controlled by his male relatives.²¹⁶ In Ekpeye, "daughters cannot inherit land from their fathers. In fact, it is seen as a taboo for a woman to remain in her father's house let alone think of inheritance of her deceased father's estate,"²¹⁷ and once the girl-child marries "her identity is lost and every entitlement as a legitimate member of her father's house is denied her. She has been effectively 'sold' to her husband's family and cannot inherit her father's estate even if he died without a surviving male child."²¹⁸

²¹⁶ Oral Interview conducted on Elder Benson Clever of Ahoada in Ekpeye land in Rivers State on January 7, 2016.

²¹⁷ *Ibid.*

²¹⁸ Oral Interview conducted on Elder Umuasara N. Chidi of Ozochi in Ekpeye land in Rivers State on January 7, 2016.

The girl-child is also made to go through some rites for marriage including traditional circumcision which is the female genital mutilation all in a bid to prepare her for the man. A woman in *Ekpeye* cannot assume a leadership position in the presence of men. She cannot be the family head, and neither can she participate in chieftaincy matters.

2.4.5. The Girl-Child among the Ijaw People

Under the *Ijaw* customary marriage, the girl-child has no recognizable part in the sharing of the father's property at his demise; and a widow cannot inherit her deceased husband's estate although she can be granted the use of his land subject to her good behaviour. This favour however is usually at the pleasure of her husband's male relatives. The girl-child in Ijaw land had 'no voice', that is she was not allowed to express her opinion publicly but could only do so indirectly through her male counterparts.

Writing on the customary laws of the Ijaw people, Nwogugu²¹⁹ stated that:

A widow still occupies the traditional status of a chattel who has no right of inheritance to her late husband's property but is to be an object of inheritance herself. If she refuses to re-marry any member of the family so designated, her total wellbeing is not guaranteed.

The Bonny people are generally regarded as *Ijaw* and more specifically described as '*Ibani*' people. Among the *Ibani* people there is no discrimination in the allotment, ownership and inheritance of properties.²²⁰ The girl-child has the right to get married to any man of her choice as well as participate in the inheritance of her father if she is not married. But once she is

²¹⁹ Nwogugu E. I; *Family Law in Nigeria*, Heinemann Publishers Inc.(1985, P 316)

²²⁰ Oral Interview conducted on Madam Inye- Wilcox Tamunoimim of Opobo Town in Rivers State on January 4, 2016.

married, she no longer has an interest or say in issues concerning her father's family as she now belongs to another family. The females in Bonny kingdom however are restricted from acquiring chieftaincy titles as she is not by custom allowed to rule over a man or occupy a position which will make her superior to men. She is not allowed to attend meetings or participate in the gathering of men unless she is summoned. The Bonny girl-child is not allowed to tie certain wrappers especially 'george wrapper' if she had not performed the *igbere-bitte or bibife*²²¹ceremonies.' A woman who defies this cultural imposition will be stripped naked in public by other women who have performed the ceremonies.

The closest neighbours to the Bonny people are the *Opobo* people. When a father dies his property is shared equally between his children except the main living house of the father which belongs to the first son and the other sons. Where a man dies without male children his property is automatically inherited by his brothers even where he has female children.²²² A man can however while alive give property other than real property to his daughters and upon his demise this property will be shared among the female children.²²³ Women are however not allowed to be traditional or family heads. A female cannot succeed her father to a traditional stool. So where there is no male child, a male uncle will act as family head to protect the family. But if the unmarried female gives birth to a male child in her father's house, such a child will be recognized as a male and given the full rights of the mother's family including being a chief. So the opobo girl-child does not face a general discrimination as to inheritance of property but only to inheritance of traditional stools.

²²¹ These are cloth tying ceremonies that show the transition of the female child from girlhood to womanhood. It is performed as part of the marriage rites for the girl-child during marriage.

²²² Oral Interview conducted on Madam Peterside Ibiere N of Opobo Town in Rivers State on January 5, 2016.

²²³ Oral Interview conducted on Omubo-Pepple Samuel of Opobo Town in Rivers State on January 5, 2016.

Among the *Andoni* people, close neighbours to the Opobo, the rights of rulership and chieftaincy stools are denied the girl-child who by custom is precluded from asking or desiring to lead men in any capacity. The girl-child cannot be made a chief or queen in *obolo* (Andoni) native law and custom as the right to rule is reserved for the male child. Even where the king has no son to succeed him, the daughter cannot succeed him rather the seat would be reserved for his brother, his male relatives or his son-in law married to his first daughter. This position was confirmed in the case of *Ekenebe v Waribo*²²⁴ the court held that under Andoni native law and custom as it was admitted by the parties in the proceedings, the right to chieftaincy stool is only given to male children to the exclusion of the females. It is however to be noted that among the Andoni people, the name of a woman can be used as title to a chieftaincy stool even though she cannot be made a chief herself. Also, among the Obolo(Andoni) people unlike some communities in the Niger Delta, the girl-child has a qualified right to inherit her father's land or other property.

In *Ukorogwung v Dennis*²²⁵ both parties sought a declaration of title to land and ownership of the community. The defendant contended that her father owned the community *Ogbon-nte* but due to the fact that she was a woman she was restricted based on Andoni native law and custom to become *okan-ama* or king but she had the right to acquire the land in question. The defendant also contended that her family was the only family producing kings in *Ogbon-nte*. The court however held that although title to land can be passed from a father to her daughter but on the issue of kingship even as admitted by the defendant she cannot own the community neither can she be made a king.

²²⁴ (Unreported) Suit No BHC/22/1990.

²²⁵ (Unreported) CCA/PH/176/2014.

The widow in Andoni has a right to inherit her husband's property as admitted by the Chiefs and the Okan-ama of various communities in Andoni²²⁶ who stated that:

Under Andoni native law and Custom it is trite that a wife could inherit her husband's property if they have children. But if not, she cannot in any way inherit his property. But if she is a married woman recognized under the Act and custom, on the death of her husband she can inherit part of her husband's property. Her dealing of course must come from the consent of the deceased family and this consent depends on the circumstances of the case but she cannot assume the ownership of the whole property. If the family members refuse their consent, she cannot deal with the property unless she approaches the chiefs and Okan-ama in order to enable her acquire the property subject to good behaviour.

Land so inherited by the girl-child from her father can however not be alienated by her; and upon her marriage the said piece of land remains in her father's family to be shared among her brothers. It is commendable that among the Andoni people, the practice of female genital mutilation is unknown.²²⁷

Among the Ndoki people, one of the closest neighbours to the Opobo in Rivers State, the girl-child has "no right to inherit title to realty at the demise of the family head."²²⁸ She is only allotted family land to be cultivated for farming purposes and not as an outright inheritance of her father's even if she is the only surviving child. A girl-child can also not become the head of

²²⁶ E.B. olaosebikan, 'The Plight of the Nigerian Widow under Customary Law System' (1998) Vol. 1 Journal of Commercial, Private and Property Law, 114; This is also based on an Interview with the Chiefs and Okan-Ama of some parts of Andoni Communities in the absence of documentary evidence.

²²⁷ Oral Interview conducted on Madam Opuwari Ugbana Blessing of Ataba kingdom in Andoni Town on the 10th of January 2016.

²²⁸ Oral Interview conducted on Elder Nwamuo Anthony of Emelego in Rivers State on December 13, 2015.

the family but where an unmarried girl-child stays at home to procreate; the children born by her are customarily accepted as bonafide members of her father's family. A male child born by such a daughter has the right to become the head of the family at the demise of the girl's father. Under Ndoki custom, this male child can become the chief as he has equal rights with any other male in the community. However, the position of the girl-child who gave birth to him is still that of a kind of 'stranger' when it comes to inheritance and succession as she is expected by custom to marry except where her unmarried state is the design of her father.

Another group generally classified under the ijaw ethnic group is the Abua people of Rivers State. The customary law of Abua people places some restrictions on the exercise of the girl-child's rights²²⁹ namely;

- i. It insists on the sharing of landed property of the father to the males only to the exclusion of the girl-child. In *Oyeodini v Oyeodini*,²³⁰ a man died having no male children but was survived by his wife and daughters. The brothers of the late man shared his landed property among themselves to the exclusion of the female children. The wife sued. Oral evidence in proof of the said custom was presented by the defendants and the witnesses called by the parties and the court in reliance of the above proved custom of the Abua people upheld the sharing of the property.
- ii. It favours the training of the boy child over and above the girl-child on the belief that whilst the male is to perpetuate the family name, the girl-child would be given out in marriage
- iii. Abua custom denies the female of the right of audience in land disputes. The girl-child is not allowed to express herself in public places especially at the village square. She is generally advised to keep her opinion to herself no matter how important her contribution may be. She can only state such opinions at home to the men who would then act as her mouthpiece in public.

²²⁹Oral Interview conducted on Chief Orugbani T.Blessing of Otari in Abua in Rivers State on December 13, 2015

²³⁰ (Unreported) Suit No. CCA /27/1922.

iv. Parents under custom can insist on choosing marriage partners for their children or betrothing the girl-child for a fee when indebted without the consent of the girl-child. This custom was acknowledged by the court in *Itode v Otukupe*²³¹ where a father who was indebted to the plaintiff betrothed his daughter without the daughter's consent to the plaintiff. When the daughter refused to go on with the marriage the plaintiff sued the father for the refund of his money or the consummation of marriage as was the custom of their people. The customary court upheld his right to the reliefs sought.

The girl-child's right to personal liberty is therefore violated by the Abua custom which denies her the right to choose a husband by the customarily approved pattern of betrothal immediately after birth. This system of betrothal allows a would-be husband to drop a dry thatch stick from the roof of a house into the water which is being used to bath the girl; and this is usually done before or immediately after the umbilical cord of the baby has fallen and with the consent of the parents thereby denying the child the liberty to choose her own husband.

iv. The Abua custom also permits woman to woman marriage where a woman desires to raise children for herself or to carry on her husband's family name if she is barren.

2.4.6 The Girl-Child among the Efiks of Cross River State and the Annangs of Akwa Ibom State in the Niger Delta

The girl-child in the *Njua Kaku* people of *Boki* Local Government Area of Cross River State does not have a different story to tell as the applicable customary laws "permit properties in a family to be shared among the male gender to the exclusion of the women and their

²³¹ (Unreported) Suit No CCA/4/1919.

daughters.”²³² Women are generally considered insignificant; strangers to the patrimony of their fathers because they are expected to be married off to other families. Education is generally considered to be a ‘man’ thing as educating a girl is considered to be a waste as she will end up in the kitchen. The betrothal of the girl-child at birth to a- would- be suitor is rife among the Efik as the choice of a partner for the girl-child under custom is generally that of the father or the family in his absence. The custom also permits the forceful abduction of the girl-child by the suitor once the parents have collected the agreed bride-price; and she can only regain her freedom upon the repayment of the bride-price. Widows are subjected to harsh, humiliating and degrading rites under customary law. She is not permitted to laugh until the husband is buried; she is not allowed to go out for months during the period of mourning. The girl-child does not enjoy the right to freedom of expression. They cannot air their views in public but can do so in private to the men folk who can now speak on their behalf.

Among the Annangs²³³ of Akwa Ibom State of the Niger Delta, a male child is viewed as the tap-root of the family and any family without one is viewed as either under a curse or one that has lost its history.²³⁴ The girl-child by custom is prohibited from sitting and discussing with the men in public and it is a taboo for an unmarried woman to acquire land and build.²³⁵ When a man died, his property devolved on his male children in order of seniority alone and to the exclusion of the girl-child. Where the deceased had no male children, his property including his wife or wives devolved on his brothers.

²³²Oral Interview conducted on Elder Kekong, L. Brown of Njua Kuka Community in Boki Local Government Area of Cross Rivers State on January 14, 2016.

²³³ Specifically among the Adiasim Clan in Essien Udim Local Government Area of Akwa Ibom State.

²³⁴Oral Interview conducted on Elder Ekong, S. Udoh of Adiasim in Essien Udim local Government Area on January 14, 2016.

²³⁵ *ibid*

The custom of the *Adiasim* people violates the right of the girl-child to freedom of movement. Her freedom of movement is highly restricted as she cannot embark on any journey without the approval of the father or husband in case of married women. The girl-child is not allowed to walk across '*awang*' (a special square in the village where cultural and ancestral heritage are kept.) The month of October is particularly restrictive for the girl child as custom places several restrictions on her movement, what to cook and eat, food not to be left overnight within this period.²³⁶ Certain masquerades were not to be seen by the girl-child especially the '*eka ekpe*' (described as the ghost masquerade).

2.4.7 The Girl-Child among the Bini and Esan people of Edo State

Under the Bini²³⁷ custom and tradition, a girl-child has no right of inheritance of the father's property at his death as the first son inherits everything with the other sons especially the '*igilogbe*' (the father's dwelling house). A child is allowed to socialize only with her female counterparts; she is not allowed to speak in the gathering of men unless on special summons. A woman can never be allowed to the headship of the family or to be made a king. It is established that headship of a family among the Bini people is a sensitive position and among the Ekpan people such weaker vessels are not allowed to tread that part.²³⁸

Among the Esan people of Edo State, no identifiable position or status is accorded a female child who it is generally believed would marry, leave the family of birth, change name and identity and may even leave the community totally to have a new life outside her family of birth. It is only the male children regarded as "the receivers of inheritance"²³⁹ under the Esan

²³⁶ Oral Interview conducted on Elder Akan E. Ekong of Abak town in Abak Local Government Area on January 14, 2016.

²³⁷ As practiced by Ekpan People of Uhunmode local Government Area of Edo State.

²³⁸ Oral Interview conducted on Aiyoboze Blessing of Ekpan in Edo State on November 26, 2015.

²³⁹ C E Ukhun & N A Inegbedion; 'Cultural Authoritarianism, Women and Human Rights Issues among the Esan People of Nigeria (2005) 5 African Human Rights Law Journal, 135.

native law and custom that merit special consideration and status. This is especially so with regard to the first son who in cases of intestacy of the father steps into the position of the father and is by custom made the custodian and administrator of the late father's estate to the exclusion of all the female children. It is generally believed that girls are inferior to boys as a girl-child is an inheritable property herself if she becomes a widow. Despite the constitutional provisions against discriminatory practices, "cultural issues of inheritance and burial among the Esan speaking people have always imposed discriminatory practices obviously infringing on this constitutional prohibition."

CHAPTER THREE

HUMAN RIGHTS RELATING TO THE GIRL-CHILD AND ITS UNIVERSAL APPLICATION

Human rights concern all human beings regardless of colour, sex, or geographical location. They are the rights that enure to man by virtue of his being human. These rights are inalienable and inherent in all human beings; they are globally recognized, expressed and protected. The girl-child as a member of the human family has rights which are protected by various domestic, regional and international legislations. Some of the rights of the girl-child to be highlighted and examined subsequently include the right to life, right to a name, right to survival and protection; right to dignity; right to parental care, protection and maintenance; right to free, compulsory and universal primary education; right to freedom from discriminations; right to belong to a family and right to privacy; right to freedom of movement; right to leisure, recreation and cultural activities; right to health and health services; right of a child in need to special care and protection; right of the unborn child to protection against harmful social and cultural practices; right to protection against abuse and torture; right not to be forced into betrothal and early marriage etcetera.

These rights are universal and are expected to be enforced by States and governments. The extent to which these rights are acknowledged and protected by our laws is examined in this chapter which will consider the nature of human rights, its development and universal application; statutory basis for human rights of the girl-child in Nigeria that is, the relevant Constitutional provisions on human rights; an examination of the laws protecting the rights of the

girl-child; enforcement of human rights in Nigeria and finally remedies for human rights violations.

3.1 Nature of Human Rights, Its Development and Universality.

Though definitions are generally restrictive, central to the discussions on the rights of the girl-child proffered so far however is the fact that issues of human rights concern human beings; their existence and co-existence in society. Human rights are generally those rights a person is entitled to for no reason other than that he is a human being. They are based on the principle of respect for the individual and the assumption that each person is a moral and rational being who deserves to be treated with dignity.¹ Human rights are now enshrined and guaranteed in different legal forms such as treaties, protocols, conventions and various other forms of international law.

According to Umuozurike², human rights have to do with:

Claims which are invariably supported by ethics and which should be supported by law, made on society, especially on its managers by individuals or groups on the basis of their humanity. They apply regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individuals... they are those rights which every individual claims or aspires to enjoy...

From Umuozurike's definition, human rights concern issues that are morally right, naturally endowed on human beings and so should be protected by the laws of the State so that no individual or group of persons nor even the State can derogate from them. Human rights are part

¹ United For Human Rights available at www.humanrights.com/what-are-human-rights.html accessed 13/02/15.

² U O Umuozurike; *The African Charter on Human and Peoples' Rights* (Martinus Nijhoff Publishers, 1997) p.5.

and parcel of man. They are universal and inherent in the nature of man;³ and so cannot be dissociated from man. Human rights by their very nature “are beyond the powers of a legal or political authority to make void because it is impossible to annul or remove from existence something that is an inherent aspect of human nature.”⁴ Igwe⁵ captures the essence of human rights when he noted that:

Human rights represent the legal expression of life. It therefore impresses that without human life there can be no human rights. More so since life means free and dignified existence in the framework of a legal order that ensures the harmonious co-existence of rights and duties, the purpose of recognizing and safeguarding human rights is to ensure the possibility of living fully and completely in dignified freedom.

Derivable from the above position is the fact that these rights are not to be arbitrarily applied nor can they be excluded from applying to some persons. In *Unilorin v Oluwadare*,⁶ the Court of appeal on the issue of whether parties can by arrangement remove constitutionally guaranteed rights, clearly stated that “a complaint against an infringement of fundamental right to fair hearing is a constitutionally guaranteed right which cannot be taken away by any domestic arrangement between the parties”.

How did human rights evolve and develop as universal rights applicable to all human beings irrespective of location, sex or race? Human rights have been traced to the law of nature

³ O Okpara, ‘The Nature of Human Rights’ in O Okpara, *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Limited, 2005) p.42.

⁴ F N Ndubuisi & O C Nathaniel, *Issues in Jurisprudence and Principles of Human Rights* (Lagos: Dmodus Publishers, 2002) p. 181.

⁵ O W Igwe, *Preliminary Studies in Human Rights Law* (Lagos: Rings and Favolit Ltd, 2002) p.1.

⁶ [2003]3 NWLR, (pt 808)557.

based on reason which sets out certain rules or methods of doing things recognizable as correct; imposes obligations and prohibitions and confers natural rights (human rights).⁷ These principles in the course of time and amidst agitations of proponents became enshrined in various Bills of Rights of nations. And became the basis for which revolution against the existing order in countries in Europe took place, became the basis for world peace after the First World War and eventually became concretized in the Universal Declaration of Human Rights.

The earliest known natural law proponents were the Greeks who saw natural law as rules of reason and preached equality of all persons. Notable among the philosophers were Plato, Socrates and Aristotle who identified natural law as the foundation of all laws, innate in man and universal as it applies everywhere and every time.⁸ To Aristotle “moral virtue is a disposition by which one chooses what is good and rejects what is evil, and this choice must be a rational choice.”⁹ Also notable among the early natural law thinkers was Cicero, a Stoic, and Roman politician¹⁰ who stated that:

There is in fact a true law- namely right reason which is in accordance with nature, applies to all men and is unchangeable and eternal...to invalidate this law by human legislation is never morally right nor is it permissible ever to restrict its operation and to annul it wholly is impossible. Neither the Senate nor the people can absolve us from our obligations to obey this law...it will not lay down one rule in Rome and another at Athens, nor will it be

⁷ O Okpara, ‘Human Rights Law & Practice in Nigeria’ *op.cit.* p.10.

⁸ J Omoregbe, *An Introduction to Philosophical Jurisprudence* (Lagos: Joja Educational Research and Publishers Limited, 1997) v.

⁹ R M Rist, *Stoic Philosophy* (Cambridge: Cambridge University Press, 1977) p. 2.

¹⁰ Stoics were followers of a Greek philosophy based on pantheism founded by Zeno in 308 BC that is; that the world is a manifestation of a divine mind and that everything in the universe is controlled by rationality.

one rule today and another tomorrow. But there will be one law,
eternal and unchangeable binding at all times upon all peoples...¹¹

Following the Greek's exposition on the principles of natural law were the Romans who by the 6th century recognized three categories of law namely the *jus civile* (civil law); *jus gentium* (law of nations); *jus naturale* (natural law).¹² Some early Roman jurists like St Augustine espoused the fact that "the law of nature is the reason and will of God which commands the preservation of the natural order and prohibits its disturbance... and that the law of nature is a law of reason; it is also a law of justice which is superior to all positive laws."¹³ It was however Saint Thomas Aquinas,¹⁴ who expounded four categories of law in Rome, that is, eternal law (*lex aeterna*) which recognizes the superiority of God the creator who controls the universe by his divine nature and law; divine law (*lex divina*) which is the law of God revealed to man through the holy books; natural law (*lex naturalis*) which emanated from eternal law and revealed to man through his reason and finally positive law (*lex humana*) which is man-made law and exists to solve societal problems.

From the 16th and 17th centuries, Thomas Hobbes, an English philosopher emerged and wrote the *Leviathan* a classical work in which he discussed men as having a quality which he called 'sense' and stated that "it is inherent in the nature of human beings to be selfish and aggressive as absolute power was a *sine qua non* of means and mutual respect among them."¹⁵

Equally traced to Thomas Hobbes and John Locke is the social contract theory¹⁶ based on:

¹¹ O O Nnamani, *Human Rights Law and Practice in Nigeria, An Introduction* (Enugu: CIDJAP Press, 1999) p. 5.

¹² J Omoregbe, *op.cit.* p. 10.

¹³ O Okpara, 'History and Concept of Natural Law' in O Okpara; *op.cit.* pp. 9-10; positive law in this sense is used to describe all man-made laws.

¹⁴ *Ibid*, p. 11.

¹⁵ T Hobbes, *Leviathan* (C B Macpherson, Penguin Books, 1968) p. 85.

¹⁶ Per Adaramola Funso cited in O Okpara; *op.cit.* p.15; that the social contract theory concerns man in a state of nature who resorts to every means of self preservation including the killing of other men...but it dawned on him

The relationship between the State and its subjects... and neither parties can change the contract without the consent of the other...and is seen in terms of the individuals in the society submitting their rights and freedom to the State which in turn protects the individuals and their rights.¹⁷

Whilst Hobbes explained natural law from a secular perspective and in support of absolute sovereign power to maintain peace in society, John Locke was anti absolutism and preached constitutionalism and limited political power.¹⁸

The French Jean Jacques Rousseau in the 18th century was very “vocal about natural rights especially the right to freedom which he sees as innate and natural,”¹⁹and that “since all men were born free and equal, no man reserves the natural right to dominate another as freedom is inherent in every person.”²⁰ These theories of rights led to the French and American revolutions of the 18th century as natural law proponents directed their attention more to the rights of individuals. These rights were first published in the British Bill of Rights in 1688 and formed the basis of the American Declaration of Independence to wit that “we hold these truths to be self evident that all men are created equal, they are endowed by their creator with certain inalienable rights...”²¹

Although the natural law philosophy over the years have been criticized by the likes of David Hume, Karl Marx, Frederick Engels etc who preached empiricism and not just reason, the

through the exercise of reason (natural law) that peace was desirable and that the sensible thing for man to do was to enter into society thereby limiting his own liberty of action provided that other men did the same.

¹⁷ T Ige & O Lewis; *Human Rights Made Easy* (3rd edition, Legal Research and Resource Development Centre, 1999) p. 2.

¹⁸ O Okpara; *Human Rights*; *op.cit.* pp. 15-16.

¹⁹ J Omoregbe; *op.cit.* p. 42.

²⁰ O Okpara; *op.cit.* p.19.

²¹ T Ige & O Lewis; *op.cit.* p. 2.

revolution of the proletariat, that is the poor against the rich (bourgeoisie) due to the continuous struggle for supremacy between the two shall result in the successful overthrow of government representing the rich class which will lead to its eventual extinction. Also the established principles of natural law which metamorphosed into the human rights agitations today, took “a firm footing in the resolve of the allies after the second world war that assuming the respect for human rights was their war aim.”²² These various globally recognized human rights are contained in international instruments²³ which encapsulate the concept of human rights in the 21st century as concerning the relationships within organized State that is, the States’ governments and the citizens. These relationships which concern their “political participation, the freedoms that the individual should enjoy and their claims on the State with regard to the provision of basic needs of life, education, health etc and shall be discussed subsequently.

From our previous discussions, it is clear that human rights have always been deemed to enure from time immemorial and in the Constitutions of States whether in the written or unwritten form. However, the United Nations Declaration of Human Rights marked the first formal internationalization and universalization of the application of these rights which came into force in 1948 as a corpus *legis* for observance by all independent Nation States who subscribed to the Articles of the United Nations organization and system. Subscription of membership of the United Nations by Nation States *ipso facto* meant admittance and applicability of these universally agreed rights within the context of the municipal laws of these States. So no Member State could elect to exclude itself from the principles and contents of the Articles of the United Nations Declaration.

²² T Ige & O Lewis, *ibid.* p.3.

²³ Such as the Charter of the United Nations in 1945, the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, Convention on the Elimination of All Forms of Discrimination against Women 1979, United Nations Convention on the Rights of the Child 1989 etc.

States that are signatories to these instruments are thereby enjoined to enforce the agreements willingly entered into in their various States by using the instruments of government to ensure that the identified rights of persons were not trampled upon. Governments are thus required by the various international enactments on human rights to act in a certain manner or refrain from so acting to ensure that their citizens' fundamental rights were protected. The emphasis on human rights protection in States stem from its universal and inalienable character which recognizes that fundamentally the human race is one and across the globe the rights which enure to persons located in point A should be the same rights equally available to the persons in point B. Donnelly agrees with this position as he has stated that to him "the Universal Declaration of Human Rights is the basis of establishing the contemporary consensus on intentionally recognized human rights."²⁴ Arinze- Umobi concurs with the universality and inalienability of human rights. To her, "human rights are universal because each and every one of us wherever we are placed has human rights which are grounded in a moral order."²⁵ Describing the universality of human rights, Malemi declares that every human being anywhere in the world is born with human rights; that human right is what enables a person to continue his humanity, and without human rights, life is meaningless, worthless and a mere shadow; and these norms are respected and protected everywhere.²⁶

What does universality of human rights mean? And to what extent can we truly say that human rights are universal? Human rights are universal rights because they apply to all men without discriminations,²⁷ and they are recognized as rights inherent in man by virtue of his being human; as such rights exist in all men regardless of colour, geographical location, political

²⁴ J Donnelly, *Universal Human Rights in Theory and Practice*: (New York: Cornell Press, 2003) p.22.

²⁵ C Arinze-Umobi, *Domestic Violence Against Women in Nigeria: A Legal Anatomy*: (Folmech Printing & Pub. Co. Ltd, 2008) p.23.

²⁶ E Malemi, *Constitutional Law in Nigeria* (Princeton Publications, 2010) p.113.

²⁷ T Ige & O Lewis, *op cit*; 8.

or economic advancement or creed. The process of a co-ordinated recognition of human rights has actually been traced to the early Greek City States and the natural law school.²⁸ It was Cicero who was credited with the capturing of the universality of human rights born out natural law principles of justice when he stated that the rights inherent in every human being are:

For universal application, unchangeable and everlasting...it is a sin to try to alter this law nor is it allowable to try to repeal any part of it and it is impossible to abolish it entirely. We cannot be free from its obligations by senate or people...and there will not be different laws at Rome or at Athens or different laws now and in the future but one eternal and unchangeable law will be valid for all nations and for all times.²⁹

Human rights are “universal in that they are inalienable, self evident and applicable to all human beings.”³⁰ This principle of universalism and inalienability of the rights of human beings was first articulated in the Universal Declaration of Human Rights (UDHR) in 1948 and further reiterated in subsequent international human rights conventions and resolutions.³¹ These rights are recognized by the States as inalienable and so not to be taken away except in certain approved circumstances to ensure societal stability and development, and in accordance with approved procedures. Human rights are equal and non discriminatory,³² and States that have

²⁸ P Ricoeur cited in C Arinze-Umobi, *op cit*.

²⁹ B H Weston, ‘Human Rights Questions for Reflection and Discussion’ in *Human Rights in World community, Issues and Actions*(edited by R P Claude, Pennsylvania Press, 1989) p.13.

³⁰ J Donnelly, *op cit*.

³¹ For example, The Vienna World Conference of 1993 on Human Rights noted that it is the duty of States to promote and protect all human rights and fundamental freedoms regardless of the political, economic and cultural systems.

³² Art. 1 of the Universal Declaration of Human Rights (UDHR) 1948 provides that “all human beings are born free and equal in dignity and rights.”

ratified the relevant international instruments which incorporates these rights also “assume obligations and duties under international law to respect, to protect and to fulfill human rights.”³³

The universality of human rights today is however debatable not so much as to its availability but to its applicability in the various States of the world. Waltz,³⁴ in her work based on the activities of Amnesty International asks the question; where did the idea of universal human rights come from? Whose values are being imposed? How can anyone claim that human rights are universal? The question is; are these rights given equal recognition by municipal and cultural laws which order the lives of people on a daily basis? It is arguable if the issues of human rights can truly be universal as “rights and values are defined and limited by cultural perceptions.”³⁵

According to Shashi Tharoor, who acknowledges criticisms of the western consensus that human rights are universal especially against the background of our “pluri-cultural, multipolar world,” it is “an essentially western concept ignoring the very different cultural, economic and political realities of other parts of the world; and concludes that if there is no universal culture, there can be no universal human rights.”³⁶ These rights by their nature ought to be universal but are they? Can a man or woman in Nigeria, state with all certainty that he or she enjoys the same rights as his or her mate in the United States of America, Canada, England or Japan? Or are we talking about a nebulous idea which ought to be but is actually not, given the realities of discriminations in various countries as discussed already in previous chapters of this work? Culture which is the totality of the way of life of a group of people is not uniform or universal and indeed cannot be. Inherent in custom and culture are the issues of rights. Can these rights

³³ *Op.cit.*

³⁴ S Waltz, ‘The Universality of Human Rights;’ (1999) Vol 6, Issue 3, Journal of International Institute, available at <http://hdl.handle.net/2027/spo4750978.0006.302>. accessed 24/07/15.

³⁵ S Tharoor; ‘Are Human Rights universal?’ Vol XVI, NO 4 World Policy Journal 1999/2000.

³⁶ *Ibid.*

actually be uniform and universal? It is doubtful. Are agitators of the universality of human rights actually using a particular custom as standard?

The question is; are these rights truly universal against the background of differences in culture, history, political and economic stages of development of nations? Does universality actually mean uniformity of rights for all human societies? Is the question of universality of human rights referring to the availability and recognition of these rights across nations of the world or is it referring to the applicability of these acknowledged rights? Can we actually have universal human rights when communities which make up the States have peculiar customs and traditions which still regulate their lives irrespective of globally acceptable standards of behaviour? Human rights and its universality it is conceded, must relate to the fact that these are rights every human being should enjoy simply because he is human; and the fact that these rights do not vary from country to country but are the same for all men everywhere and in all societies. Also, that these rights are recognizable by all; and that there is a global need to protect these rights. The protection of rights is the responsibility of all persons and especially the responsibility of governments to ensure that domestic laws and strategies are put in place to guard against violations. If the universality of human rights is to the effect that world over men now enjoy these rights in the same measure it will throw up questions on the further need for the existence of the International Criminal Court (ICC), and newer and further protocols that have emerged on human rights issues.

It is equally important to note that nations may gloss over some human rights issues because such issues have over a long time been culturally permissible for instance the child marriages permissible under Islamic law in the northern States of Nigeria, the disinheritance of the girl-child in various communities of the Niger Delta already discussed. They do not see such

practices as inherently wrong especially having practiced them for so long and neither do they see some globally acknowledged human right as relevant to their society and the survival of persons nor do they have the resources available to the western world to provide the enabling environment to guarantee these proclaimed rights. Are there universal and uniform responses to issues of human rights? Are States' responses to clear human rights violations in their domain universal? The position that human rights predates modern political societies and so are unchangeable and unaffected by cultural or political variations is debatable as opinions abound on the effect of cultural relativism on issues of human rights.

Lower³⁷ thinking along these lines maintains that “rights are certainly not universally applied today with oppression, torture and various atrocities committed in many parts of the world.” According to him, human rights issues have been treated by some States as a political tool thereby weakening its universality.³⁸ Ake writing on the universality of human rights stated that “some of the rights important in the west are of no interest and no value to most Africans. For instance, freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle for survival...”³⁹ Some writers like Langlois,⁴⁰ have argued that the concept of human rights is an imposition of western culture. To him human rights “developed from western culture and thus they are inappropriate in application to other cultures.” This position was also re-echoed by

³⁷ M Lower, ‘Can and Should Human Rights be Universal?’ available at www.e-ir.info, (Dec 1, 2013) accessed 4/10/15.

³⁸ *Ibid.*

³⁹ C Ake, ‘ The African Context of Human Rights;’ A Paper presented at the International Conference on Human Rights in the African Context held in Port Harcourt 9-11 June 1987 quoted in T Akinola Aguda, *Human Rights and the Right to Development in Africa* (Lagos : Nigerian Institute of International Affairs. 1989)p 26.

⁴⁰ A Langlois, ‘Normative and Theoretical Foundations of Human Rights’: in M Goodhart; *Human Rights: Politics and Practice* (ed., Oxford, Oxford University Press Ch 1, 2009) p. 19.

Onguergouz,⁴¹ and O'Bryne⁴² who agrees that "claims based on universal human rights are at risk of being a weapon of cultural hegemony" as western philosophy places such importance on the individual. This is true to a large extent because certain issues of human rights held tenaciously in the western world are glossed over as unimportant in Africa.

According to Freeman,⁴³ the "western origins of human rights and the incompatibility of its imposition are argued to prove that human rights should not and cannot be universally applicable." The arguments against the universalism of human rights posits that it is "a new form of imperialism masking western interests"⁴⁴ as at different times in their history the West may dismiss human rights agitations and support regimes noted for human rights abuses while working against other regimes in the guise of protection of human rights.⁴⁵ It is trite also that the 3rd world countries have accused the West of double standards and the use of human rights to "undermine their sovereignty."⁴⁶ Some instances of such double standards concern their treatment of the individual's right to protection against arbitrary State executions borne out of his right to life. The alleged commission of this violation though not completely absent in the 'western' countries usually attract different responses depending on the country involved and may even become enough justification for the interference in the nation's sovereignty and may even lead to the ousting of a regime.

Also, the right to self determination is a human right that has been deployed by the United States to intervene in the domestic matters of a country; protection from racial

⁴¹ F Onguergouz cited in *Women, Law and Human Rights, An African Perspective* by F Banda (Oxford Portland Oregon: Hart Publishing, 2005) p. 4.

⁴² D O'Bryne, *Human Rights: An Introduction* (Harlow, Pearson Education, 2003) p. 42.

⁴³ M Freeman, 'Human Rights' in P Burnell & V Randall; *Politics in the Developing World* (Oxford, Oxford University Press Ch 18, 2008) p. 263.

⁴⁴ N Rengger, 'The World Turned Upside Down? Human Rights and International Relations after 25years' (2011) Vol. 87, No 5 International Affairs, 1159- 1178.

⁴⁵ K Adar, 'The Wilsonian Conception of Democracy and Human Rights: A Retrospective and Prospective' (1998) Vol. 2, No 2, African Studies Quarterly, 35.

⁴⁶ J Donnelly, *op cit*; 99.

discrimination is a human right and whilst some States in the west have ostensibly done away with very obvious discriminations, they still exhibit other covert discriminations and even go on to justify interventions in other States on their basis, and invariably disrespecting the sovereign status of the States concerned. For instance, the entire monarchies in the Arab States of Saudi Arabia, Jordan, Morocco, Kuwait, and Oman have no regard for democracy and respect for women rights; however the world's greatest democracy, United States who benefits from their oil reserves is aware of this but conveniently choose to gloss over their human rights abuses. Also capital punishment in Western Europe and United States are anachronistic; yet in the monarchies of the Arab States they are still widely practiced.

According to Falk⁴⁷, the double standards of the west with respect to human rights are in terms of their impact on foreign policy. The western projection of power against the weak is shown through their various humanitarian interventions; and economic programmes of the IMF & World Bank. Israel is known for the violation of the rights of Palestinians who are made to go to their homes with passes. The rights of non-jewish Israelites like the Arabs and Palestinians are not counted as important, further fuelling the crisis in the Middle East, yet America is the greatest supporter of Israel. To be truly universal therefore argues Michael Lower, "the international community must maintain a positive critical role and domestic pushes for human rights should be legitimized by international law."⁴⁸

In considering the universality of human rights, the push and pull of declarative policies and operative policies of the United Nation's Member States somewhat appears to have whittled down the concept of universality as there is a huge gap between the signing of Protocols and Conventions and actually putting up structures and domestic legislations to ensure the operation

⁴⁷ R Falk, 'Affirming Universal Human Rights' (2003) Vol. 3 Human Rights & Human Welfare; Centre on Rights Development; pp.77-82.

⁴⁸ M Lower, *op cit*.

and compliance with standards of behaviour set by the United Nations. It was only until the Beijing Conference of 1995 which somewhat shifted the post in human rights agitations especially with regard to women rights that the world moved a step from declaratory policies to affirmative action in a bid to recognize and protect women's rights.

The interplay of culture and issues of human rights as encapsulated in the Universal Declaration on Human Rights demands further analysis as noted in the Bangkok Declaration of 1992 that “the universal human rights standards are rooted in many cultures. We affirm the basis of universality of human rights which afford protection to all humanity... while advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights including women's rights must not be tolerated.” It is also conceded that the Universal Declaration of Human Rights according to Glendon,⁴⁹ has achieved “wide acceptance among diverse cultures” and this is portrayed in the States' acceptance of the International Criminal Court's jurisdiction via the Statute of Rome⁵⁰ to independently investigate and charge individuals for serious human rights violations.

3.2 International Instruments Protecting the Rights of the Girl –Child

The genesis of a concerted effort to recognize and concretize human rights for peace, development and to forestall future wars started with the decision of some nations to form an umbrella body after the Second World War called the United Nations via a charter⁵¹ which stated the purposes⁵² and principles of the organization of Member States to include the following:

i. to maintain international peace and security;

⁴⁹ M Glendon, 'The Forgotten Crucible: The Latin American Influence on The Universal Human Rights Idea' (2003) Vol 16 Harvard Human Rights Journal, 27-39.

⁵⁰ M Plessis, *The International Criminal Court and Its Work in Africa* (Institute for Strategic Studies (ISS) Publication, 2008) p. 11.

⁵¹ United Nations Charter of 1945.

⁵² Art. 1 *ibid.*

- ii. to develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples...;
- iii. to achieve international co-operation in solving problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction to race, sex, language or religion; and
- iv. to be a centre for harmonizing the actions of nations in the attainment of these common ends.

In its Charter, the United Nations seeking the protection of the entire human race for which the girl-child as a female specie of humans belongs and to ensure that generations of the human race was saved from the devastating effects of further wars declared the commitment of Member States to respect fundamental human rights. It stated that “we the Peoples of the United Nations determined to save succeeding generations from the scourge of war...and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained...have resolved to combine our efforts to accomplish these aims.”

The Charter gave a foundation to many other instruments ⁵³(especially in the area of the dignity and worth of the human person) which later emerged specifically targeting the protection of the girl-child and women rights. The Charter specifically demanded the “the universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” It was thus on the basis of the provisions of this Charter that other international instruments on the human rights of persons evolved. We shall discuss some of these instruments.

⁵³ See Convention on Consent to Marriage, Minimum Age For Marriage and Registration of Marriages, 1962; Convention on the Elimination of All Forms of Discriminations Against Women 1979; Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974.

3.2.1 Universal Declaration of Human Rights (UDHR 1948)

The United Nations took a further step in 1948 to proclaim the Universal Declaration of Human Rights with 30 Articles and a Preamble which preserved the inherent dignity, rights of members and respect of human rights to foster peace and freedom in the world by re-echoing same in these words; “whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; whereas disregard and contempt for human rights have resulted in barbarous acts...and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear... whereas the peoples of the United Nations have in the Charter re-affirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women...”⁵⁴

The Universal Declaration of Human Rights has been described as “the basic international pronouncement of rights that cannot be taken away from all members of the human family.”⁵⁵ The freedom and equality of all human beings irrespective of sex, colour, religion etc were also re-affirmed where it stated that “all human beings are born free and equal in dignity and rights...”⁵⁶ The earlier racial distinctions, slavery and genocide were further declared abhorrent behaviours by other articles of the Universal Declaration of Human Rights which stated that:

Everyone is entitled to all the rights and freedoms set forth in this
Declaration, without distinction of any kind, such as race, colour,

⁵⁴ Cited in S Ghandi, *Blackstone's International Human Rights Documents*: (8th edition, Oxford University Press, 2012) pp. 10-12.

⁵⁵ T Igwe & O Lewis; *Human Rights Made Easy:op.cit.* p 5.

⁵⁶ Universal Declaration of Human Rights 1948, Art.1.

sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁷

The Declaration also recognizes that everyone including the girl-child has the right to life, liberty and the security of person⁵⁸ and that no one shall be held in slavery and slave trade shall be prohibited in all forms.⁵⁹ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁶⁰ By the provisions of the UDHR, nobody is above the law as “all are equal before the law and entitled without any discrimination to equal protection of the law.”⁶¹ A further assurance against discriminations is guaranteed by the Declaration which stated in Article 7 that “all are entitled to equal protection against any discrimination in violation of this Declaration...” States were also enjoined to ensure that all persons have equal access to justice as it states that “everyone has the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁶²

The right of persons to fair and public hearing before a competent court is guaranteed under Article 10 while the right of persons not to be subjected to arbitrary arrest, detention and exile is provided by Article 9. The guilt of an accused person can only be rightly pronounced by a competent court as Article 11 provides that an “accused person is presumed innocent until proven guilty according to law.” Articles 12, 13 and 15 provide for the ‘right to privacy and protection of the law against arbitrary interference with his family, correspondence, honour and reputation; right to freedom of movement in and out of his country; and right to nationality respectively.

⁵⁷ Art. 2; *op.cit.*

⁵⁸ Art. 3; *ibid.*

⁵⁹ Art. 4; *ibid.*

⁶⁰ Art. 5; *ibid.*

⁶¹ Art. 6, *ibid.*

⁶² Art. 8, *ibid.*

The UDHR recognizes the fundamental right of women to choose to marry, who to marry and to have equal rights with men regarding their union. It stated “the right of men and women of full age to marry and to found a family. They are entitled to equal rights as to the marriage during the subsistence of the marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of intending spouses...”⁶³ Everyone (and this includes the girl-child and woman) has a recognizable right to own property;⁶⁴ right to freedom of thought, conscience and religion;⁶⁵ right to freedom of opinion and expression...⁶⁶ right to freedom of peaceful assembly and association and right to participate in the government of his country; right to social security; right to work, to free choice of employment;⁶⁷ right to rest and leisure; right to a standard of living adequate for health...right to education and to freely participate in the cultural life of the community...⁶⁸The Declaration further provides that “everyone is entitled to a social and international life in which the rights and freedoms set forth in this Declaration can be fully realized. Everyone has duties to the Community...and finally nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedom set forth herein.”⁶⁹

It should be noted that the Universal Declaration of Human Rights is a moral standard for the protection of individual and collective rights of persons to guarantee peace and development in the world. It is not a treaty and to that extent not legally binding on nations and persons but has formed the basis for formulating constitutions of countries, regional instruments like the

⁶³ Art. 16, *op.cit.*

⁶⁴ Art. 17, *ibid.*

⁶⁵ Art. 18; *ibid.*

⁶⁶ Art. 19; *ibid.*

⁶⁷ Art. 20-23; *ibid.*

⁶⁸ Art. 24-27; *ibid.*

⁶⁹ Articles 28-30; *ibid.*

African Charter on Human and Peoples Rights; and the basis of other legally binding instruments like the international Covenant on Civil and Political rights. The essence of the Universal Declaration of Human Rights was aptly captured by Ogbu⁷⁰ who opined that “the Universal Declaration though not a treaty, has in the course of time become a basic component of customary international law binding on all states and not only members of the United Nations. It is merely a statement of basic principles of inalienable human rights setting forth a common standard of achievement for all people and nations.”⁷¹

3.2.2 International Covenant on Civil and Political Rights (ICCPR 1966)

In the Preamble to the ICCR, the States Parties in accordance with the principles proclaimed in the Charter of the United Nations recognizing the inherent dignity, equal and inalienable rights of all members of the human family, entered into a covenant expressed in six parts and in 53 articles; some of which will be highlighted subsequently,

Part 1, Article 1 provides that “all peoples have the right to self-determination...to freely determine their political status and freely pursue their economic, social and cultural development...” It also demands that:

Each State Party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the present covenant without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷²

⁷⁰ O N Ogbu, *Human Rights Law and Practice in Nigeria, An Introduction* (Enugu: Cidjap Press 1999) p.40.

⁷¹ G Ezejiogor, ‘The Development of the Concept of Human Rights: definition and Philosophical Foundations’ in O Okpara; *op.cit.* p.62.

⁷² Part II, Art. 2; International Covenant on Civil and Political Rights 1966.

The Covenant particularly ensures equal treatment of men and women which includes the girl-child in the protection of civil and political rights. It states that “the State Parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present covenant.”⁷³ The covenant protects the sanctity of human life in Article 6 which states that every human being which includes the girl-child has an inherent right to life; which right shall be protected by law as no one shall be arbitrarily deprived of his life. Also, “no one shall be subjected to torture, or cruel inhuman or degrading treatment or punishment...no one shall be held in slavery or servitude... everyone has the right to liberty and security of the person...no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”⁷⁴ More specifically, this legislation provides protection for the girl-child when it stated that “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”⁷⁵ The girl-child by the definition adopted in this work falls within this age bracket and is also covered by the protection for pregnant women.

The ICCPR provides the right of the girl-child, “men or women of marriageable age to marry and to found a family;”⁷⁶ so the customary practices practiced among the Ogoni and Ikwerre peoples of the Niger Delta which deny the girl-child especially the first daughter the right to marry is clearly a violation of their human rights. The girl-child by this law is protected from forced marriages as it provides that “no marriage shall be entered into without the free and full consent of the intending spouses.”⁷⁷

⁷³ Art. 3, *ibid.*

⁷⁴ Art. 7-9; *ibid.*

⁷⁵ Art. 6, Part III ICCPR 1966.

⁷⁶ Art. 23, para 2 *ibid.*

⁷⁷ *Op.cit*; para 3.

Everyone including the girl-child is “equal before the law and without discrimination entitled to equal protection of the law,”⁷⁸ and every child including the girl-child “shall have without any discrimination...the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State; has a right to acquire a nationality and have a name.”⁷⁹ Nigeria has ratified the International Covenant on Civil and Political Rights (ICCPR) but not the Optional Protocols.

3.2.3 International Covenant on Economic, Social and Cultural Rights (ICESR1966)

This instrument is divided into five parts containing 31 Articles. The State Parties to the covenant agreed that all peoples have the right to self determination. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development.⁸⁰ The States Parties were further enjoined in Article 3 to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant.”

Also, State Parties were to recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensures in particular (a) remuneration which provides all workers as a minimum with fair wages and equal remuneration for work of equal value without distinctions of any kind; and in particular women being guaranteed conditions of work not inferior to those enjoyed by men; and with equal pay for work...⁸¹ The Covenant also provides “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children

⁷⁸ Art.26, *ibid.*

⁷⁹ Art. 24, para 1-3, *ibid.*

⁸⁰ Art. 1 & 2; *ibid.*

⁸¹ Art. 9, *ibid.*

and young persons should be protected from economic and social exploitation...”⁸² The State Parties to the present covenant recognize the right of everyone to take part in cultural life.

3.2.4 Convention on the Political Rights of Women (CPRW) 1954.

The Convention seeking to implement the principle of equality of rights for men and women contained in the Charter of the United Nations agreed that women have the right to vote in all elections on equal terms with men without discrimination;⁸³ the right to hold public office on equal terms with men without discrimination;⁸⁴ etcetera.

3.2.5 Convention on consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964.

The State Parties to the Convention desiring to conform with the United Nations promotion of universal respect and observance of human rights and freedom for all irrespective of race, sex, language or religion and especially considering that certain customs, ancient laws and practices relating to marriage and the family are inconsistent with the principles set out in the United Nations Charter agreed to take all appropriate steps to abolish such customs and practices. And also ensuring total freedom in the choice of a spouse agreed that “no marriage shall be legally entered into without the full consent of both parties...;”⁸⁵ and that “State Parties shall take legislative action to specify a minimum age for marriage...⁸⁶” while all marriages should be registered in an appropriate official register by the competent authority.⁸⁷ In Nigeria it is still doubtful whether marriages are only contracted with the consent of the parties since forced

⁸² Art. 10; *op.cit.*

⁸³ Art. 1 Convention on the Political Rights of Women 1954.

⁸⁴ Art 11, *ibid.*

⁸⁵ Art. 1 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964.

⁸⁶ Art.2 *ibid.*

⁸⁷ Art.3 *ibid.*

marriages are still rife. Also, it is true that the Child Rights Act 2003 prohibits child marriages as well as providing that a child is a person under 18 years. The problem however is that this law has not been enacted as State laws to be implementable and for some States that have so enacted, there is no conformity as to the age of a child as some States have adopted 15 or 16 years.

3.2.6 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979)

The Convention divided into six parts, and with 30 articles sought to chart “an international bill of rights for women”⁸⁸ by first of all acknowledging the existence of various forms of discriminations against women and defining what would amount to discrimination. The States parties to the convention noted that despite the various international legal instruments reaffirming faith in fundamental human rights, in the dignity and worth of the human person; equal rights of men and women to enjoy economic, social, cultural, civil and political rights, “discriminations against women continues to exist.”⁸⁹

The Convention noted further that in:

situations of poverty women had the least access to food, health, education, training, opportunities for employment and other needs; and that discrimination against women violates the principles of equality of rights and respect for human dignity and is an obstacle to the participation of women on equal terms with men in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of the society and the family and makes more difficult the full

⁸⁸ T Igwe & O Lewis; *op.cit.* p.41.

⁸⁹ S Ghandj; *op.cit.* p. 62.

development of the potentials of women in the service of their countries and humanity.⁹⁰

It also recognized that for a complete development of a country to be possible and for world peace to be realizable, the “maximum participation of women on equal terms with men in all fields is required.”⁹¹ And which provision includes the girl-child. The Convention states further that it is “aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women;” and is thus convinced that the “establishment of the new economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women.”⁹²

The Convention for its purposes gave a definition of discrimination against women to mean “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹³

In the Article 2 of the Convention, the States Parties condemn discrimination against women in all its forms...to pursue by all appropriate means and without delay a policy of eliminating discriminations against women...To foster the achievement of Article 2, the parties undertook to (i) embody the principles of equality of men and women in their national constitutions and other appropriate legislation...; (ii)to adopt appropriate legislative and other measures including sanctions were appropriate prohibiting all discriminations against women; establish legal protection of the rights of women on an equal basis with men...; to refrain from

⁹⁰ *Op.cit*; p. 62.

⁹¹ *Ibid*; p. 62.

⁹² *Ibid*.

⁹³ Part 1, Art. 1; CEDAW 1979.

engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; to take all appropriate measures to eliminate discriminations against women by any person, organization or any enterprise; to take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discriminations against women; and to repeal all national penal provisions which constitute discriminations against women.⁹⁴

States Parties also agreed to “modify the social and cultural patterns of conduct of men and women with a view to achieve the elimination of prejudices, customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or stereotyped roles for men and women...”⁹⁵ Whilst all forms of trafficking in women and exploitation through prostitution of women is agreed by the parties to be suppressed,⁹⁶ measures would be taken by the States Parties to eliminate discriminations against women in the political and public life of the country...ensure to women on equal terms with men the right to vote in all elections...participate in the formulation of government policy...participate in non-governmental programmes...Parties were also enjoined to “grant women organizations and associations concerned with the public and political life of the country...”⁹⁷

They shall ensure that neither marriage to an alien nor change of nationality by husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband...”⁹⁸ Part 3 of the Convention provides for the elimination of discrimination against women to grant them equal rights to education,⁹⁹ the right to work as an

⁹⁴ Art.2; *op.cit.*

⁹⁵ Art. 5; *ibid.*

⁹⁶ Art. 6; *ibid.*

⁹⁷ Art. 7; *ibid.*

⁹⁸ Art. 9; *ibid.*

⁹⁹ Art. 10, *op.cit.*

inalienable right of all human beings etc,¹⁰⁰ equality of women with men before the law;¹⁰¹ ensure the women's right to enter into marriage, freely choose a spouse, have the same rights and responsibilities in the marriage as men during the marriage and at its dissolution, the same rights and responsibilities as men in matters relating to their children whose interest will be paramount in all cases; right to freely decide on the number and spacing of their children; same rights and responsibilities regarding guardianship, trusteeship and adoption of children; same rights for both spouses in respect of ownership, acquisition, management, enjoyment of property.¹⁰²

3.2.7 Convention on the Rights of the Child (CRC 1989)

The United Nations Convention on the Rights of the child has a Preamble; it is divided into 3 Parts and has 54 Articles. The Convention in its Preamble reiterated the principles of recognition of the inherent dignity and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world enshrined in the Charter of the United Nations 1945, and recognized the need for the “full and harmonious development of the child's personality in a family environment and in an atmosphere of happiness, love and understanding.”¹⁰³

It is important to note however that the Convention on the Rights of the child is a follow-up on the Geneva declaration of the rights of the child in 1924 and which was adopted by the General Assembly on Nov 20, 1959.¹⁰⁴ This follow-up became necessary because of the need to extend particular care to the child to ensure the welfare of children. The Convention expressed a definition of a child to mean “every human being below the age of eighteen years unless under

¹⁰⁰ Art. 11; *ibid.*

¹⁰¹ Part iv; Art. 15; *ibid.*

¹⁰² Art. 16; *ibid.*

¹⁰³ S Ghandi; *op.cit.* p. 67.

¹⁰⁴ *ibid.*

the law applicable to the child majority is attained earlier”.¹⁰⁵ The rights of the child within jurisdiction are to be respected by States “without discrimination of any kind, irrespective of the child’s or his or her parents’ or legal guardian’s race, colour, sex...”¹⁰⁶

The Convention however cautions that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities... the best interest of the child shall be a primary consideration.”¹⁰⁷ It is important to note that the Convention recognizes and appreciates the role of custom in the overall development of the child as it states that “State Parties shall respect the responsibilities, rights and duties of parents or where applicable the members of the extended family or community as provided by local custom...”¹⁰⁸ This provision shows that the Convention not only recognizes the importance of local customs but actually reiterates the need for upholding such customs.

The girl-child by international legislation has a recognizable and inherent right to life; and it is the responsibility of States to “ensure to the maximum extent possible the survival and development of the child.”¹⁰⁹ The child also has the freedom of expression, of thought, conscience and religion; although it also recognizes the rights and duties of parents or legal guardians to provide direction to the child.¹¹⁰ The child’s freedom of association and peaceful assembly is guaranteed under Article 15 and “no child shall subjected to arbitrary and unlawful interference with his or her privacy, family...The Convention places the responsibility of protecting the child from all forms of violence either in the house, school, community etc on the governments of nations. Article 19 provides that “State parties shall take all appropriate

¹⁰⁵ Convention on the Rights of the Child 1989, Art.1.

¹⁰⁶ Art. 2; *ibid.*

¹⁰⁷ Art. 3, *ibid.*

¹⁰⁸ Art.5, *ibid.*

¹⁰⁹ Arti. 6, *ibid.*

¹¹⁰ Art. 13 & 14, *ibid.*

legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse while in the care of parent(s), legal guardians or any other person who has the care of the child.”

The disabled child is also protected under the articles of the Convention which insists that “State Parties recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure dignity, promote self reliance and facilitates the child’s active participation in the community.¹¹¹The child has the right to education which at the primary level should be compulsory and free to all,¹¹²and even if from a minority group should not be denied the right to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language,¹¹³ as the child has the right to participate fully in cultural and artistic life...¹¹⁴Child abuse, child labour and exploitation were frowned at by the convention which provided that State Parties recognize the rights of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.¹¹⁵

The child’s right to personal liberty is guaranteed as the “State Parties should ensure that no child shall be subjected to torture, or other cruel inhuman or degrading treatment or punishment.¹¹⁶ Nigeria signed the Convention on the rights of the child in 1991 and took the step

¹¹¹ Art. 23, *op.cit*

¹¹² Art. 28, *ibid.*

¹¹³ Art. 30, *ibid.*

¹¹⁴ Art. 31, *ibid.*

¹¹⁵ Art. 32, *ibid.*

¹¹⁶ Art. 37 *ibid.*

of domesticating the convention into a national law that is the Child Rights Act assented to by President Olusegun Obasanjo in 2003.

3.3 Regional Instruments on the Rights of the Girl-Child

Flowing from the international instruments canvassing the recognition and protection of human rights already discussed, the Universal Declaration of Human Rights became the basis on which regional bodies and groups such as the Organization of African Unity (African Union) took steps to galvanize member states to enter into legal relationships with each other with the aim of encouraging member states to take every appropriate measure to ensure the promotion and protection of human rights in their domains. It is on this premise that this work shall discuss the African Charter on Human and Peoples Rights 1986 and the African Charter on the Rights and Welfare of the Child.

3.3.1 African Charter on Human and Peoples Rights (ACHPR 1981)

The African Charter on Human and Peoples Rights is an expression of the government's, peoples' and non-governmental organizations' condemnation of the various human rights violation in Africa firstly by colonial powers in States which were still under colonial government, then violations by military regimes and other systems of government in the African region. This quest culminated in 1981 to the then Organization of Africa's Unity's agreed provisions in a treaty called the African Charter to guide governments and citizens of member states.

The Charter contained individual human rights such as the right to life, right to justice and fair trial before the law, freedom of expression, right to religion or to any belief, right not to be tortured or detained unlawfully by the police or the prison, right to membership of any organization, union or political party. The charter also provides for the rights of peoples and

citizens of a nation, state, members of a community, group or tribe; and these rights included the right to be governed and to choose who will govern them; right to be paid for work done; right to a good economy; right to promote the positive aspects of their tradition and culture.

Certain duties are also expressly required of the individual such as the duty to work for the community and to defend the security of the nation, whilst the state has a duty to protect the law and grant justice to all, protect the well-being of its citizens, grant them the right to own property and be educated. The Charter provided for an African Commission on Human and Peoples' Rights to ensure the implementation of the charter's provision and settle conflicts arising from breaches by member states.

3.3.2 African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

This Charter stresses the preservation and strengthening of positive African values which will be complementary to the development of the African child and also seeks to discourage harmful values and practices to the health and status of children. The Organization of African Unity (now called African Union) in 1979 in Monrovia, Liberia recognized the need to take all appropriate measures to promote and protect the rights and welfare of the African child especially after “noting with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger...”¹¹⁷

This Charter is divided into 2 parts with a total of 43 articles. The Charter states the obligations of member states to recognize the rights, freedom and duties enshrined in the Charter and expressly excludes the application of “any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present

¹¹⁷ Preamble to the AU Charter on the Rights and Welfare of the Child, 1990.

Charter”¹¹⁸ which to the extent of such inconsistency should be discouraged. The Charter defines the child to mean ‘every human being below the age of 18 years’¹¹⁹; while article provides that the best interest of the child shall be the primary consideration in all actions concerning the child; every child has an inherent right to life to be protected by law; freedom of expression, association and freedom of thought, conscience and religion.¹²⁰ The Charter recognizes the child’s right to protection of privacy and right to education, rest, leisure and cultural activities.¹²¹ Handicapped children have the right to special measures of protection in keeping with their physical and moral needs...right to health and health services.¹²² Child labour, child abuse and torture were to be tackled by member States through specific legislative and administrative, social and educational measures.¹²³

The Charter provides protection for the child against harmful social and cultural practices where it specifically stated that it will:

1. “Take appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular (a) those customs and practices prejudicial to the health and life of the child and (b) those customs and practices discriminatory to the child on the grounds of sex or other status;
2. Child marriages and betrothal of girls and boys shall be prohibited and effective action including legislation shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory. Protection of the child against discrimination, sexual exploitation and drug abuse were guaranteed under Articles

¹¹⁸ Preamble, para 3; *ibid.*

¹¹⁹ Art II *ibid.*

¹²⁰ Art V, VII, VIII, IX *ibid.*

¹²¹ Art XI, XII *ibid.*

¹²² Art XII, XIV *ibid.*

¹²³ Art XV XVI *ibid.*

XXVI, XXVII, XXVIII while sales, trafficking and abduction of children for any purpose and in any form by any person including parents or legal guardians of the child were to be prevented as the Convention enjoined states parties to take appropriate measures to prevent use of children in all forms of begging.”¹²⁴ The girl-child begging on major streets of major cities in Nigeria is clearly in contravention of the agreements reached by the Convention.

3.3.3 African Union Declaration on Gender Equality in Africa, July 2004

The Heads of States and Governments of Member States of the Union re-affirmed their commitment to the principle of gender equality enshrined in the Union’s Act;¹²⁵ noted their commitment to stand by their decision on gender parity in Durban, South Africa in 2002 and implemented in Maputo, Mozambique in 2003 through the election of five female and five male commissioners in 2003;¹²⁶ acknowledging that gender parity was a “historic achievement” of the Union not recorded in any other continent and resolving to promote gender equality at all levels; concerned about the:

status of women and the negative impact on women of issues such as the high incidence of HIV/AIDS among girls and women, conflict, poverty, harmful traditional practices, high population of refugee women and internally displaced women, violence against women, women’s exclusion from politics and decision making and illiteracy, limited access of girls to education.¹²⁷

¹²⁴ Art. xxix; *ibid*.

¹²⁵ S.4 (1) of the Constitutive Act of the African Union 2000.

¹²⁶ J N Ezeilo, *Human Rights Documents relevant to Women and Children’s Rights in Nigeria* (Nigeria: WomenAid Collective, (WACOL), 2008) p. 425.

¹²⁷ *Ibid*, p.426.

The Union agreed to accelerate the implementation of gender economic, social and legal measures to ensure that the problems and diseases identified were adequately combated, and to launch a campaign for the systematic prohibition of the recruitment of child soldiers and abuse of girl children as wives and sex slaves in the violation of their rights as enriched in the African Charter on the Rights of the Child.¹²⁸

3.4 Municipal Instruments on the Rights of the Girl-Child

The Nigerian nation has enacted some specific legislation to protect the rights of the girl-child and women. The Constitution which is the fundamental and supreme law of the country has clear provisions on the rights of persons which include the girl-child; the powers of government and limits of the exercise of such powers to guarantee peace, stability and progress of the nation.

The globally recognized rights inherent in every man as human rights are guaranteed in Chapter Four of the 1999 Constitution of Nigeria as fundamental rights. Ama Oji states clearly that “it is in this chapter that most of the rights of the individual are comprehensively set out and protected.”¹²⁹ These rights are 12 identifiable rights namely; the right to life; right to dignity of the human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own property; right to compensation for property compulsorily acquired. These fundamental rights according to the court in *Uzoukwu & ors v Ezeonu II & ors*,¹³⁰ “remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country, that is, by the Constitution.” It

¹²⁸ *Op.cit.* p. 427.

¹²⁹ E.Ama Oji, ‘Right to Private and Family Life and Right to Freedom of Thought, Conscience and Religion,’ in O Okpara, *op. cit.*

¹³⁰ (1991)6 NWLR, (pt 200)708 at 761.

should be noted however that these rights are not absolute rights but are limited by the same Constitution.¹³¹ We shall thus be considering these constitutional provisions termed fundamental human rights in addition to the examination of the Child Rights Act which has copious provisions concerning children and for which States in Nigeria are advised to enact as laws in their various States.

3.4.1 Constitutional Provisions on Fundamental Human Rights in Nigeria.

Right to Life¹³²

This right enshrined in the Constitution provides that “every person has a right to life save in execution of the sentence of a court in respect of a criminal offence of which he or she has been found guilty.” There are however exceptions to this provision in s. 33(2). This right has been described as “the most basic, the most fundamental, the most primordial and supreme right which human beings are entitled to have and without which the protection of all other rights becomes either meaningless or less effective.”¹³³ Sanctity of life is protected by international¹³⁴, regional¹³⁵ and municipal legislations.¹³⁶

This importance of life and the need to protect same guaranteed by the Constitution informs the demand on Nation States by various instruments to take positive steps and put appropriate measures to ensure that this right is not threatened. And when threatened or interfered with, it is considered a crime against the State, prosecuted as such and given the

¹³¹ Constitution of the Fed. Republic of Nigeria 1999 (as amended) S.45.

¹³² S. 33(1) *ibid.*

¹³³ F. Menghistu, ‘The Satisfaction of Survival Requirements’ in C A Omaka, ‘Right to Life and The Dignity of the Human Person (Sections 33 and 34 of the 1999 Constitution) in O Okpara; *op.cit.* p.112.

¹³⁴ See Article 3 Universal Declaration of Human Rights 1948 provides that “everyone has the right to life, liberty and the security of person.”

¹³⁵ Article 4, African Charter on Human and Peoples Rights states that “human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

¹³⁶ See examples of the Criminal and the Penal Codes. The Criminal Code for instance while S. 306 provides that it is unlawful to kill any person; S308 provides that “except as hereinafter set forth, any person who causes the death of another directly or indirectly by any means whatever is deemed to have killed that person

ultimate sanction to act as effective deterrent. It has also become an emerging trend in international law that governments are enjoined to take positive measures which include provisions to ensure adequate health facilities for all especially women and children.¹³⁷ From this provision, it is expected that governments should make relevant policies and put adequate strategies in place to ensure that its citizens are free of preventable diseases. It is therefore argued in this work that the constitutional right to life includes the right to health, adequate medical and health facilities for all.¹³⁸

The Right to Dignity of the Human Person¹³⁹

The Constitution provides that every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to torture or inhuman or degrading treatment; no person shall be held in slavery or servitude; and no person shall be required to perform forced or compulsory labour.¹⁴⁰ Torture has been given judicial definition in *Uzoukwu v Ezeonu* to include “mental harassment, as well as physical brutalization while inhuman treatment characterizes any act without feeling for the suffering of the other person; and degrading treatment involves the element of lowering the societal status, character, value or position of a person.¹⁴¹ This right demands that no citizen of Nigeria be treated with ridicule and in a degrading manner especially in line with the constitutional provision that an accused is innocent until proven guilty, he should not be treated as a criminal before he is so declared by a competent court. So the beating of suspects in police custody, and the meting of all forms of punishment including the handcuffing of a suspect are clearly not permissible under the provisions of the Constitution.

¹³⁷ See Article 12, paragraphs 1& 2 ICESCR 1966.

¹³⁸ S 17(3) c & d, Chapter II, 1999 Constitution of the Federal Republic of Nigeria (as amended).

¹³⁹ S. 34(1) *ibid.*

¹⁴⁰ S 34(1) *ibid.*

¹⁴¹ [1991]6 NWLR, (pt 708) 764.

Also clearly unconstitutional are customary practices which allow a person to be stripped naked and paraded round the village as a thief upon a mere allegation of theft and before proper investigations are carried out. Also, the inhuman treatments discussed previously in this work to which some widows are subjected to in the Niger Delta violate this right. The physical and mental brutalization; and violence against women in the domestic environment is inconsistent with the provisions of the Constitutions. To treat any person as a slave “held in slavery and servitude or required to perform forced or compulsory labour is unconstitutional and the court in *Mogaji v Board of Customs and Excise*, has highlighted instances of what would amount to inhuman or degrading treatment to include organizing a raid with the use of guns, horse whips, tear gas etc.¹⁴² This constitutional provision of course renders the traditional classing of persons into categories and the treatment of them as such is unconstitutional. So the variants of the *osu* system in some parts of Igboland which treat some Nigerian citizens as inferior and second class work against the human rights enshrined in S.34(1) of the Constitution.

Right to Personal Liberty¹⁴³

S 35(1) of the Constitution of the Federal Republic of Nigeria states that “every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except in the circumstances stated in paragraphs a-f such as in execution of a court order or sentence; failure to comply with court order; for bringing a person before the court; for the education and welfare of a person below 18years; for the purpose of care and treatment of persons suffering from infectious diseases and for the protection of the community, or for the purpose of preventing unlawful entry of any person in Nigeria or for expulsion and extradition purposes etc. The right to personal liberty is guaranteed to all persons whether free or in detention and charged with an

¹⁴² (1982)2 NCLR 552 at 561.

¹⁴³ S. 35(1) *op. cit.*

offence. This right acknowledges the right of an accused person not to answer any question or make a statement until after consultation with his lawyer or any other person; right to be informed in writing the grounds for his arrest within 24 hours; right to bail if entitled and right to be charged to court within reasonable time and not be incarcerated without information on why he is detained; and right to a public apology and compensation if unjustly arrested and detained.

This constitutional right is further guaranteed by International Convention on Civil and Political Rights (ICCPR)¹⁴⁴ which states that “all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. On the law enforcement agencies, the police in Nigeria while carrying out their constitutional duties of investigations of alleged crimes, detention and prosecution should respect the dignity of persons, by not pushing, shoving, slapping, handcuffing and generally treating the accused as a condemned criminal.

In *Chinemelu v Commissioner of Police*¹⁴⁵ the court decried police brutality of an arrested person and the continued detention of same without a formal charge and in contravention of constitutional provisions in the words:

even though there is an insinuation or allegation of murder of certain persons, neither has any formal charge of murder as required by law been preferred against the appellant nor have the proofs of evidence been prepared as prescribed by law. In such circumstances the further detention of the appellant would appear unreasonable and unjustified... to allow the respondent continue the detention of the appellant as it were in perpetuity in these circumstances would unreasonably deprive a citizen of his right of liberty and unwillingly

¹⁴⁴ Art 9 & 10.

¹⁴⁵ [1995]4 NWLR, (pt 390)467.

sow the seed of improper use or abuse of power by the police or the executive to the chagrin of a citizen whose innocence...is yet to be disproved. Such posture the courts must roundly condemn.

There is no arguing the fact that the police have the power to stop and search anybody¹⁴⁶but in doing this they have incessantly violated the right of citizens to dignity of the human person and their personal liberty.It is these violations and even with the right to life that warranted Amadi¹⁴⁷ to argue that “in our country where the Police in the guise of doing their duty tend to subject the citizens to verbal abuses and even physical assaults and premature death, it is more sensible for a person sought to be detained and searched to submit to the police and later sue for false imprisonment if his detention and search are not well founded.”

Right to Fair Hearing¹⁴⁸

This section provides that “in the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.” This right deals essentially with the adjudicatory process and demands that a person facing trials be given an opportunity to be heard before guilt is pronounced. So he should be informed of the offence allegedly committed by him, be present at the proceedings and hear all evidence against him, be allowed to contradict any witness testifying against him by cross examination, have access to all documents used in evidence against him.etcetera.

¹⁴⁶ S.29 Police Act which provides that a police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner anything which he has reason to believe to have been stolen or otherwise unlawfully obtained.

¹⁴⁷ G O S Amadi, *Police Powers in Nigeria* (Afro-orbis Publishing Co Ltd, Nsukka, 2000) p. 33.

¹⁴⁸ S. 36(1) *op. cit.*

The Supreme Court underscored the import of this right in *State v Onagoruwa*¹⁴⁹ where it stated that “amongst other things, fair hearing is in the procedure followed in the determination of the case and not in the correctness of the decision, and that neglect or failure to abide by the rule of fair hearing renders both the procedure and its outcome meaningless.” The right to fair hearing puts both the plaintiff and the defendants in equal positions to make their case before judgment is pronounced as was declared in *Alhaji Lawal v Israel Opawile*.¹⁵⁰ To guarantee fair hearing, the constitution also demands that proceedings of court and tribunals in matters relating to civil rights, obligations and criminal offences be held in public;¹⁵¹ the person so charged with an offence is presumed innocent until found guilty.¹⁵²

Right to Private and Family Life¹⁵³

This section provides that “the privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communications is hereby guaranteed and protected.” Every citizen has a recognizable right to dignity of the human person which is further assured by the right to privacy. No one is allowed to barge into another person’s house without invitation and permission except law enforcement agents who can only do so upon valid authorization. The search of persons and their homes by the police in connection with criminal investigations must be authorized by a warrant if not it will amount to a violation of a citizen’s privacy.

No one has the right to read correspondence (letters, phone messages) or eavesdrop the private conversations of others or intercept private messages of another person, bug the phones of people without authorization and in furtherance of protection of the rights of other persons as

¹⁴⁹ [1992]2 NWLR, (pt 221).33.

¹⁵⁰ (2001)1SCNQR 1.

¹⁵¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), S.36(3).

¹⁵² S. 36(5) *ibid.*

¹⁵³ S. 37(1)*ibid.*

stated in S.45 of the Constitution. To Ama Oji, the right to private and family life “guarantees the privacy necessary for the maintenance of a dignified life. It is this provision that gives one the right to protest against body searches without authorization, unlawful entry by the police into private premises for the purpose of arrests...government confiscation of mail or identity documents and government tapping of telephone lines.”¹⁵⁴

Right to Freedom of Thought, Conscience and Religion¹⁵⁵

By the provisions of S.38, “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 and in public or private to manifest and propagate his religion or belief in worship, teaching, practice and observance. It is this provision that establishes the secular nature of Nigeria as it allows every citizen the freedom of worship and belief; freedom to propagate his religion and take steps to manifest same; the right not to be forced into any religious ceremony or observance in schools except in line with his chosen religion; while subsection 4 precludes any citizen from being a member and participating in the activities of a secret society.

Right to Freedom of Expression and the Press¹⁵⁶

This section provides that “every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference. This right is universal and is provided in the Universal Declaration of Human Rights.¹⁵⁷ The African Charter on Human and Peoples Rights also provides that ‘every individual shall have the

¹⁵⁴ *Op. cit.* p. 230.

¹⁵⁵ Constitution of the Federal Republic of Nigeria 1999(as amended) S. 38.

¹⁵⁶ S. 39(1) *op. cit.*

¹⁵⁷ Art. 9.

right to receive information; every individual shall have the right to disseminate his opinions within the law.

“Freedom of expression connotes the liberty to openly discuss issues without fear of restriction or restraint.” By this provision everyone whether male or female has the right to a view on any subject matter and to express same without first seeking and obtaining permission to do so as is required of women and the girl-child under customary law in most communities of the Niger Delta. It is a constitutional right which allows any person to speak freely on any subject matter and be held responsible for his or her views so expressed. The requirement of obtaining consent before an opinion can be expressed on an issue is clearly outside the purview of this provision.

Every Nigerian citizen by virtue of S.39 can hold an opinion; share the opinion with others without censure or restriction. It is not a seasonal right which is granted some persons to mark an event and to be later withdrawn and neither is it the prerogative of man to be granted the woman at his pleasure. It is a right which allows citizens to discuss national and international issues so long as they do not border on the treasonable seditious expressions; and neither are they contemptuous of court, defamatory or inciteful to mutiny etcetera.

Right to Peaceful Assembly and Association¹⁵⁸

S.40 of the Nigerian Constitution provides that “every person shall be entitled to assemble freely and associate with other persons and in particular he or she may form or belong to any political party, trade union or any other association for the protection of his interest...” This constitutional provision makes formation of associations legal in Nigeria except such an association is specifically proscribed by law or is formed to carry out illegal purposes or to pursue activities

¹⁵⁸ S. 40(1) *op. cit.*

that endanger public security, peace and health.¹⁵⁹ It follows therefore that every citizen of Nigeria has the right to form or join any political party, trade unions or professional bodies so long as he or she possesses the valid requirements to belong to the association in question. It also follows that no association should bar any person on grounds of discriminatory qualities like sex, religion, geographical background or level of education.

It should however be noted that the constitutional right to associate does not preclude the associations from making rules to regulate the internal matters of the union or association. This was the position of the court in *Aniekwe v Okereke*,¹⁶⁰ where it stated that an association has a right to have its rules and regulations guiding the operations of the association and that a member of such association is subject to the privileges and advantages of the association on the principle of *volenti non fit injuria*. Under this provision, nobody should be compelled either in the school environment or work place or community to join any group or association or even go on to impose penalties; cultural or otherwise for failure to participate in any group or association's programmes. The Supreme Court reiterated this position in *Agbai v Okagbue*,¹⁶¹ where the plaintiff/respondent's sewing machine was forcefully carried away by the defendant/appellants who accused him of not contributing to the age-grade's project of building a health centre for the village. The court held that such seizure was illegal as the respondent could not be forced to join the age grade; that it will be unconstitutional to force a person to belong to an association even if such an association is mandatory by customary law.

¹⁵⁹Constitution of the Federal Republic of Nigeria 1999(as amended) S. 45.

¹⁶⁰ [1996]6 NWLR, (pt.452) p. 60.

¹⁶¹ [1991] 7 NWLR, (pt. 204) p.391.

Right to Freedom of Movement¹⁶²

Section 41 (1) of the Constitution provides that “every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from. The exceptions to this provisions are in subsection 2 a& b. This right means that every person has the right to go to anywhere in Nigeria and has the right to live in any part of the country. The right to free movement further concretizes the right to personal liberty. Under the Constitution, it is only the commission of a crime as stated in subsection 2 that should limit this right. So the customary laws applicable in some communities of the Niger Delta as seen among the Ogba people during “okoruosu” dances which proscribes the girl-child’s freedom of movement especially when certain rituals and festivals are taking place; and her right to move is limited to the homestead is clearly unconstitutional.

Freedom from Discrimination¹⁶³

Section 42 of the Constitution provides that “a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person be subjected either expressly by or in the practical application of any law in force in Nigeria...to disabilities, or to restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject...”This provision emphasizes the doctrine of the rule of law; especially the equality of all persons before the law.

¹⁶² S.41(1) *op. cit.*

¹⁶³ S.42 *op. cit.*

Every Nigerian is by this constitutional provision free to hold an opinion on any political issue, express same and not be put to any disadvantage at the work place, at school, in the home etc on account of his political persuasion and choice of religion. This provision clearly shows that no community in Nigeria is or should be superior to another, and equal opportunities and the same criteria should apply to persons in the areas of education, job and employment placements, health facilities, safety, access to justice etc should be given to Nigerians irrespective of sex, place of origin, religion etc. The Federal character enshrined in our constitution is a clear effort to ensure that all sections of the country are recognized and included in the policies and programmes of the Federal Government. However, the practicability and enforcement of the principle of Federal character in accordance with the spirit and intendment of the Constitution is still debatable. Freedom from discriminations of any kind is guaranteed by other international legal instruments.¹⁶⁴

3.4.2 The Child Rights Act 2003

This Act was the result of Nigeria's efforts to domesticate the Convention on the Rights of the child. It was passed by the National Assembly in 2003 and is by law required to be enacted by each State House of Assembly as a State law to be effective. This requirement of enacting the Child Rights Act into a State law is because issues concerning the protection of the child are in the residual list of the 1999 constitution which means that States have exclusive responsibility and jurisdiction to make laws on them as is relevant to its peculiar situation.

¹⁶⁴ Such as the Universal Declaration of Human Rights (UDHR)1948 which in Article 2 provides that "everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; Art 2 African Charter on Human and Peoples' Rights which provides that "every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any opinion, national or social origin, fortune, birth or other status.

It is only about 22 State Assemblies out of the 36 States of the Federation that have passed the Act into law; namely, the States of Abia, Akwa Ibom, Anambra, Benue, Cross River, Delta, Edo, Ekiti, Imo, Jigawa, Kwara, Kogi, Lagos, Nassarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers and Taraba; and even these States have not fully implemented same, although Lagos State has made very appreciable progress with the establishment of special courts known as family courts which are created purely for the hearing and adjudicating of all matters concerning and relating to children. It was only in May 2016 that Bayelsa State passed the Child Rights Law in the State. Umar however¹⁶⁵ examining the provisions of the Child Rights Act 2003 argues that they were in conflict with Sharia law and so cannot be adopted as law in the northern part of the country. The existing conflicts between the provisions of the Child Rights Act and Islamic law according to him especially regarding child marriages was against the spirit and practice of Islam and thus, makes “the realization of the rights of the Nigerian child more difficult.”¹⁶⁶ The writer advocated the compatibility of the Child Rights Act with Sharia law, “if we wish to make the Act of universal application in practice rather than in theory.”¹⁶⁷

Meanwhile, to Ezeamalu, the responsibility for ineffectiveness of the Child Rights Act is directly that of the government. He states that “the Child Rights Act passed in 2003 to protect the children’s rights have not lived up to its responsibilities.” He puts the blame of non functionality of the Act on the Nigerian government which has abdicated its responsibility to protect the child as most of the States that have passed the Act are not even implementing it.”¹⁶⁸ According to

¹⁶⁵ Alkali Umar, ‘An X-ray of the Conflicts between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy’ February 2012, Vol. 3 Human Rights Review; An international Human Rights Journal, 76.

¹⁶⁶ Alkali Umar; *ibid.*

¹⁶⁷ *Ibid.*, p.76.

¹⁶⁸ B Abah, in B Ezeamalu, ‘Nigeria’s Child Rights Act, Non- Functional,’ Premium Times, Friday February 19, 2016 available at www.premiumtimes.com/news/161510-nigeria-child-rights-act-functional-activists-say.html accessed 10/5/16.

Onyenweaku,¹⁶⁹ further confirming the position of Umar that the age of the child adopted in the Act is “one of the reasons some States have refused to pass the Child Rights law since the Child rights Act in consonance with the Convention on the Rights of the child prohibits the betrothal and marriage of a child; some States see it as out of tune with their culture with respect to marriage to have someone as old as 15, 16, or 17 be defined as a child.” The Act prohibits marriage to a child below 18years and considers a husband’s consummation of marriage with such a child as rape.

The Child Rights Act 2003 as a legal document adopted all the fundamental human rights set out in the Chapter Four of the 1999 Constitution as the fundamental human rights of children and in addition also provided some specific rights for the protection of children such as the right to a name; right to survival and protection, right to dignity; right to parental care, protection and maintenance; right to free compulsory and universal primary education; right to freedom from discrimination; right to privacy and family; right to freedom of movement; right to freedom of association and peaceful assembly; right to freedom of thought, conscience and religion; right to leisure, recreation and cultural activities; right to health and health services; right of a child in need of special care and protection; right of the unborn child to protection against harmful social and cultural practices; right not to be imprisoned with the mother; right to have his best interest considered paramount in any matter involving him; right to protection against abuse and torture.

These rights have been categorized into four groups namely:

- i. Survival rights which include the child’s right to life, development.
- ii. Development rights;
- iii. Protection rights such as protection from child labour, abuse and trafficking, neglect etc

¹⁶⁹ O Onyenweaku, ‘The Child Rights Act 2003: The Rights, The Benefits’ available at <http://dailyindependentnig.com/2013/10/the-child-rights-act,2003> accessed on 21/7/15

iv. Participation rights; which include his rights to be involved in matters that concern him.¹⁷⁰ In all transactions concerning the child, “the child’s best interests shall remain paramount in all considerations.” Despite the laudable provisions, there is no appreciable change in the status of the Nigerian child in most States of the country. The non implementation and resulting ineffectiveness of the Act especially in the northern States has been decried by Abah¹⁷¹ who stated that “it is worse in the northern part of Nigeria where you have issues of child bride that some people think are being backed by erroneous interpretation of religion to continue to carry out gross human rights abuses of vulnerable persons in our society.”

3.5 The Girl-child’s Reproductive Rights

Reproductive rights generally concern all legal rights and freedoms relating to reproduction and reproductive health. The girl-child in Nigeria falls within the reproductive age bracket and the incidence of early and forced marriages sanctioned under our various customs make a study of the girl-child’s reproductive rights imperative. Further inquiry into issues of reproductive rights is germane as the welfare, and complete development of nations require the maximum participation of women on equal basis with men in all fields.¹⁷² As a critical part of human rights, reproductive rights embrace the “inalienable, integral and indivisible part of the universal human rights which ensures full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels to eradicate all forms of discrimination on grounds of sex.”¹⁷³

¹⁷⁰ T Akinlami, ‘The Child Rights Act 2003: Provisions, Applications and You,’ delivered at a Training Programme for Lagos State Teachers held on June 2013.

¹⁷¹ *Op. cit.*

¹⁷² Preamble to the Convention on the Elimination of Discrimination against Women 1979.

¹⁷³ Part 1, Para 18, Vienna Declaration and Programme of Action adopted following the United Nations World Conference on Human Rights, Vienna, June 1993.

Reproductive rights thus encompass the right not to be forced into early marriages; right not to have sexual intercourse without the woman's consent; right to have the number of children she wants to give birth to, right to choose her sex partner; right to adopt the best birth control techniques and to reproductive health care etc. Reproductive rights have been defined further by the World Health Organization to mean those rights which "rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children; and to have the information and means to do so; and the right to attain the highest standard of sexual and reproductive health. They also include the right of all women to make decisions concerning reproduction free of discrimination, coercion and violence."¹⁷⁴

What is the background to the quest and demand for the recognition of reproductive rights against the background already established in this work that culture, especially the customs and traditions of the various people of Nigeria is hinged on patriarchy which tended to give a secondary role to women; and the pride of place in decision making for the family to the men? The quest for this right is a reaction of different categories of persons ranging from feminist groups to non- governmental organizations against the discriminatory policies and regulations and laws of government.¹⁷⁵ Also prohibited by this right are harmful traditional and cultural practices such as the female genital mutilations and barbaric widowhood practices which reflected the continuous and systematic violations of woman's right to life, right to liberty and the dignity of the human person, right to security and health care. Other factors that led to the emergence of reproductive rights include issues of maternal mortality, lack of procedure for legal

¹⁷⁴ World Health Organization Report.

¹⁷⁵ Occupational discriminations against married women in the Police Force as provided in S.122 Nigerian Police Regulations; Anti Abortion Laws contained in SS228 and 230 of the Criminal Code Cap 38, Vol 4, Laws of the Federation 2004.

abortion, inadequate allocation of resources for family planning, coercive population control programmes that lead to the sterilization of women without their consent¹⁷⁶ etc.

Despite this global awareness of the reproductive rights of women, Nigeria has no recognizable specific law on reproductive rights except as incorporated generally in Constitution;¹⁷⁷ the Labour Act;¹⁷⁸ the Marriage Act,¹⁷⁹ the Matrimonial Causes Act;¹⁸⁰ The Criminal Code;¹⁸¹ and more recently, the Violence Against Person's Prohibition Act passed in 2015 and which prohibits genital mutilation, harmful widowhood practices, abandonment of spouse, children and other dependants without sustenance, disinheritance and forceful ejection from homes etcetera. Some of the laws made to enforce the rights of the girl-child against various forms of abuses at the Federal and State levels include the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003; Ebonyi State Law on Abolition of Harmful Traditional Practices against Children and Women No 10, 2010; Edo State Female Genital Mutilation (Prohibition) Law 2002; Bauchi State Hawking by Children (Prohibition) Edict, cap 58, 1985; Cross Rivers State Girl Child marriage and Female Circumcision (Prohibition) Law 2000.

In many States in the Niger Delta region of Nigeria, there are local legislations¹⁸² prohibiting various forms of discriminations against the girl-child. There are also regional¹⁸³ and

¹⁷⁶ <http://www.un.org/womenwatch/daw/csw/shalev.htm> accessed 16/01/16.

¹⁷⁷ S.14 recognizes that the security and welfare of the people shall be the primary purpose of government. Also see S17 dealing with social objectives of the Nigerian State which obligates government to direct its policies to ensure adequate medical and health facilities for all persons; S 17(3)b which provides that conditions of work at work places be just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life. And see generally SS.33 to 45 Constitution of Nigeria, 1999, Cap C23, Vol. 3, 2004.

¹⁷⁸ Labour Act Cap L 1, Vol. 8 2004, S.54.

¹⁷⁹ S.18 Marriage Act, Cap M6, Vol. 8, 2004 which protects the reproductive rights of women by providing the necessary legal platform for women to enjoy married life with their husbands to the exclusion of other women; it also bars under-aged children from contracting valid marriages.

¹⁸⁰ Matrimonial Causes Act 1970, M7, Vol 8, 2004; S.3.

¹⁸¹ Chapter 21; Part 5 *op.cit.*

¹⁸² The Rivers State Reproductive Health Services Law, 2003; Female Circumcision Abolition Law of Rivers State, 2001; Dehumanizing and Harmful Traditional Practices Law of Rivers State, 2003; Child Marriage and Female

international instruments¹⁸⁴ which are legally binding on Nigeria and are very supportive of the reproductive rights of women. Custom on the other hand especially with regard to customary marriages which includes Islamic marriage neither recognizes, protects nor promotes the reproductive rights of women because it entitles the man to more than one wife at a time, which invariably puts the woman to a disadvantage as she has to compete with other ‘legal wives’ for his attention and consortium. It denies her the right to decide when to have sexual relations with the husband as she has to stand in queue for his attention. This form of marriage which places a high premium on parental rather than the girl-child’s consent and choice of a husband denies her reproductive rights. It also denies the woman true privacy and exposes her to sexually transmitted diseases.

Customary marriage systems encourage early marriages against the will of the girl-child as more emphasis is placed on the payment of bride-price negotiated and collected on her behalf by her parents. This bride-price syndrome is said to lower the status of women in Nigeria as they are considered as chattels or commodities to be dealt with any how the husband pleases, especially “as most parents under customary marriage give out or force their children into early marriages to men that are old enough to be their fathers without the consent of the women or girls involved just because of the financial gains they stand to benefit from the bride-price.”¹⁸⁵

Circumcision or genital Mutilation Prohibition Law (No 22) of Cross River State, 2000; Infringement of Widows and Widowers Fundamental Rights law, (No3) of Enugu State, 2001.

¹⁸³ Such as the Protocol on the Rights of Women in Africa, 2004; The African Charter on Human and Peoples Rights 1981; African Charter on the Rights and Welfare of the Child 1979.

¹⁸⁴ UN Convention on the Rights of the Child 1989; UN Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, 2001; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Universal Declaration of Human Rights 1948.

¹⁸⁵ O W Igwe, ‘Cultural impediments to the Realization of Women’s Human Rights in Igboland,’ (2014) Vol 1, JPPL, pp.160-161.

3.6 Enforcement of the Girl-child Rights in Nigeria

Several United Nations Organizations such as the United Nations Children’s Emergency Fund (UNICEF); the United Nations Development Fund for Women (UNIFEM) have made determined efforts to curb women and child rights violations.¹⁸⁶ But despite the positions adopted against gender and child discriminations by these international organizations; other legal instruments such as UDHR, CEDAW, ICCESR, CRC, etcetera¹⁸⁷ and domestic laws such as the 1999 Constitution and the Childs Rights Act it has been confirmed that discriminatory and harmful practices against women and children such as “harmful widowhood practices, child marriages, early betrothal, sexual trafficking and exploitation of women, disinheritance of the girl child and women” still thrive and are prevalent.¹⁸⁸

The Nigerian Human Rights record is quoted¹⁸⁹ to remain poor as government officials continue to commit abuses of different forms such as extra judicial killings by security operatives, clear intolerance of peoples’ right and agitation for self governance, torture, rape and other degrading treatment of prisoners, suspects and detainees, vigilante killings, arbitrary arrests, restrictions on freedom of the press and movement, domestic violence and discriminations against the women, child abuses and exploitation etc.

It is therefore no longer a subject of debate that “women in Nigeria face various versions of violations despite the protections guaranteed by the Constitution; and they are often restrained by social expectations... even when they have employment opportunities, custom dictates that

¹⁸⁶ 1994 Annual Report (CHDR) on Human Rights Situation in Nigeria available at <http://www.hrw.org/world-report/2015/country-chapters/nigeria> accessed on 15/1/2016.

¹⁸⁷ A Adeyemi; ‘Enforcement Mechanism for the Protection of Women and Children Rights’ (2003) Vol.1 Rivers State University Journal of Public Law (UJPL)1-12.

¹⁸⁸ S Afonja, ‘Towards the Codification of Customary Laws Affecting Women and Girls in Nigeria;’ A Study on Commission by UNICEF, November 2001.

¹⁸⁹ 2008 Country Report on Human Rights Practices, United States Department of State Bureau of Democracy, Human Rights and Labour 2009-02-05 available at <http://www.state.gov/g/dri/ris/hrrpt/2008/af/119018.htm> accessed on 14/9/2015.

career is secondary to a woman's primary role in the family as a mother or housewife."¹⁹⁰ And "women who become widows are subject to cultural pressures that are inconsistent with human rights agitations" in various parts of the country such as among the Efiks of Cross River State.¹⁹¹ Concerning inheritance issues women especially widows have not fared any better as it is usually the eldest son of the late man and not the widow that inherits property. "So the lack of sufficient property rights makes the girl child/ woman continually dependent on men, either as a single girl, married woman or a widowed woman."¹⁹² Child labour is an acknowledged human right violation in Nigeria and about 14 million children aged between 5-14 years old are engaged in forced labour in various sectors ranging from agriculture, mining and marketing instead of attending schools which at the primary level should be free and compulsory.¹⁹³

The violation of the girl child's rights to marriages of choice through forced and early marriages between the ages of 5-15 years makes them susceptible to diseases, domestic violence and restricts their access of education.¹⁹⁴ In the northern part of the country, and even among States that have adopted the Child Rights Act, the laws prohibiting child marriages have been ineffective as there remain many cases of child marriage. Also for non muslims living in the States that have adopted the sharia law as a State law, their rights to choose and practice a religion, their right to life and freedom from cruel and unusual punishments are violated with the imposition of Sharia law on all persons living and doing business in the State. Violations of human rights in Nigeria are rife especially with the series of extra judicial killings by law

¹⁹⁰ P Okeke, 'Reconfiguring Traditions: Women's Rights and Social Status in Contemporary Nigeria;' (Africa Today, 2000.) p.7

¹⁹¹ R Ako-Nai, 'Gender and Power Relations in Nigeria;' (Lexington Books, 2012) p.13

¹⁹² Gender and Power Relations in Nigeria available at <https://en.m.wikipedia.org...accessed> on 13/12/2015

¹⁹³ A Adetola, A S Coster; Gbolagun A O, "Child Farm Labour in Rural Households of Southwest Nigeria"; Global Journal of Human Social Science, 2013; Nigeria 2013 Findings on the Worst forms of Child Labour available at <https://en.m.wikipedia...> accessed on 15/3/2016.

¹⁹⁴ I Nnadi, 'Early Marriage: A Gender-Based Violence and a Violation of Women Rights in Nigeria;' (2014) Vol. 7, No 3 Journal of Politics and Law, 22.

enforcement agency. Reporting on the extra judicial killings in Nigeria the Committee for Defense of Human Rights (CDHR) stated that such killings have increased and assumed frightening dimensions in Nigeria.¹⁹⁵ Writing on human right violations the report stated that, “the police engaged in human rights abuses including torture throughout the country, local vigilante groups assisting Nigerian security forces to apprehend the militants were allegedly implicated in the recruitment and use of child soldiers and unlawful killing of Boko Haram suspects”¹⁹⁶. It was also observed that “government security forces including the police are implicated in human right abuses throughout the country with little effort made to bring those responsible to account”.¹⁹⁷ Human rights violations are therefore enforceable against any violator whether government, its agencies and officers or private persons. And to succeed in any claim of violation the court in *David-Osuagwu v A G of Anambra State* held that the injured party must locate his right which has been infringed on existing law to wit, the provisions of sections 33- 44 of the 1999 Constitution.¹⁹⁸

Under the Fundamental Rights (Enforcement Procedure) Rules, an applicant seeking the aid of the court should first of all obtain leave of court which is made ex-parte and is supported by a statement showing the applicant’s name and description, relief sought, grounds on which such reliefs are sought, with an attached affidavit verifying the stated facts relied on.¹⁹⁹ The application is required to be made within 12 months from the date of happening of the event or act complained about and should be followed by a written address.²⁰⁰ Where leave is granted, the

¹⁹⁵ 1994 Annual Report; *op. cit.*

¹⁹⁶ S Mausi, ‘Human Rights Watch’ <https://www.hrw.org/africa/nigeria> accessed on 12/2/2016.

¹⁹⁷ *Op.cit*

¹⁹⁸ [1993]4 NWLR (pt.285) p. 13.

¹⁹⁹ Order 11 Rule 3 Fundamental Rights (Enforcement Procedure) Rules 2009.

²⁰⁰ Order 11 Rule 5 *ibid.*

application must be made by notice of motion or by originating summons in Forms I and 2 to the appropriate court.

Despite the readiness of the courts to entertain and adjudicate cases of human rights violations, challenges to the proper enforcement of these remedies exist. They include applications that query the jurisdiction of the courts to entertain the actions such as questions of locus standi (the legal capacity to commence the action, ouster clauses during military regimes that take away the jurisdiction of the courts, access to court and cost of litigation which are inhibitive to effective realization of remedies as stated by Oluduro.²⁰¹ To Dada, “the greatest impediment to judicial remedies in Nigeria is the notorious problem of disobedience to court orders.” Enforcing judgments of courts are problematic because the judiciary has no independent means of enforcing judgments outside the executive arm of government, so in Nigeria the government of the day which is usually the greatest violators of human rights choose which order of court to obey or not.²⁰² This position is further confirmed by Sagay who states that in enforcing judicial remedies against the government in cases of human rights violations is problematic because the “government is the major predator” and culprits from which judicial protection is sought.

3.7 Remedies for Girl-Child Rights Violations- Judicial and International interventions

Human rights have become globally recognized; and various international instruments on human rights have been ratified and even domesticated by various countries of the world. It is thus curious that citizens at different times still experience constant violations of their human rights even by the government that has assented to the relevant laws. What is wrong? Are there no

²⁰¹ O Oluduro; *op. cit.* pp. 319- 324.

²⁰² C A Odinkalu, ‘Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa’ (2003) 47, J of Afr.L. 1-37.

clear-cut provisions on enforcement procedures in cases of human rights violations? Or is it a question of inadequate State machinery to ensure compliance? Surely where there is a wrong (that is an established right, there is a remedy) expressed in the maxim *ubi jus ibi remedium* and adumbrated upon by the Nigerian court in *Ewhurudje v W.L.G.C*²⁰³ when it stated that “it is the duty of the court to provide a remedy for a plaintiff even if none had been prescribed in the Statute book, for where there is a right there must be a remedy on the basis of the Latin maxim ‘*ubi jus ibi remedium*.’”

These rights of persons to remedies in cases of human rights violation have been recognized by the learned jurist Oputa who stated that “all citizens of our country have a right to have their substantial legal and constitutional rights recognized and transformed into actual remedies without which their theoretical fundamental rights would be seriously diminished or else denuded of any real value.” It shows that the world must move away from the mere listing of rights to actual enforcement and protection of rights. Are there clear sanctions for violations? Are there available remedies for the victims of such violations? Are these remedies accessible and implementable? These questions bog the mind, prompting a writer²⁰⁴ to assert that the “mere enumeration of rights even if it is meticulously worded is not enough. What is needed is a provision for its enforcement, and an avenue for redress. According to him rights must be enforceable by the judiciary otherwise they are sure to remain as mere paper rights”.

The United Nations have since recognized the right of victims of violations of human rights to a remedy.²⁰⁵ But how can violations of human rights and international law be remedied? It is trite that human rights treaties “provide for specific provisions on compensation for example

²⁰³ [2005]7NWLR Part 924, p.337.

²⁰⁴ N B Rakshi, ‘Right to Constitutional Remedy. Significance of Article 32’; Economic and Political Weekly, Vol. 34, No 34/35, Aug 21-Sep 3 1999 available at <http://www.jstor.org/stable/4408327> accessed 10/2/2016.

²⁰⁵ Principle 8, UN Principles on the Right to A Remedy.

to victims of unlawful arrests and detention.”²⁰⁶ The International Criminal Court (ICC) authorizes the court to determine any damage, loss or injury to victims and order reparations to them.²⁰⁷ States are by various international instruments made responsible for the promotion and protection of human rights.²⁰⁸ It is important to note that the ICCPR²⁰⁹ provides that “States have a duty to provide an effective remedy in case of violation of the human rights protected in the Covenant and individuals have a concomitant right.” The Internationally recognized monitor of States’ compliance with the Covenant, that is the Human Rights Committee has held that “violations of the covenant in general entail appropriate compensation and that reparation can involve restitution, rehabilitation and measures of compensation...it has also given specific indications on how to remedy the violations including specific monetary amounts of compensation, amendments of national laws, public investigations and even restitution of liberty, employment and property.”²¹⁰ It is true that these remedies may be available. But do they actually assuage the pain of violations of human rights such as the right to life? It is the opinion of this writer that neither monetary compensation, nor a jail term or even death sentence can remedy the loss of life of the girl-child who is gang- raped, tortured and left to die in circumstances that could have been avoided if adequate machineries are put in place by a serious and responsible government.

The African Commission on Human and Peoples’ Rights have also accepted the principle of reparations and developed “a practice of providing remedies including declaratory relief,

²⁰⁶ Article 5(9) ICCPR 1969; L Zegveld; ‘Remedies for Victims of violations of International Humanitarian Law’ (2003)Vol 85, No 851, Journal of International Humanitarian law, 497.

²⁰⁷ UN Document A/CONF. 183/9 Article 75 of July 1998.

²⁰⁸ African Charter on Human & Peoples Rights 1981, Art.2.

²⁰⁹ *Ibid*, Art. 2(3).

²¹⁰ Human Rights Committee General Comment No31; “Nature of General Legal obligations Imposed on States Parties to the Covenant; 26 May 2004; UN DOC. CCPR/C/21/Rev.1.

compensation and restitution”²¹¹ Also the Protocol establishing a court to the Charter System stipulates that “if the court finds that there has been violations of human or peoples’ rights it shall make appropriate order to remedy the violation including the payment of compensation or reparation.” One may acknowledge that where such remedies may be meaningful in violations of right to movement and personal liberty, they will be grossly insufficient for violations to life.

According to Dada, “Nigeria has erected enviable institutional infrastructure and provided a wide range of remedies, judicial and extra-judicial to redress human rights occurring in its territory.”²¹² The Nigerian courts have been vested with judicial powers²¹³ which “shall extend to all matters between persons, or between government or authority and to any person in Nigeria...” In pursuance of the power so vested, the courts in Nigeria as expressed by the Supreme Court in *Olawoyin v Attorney General, Northern Region*²¹⁴ “have been appointed sentinels to watch over the fundamental rights secured to the people... and to guard against any infringement of those rights by the State.” The High Courts of various states in Nigeria including the Federal Capital Territory (FCT) in their special jurisdiction have the constitutional right to hear and determine allegations of human rights violations.²¹⁵ So any citizen of Nigeria whose rights have been violated or is facing threat of violation has recourse to the High court as stated in *F.R.N v Ifegwu*²¹⁶ per Tobi Jsc (as he then was) that:

²¹¹ G J Naldi, ‘Reparations in Practice of the African Commission on Human and Peoples’ Rights’ (2001) Vol.14 Leiden Journal of International Law, 682- 693.

²¹² J A Dada, ‘Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal’ (2013) Vol. 10; Journal of Law, Policy and Globalization, 11.

²¹³ Constitution of Nigeria of the Federal Republic of Nigeria 1999, S. 6

²¹⁴ (1962) 1 All NLR 324 at 327.

²¹⁵ S. 46(1)(2) 1999 Constitution which provides that “any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in any State in relation to him may apply to a High court in that State for redress; Subsection 2 vests original jurisdiction to hear and determine any application made to it and to make such orders, issue writs and give directions as it may consider appropriate for the purpose of enforcing or securing enforcement within that State of any right to which the applicant may be entitled in the State High courts.

²¹⁶ [2003]15 NWLR (pt. 842)133-134.

The fundamental rights entrenched in the Constitution are very important...In the context of the 1979 Constitution S.42 thereof and the Fundamental Rights (Enforcement Procedure)Rules 1979 vest in an individual who alleges that any of the provisions of the Chapter has been, is being or likely to be contravened or infringed in any State in relation to him may apply to a High Court in that State for redress. As it is, the enforcement procedure is in three major limbs. The first limb is that the fundamental right in chapter 4 has been physically contravened...the second limb is that the fundamental right is being contravened...and in the third limb there is likelihood that the respondent will contravene the fundamental right of the plaintiff..

Generally the available judicial remedies in cases of human rights violations in Nigeria include the writ of habeas corpus, injunctions, prohibitions, mandamus, certiorari etc. As stated by the court in *Asemota v Yesufu & anor*,²¹⁷ “the remedy provided in S.42(1)n of the 1979 constitution supplements or is in addition to the existing order for enforcing or securing constitutional redress of enshrined constitutional rights by writs of habeas corpus, and/or order of certiorari, mandamus and/or prohibition”. While the writ of habeas corpus is used for securing the release of a person from unlawful and illegal detention which is a violation of his right to personal liberty; the order of certiorari is a useful tool in the hands of the High court to examine proceedings and orders from lower tribunals for arbitrariness and excesses for the purpose of correcting or quashing same; the order of prohibition allows the court to intervene and halt any proceeding in a lower

²¹⁷ (1981)1 NCLR 420.

tribunal while the order of mandamus lies to secure the performance of a public duty. It is trite that the deployment of these remedies have and that they are still useful tools in the protection of human rights in Nigeria despite challenges to proper enforcement highlighted by various academics.²¹⁸

To Udombana²¹⁹, recourse to judicial remedies in human rights violations will douse tensions and guarantee better appreciation of the claims of parties concerned. In addition he recognizes the place of informal and non judicial mechanisms such as the African dispute settlement techniques which emphasize brotherliness, love and equity in redressing human rights violations in Nigeria. Meanwhile in the case of *Shugaba Darwan v Minister of Internal Affairs*²²⁰ the court has stated that “an infringement of fundamental rights of a Nigerian citizen ought to attract compensatory damages and in appropriate cases exemplary damages. It is when this is done that infraction of human rights especially by security agents will not only be discouraged but adequately punished and the goal of human rights furthered.”

Generally speaking, the United Nations encourages the pacific settlement of international disputes geared towards the promotion of world peace.²²¹ According to Buyse,²²² “restitution is one of the ways in which violation of international law can be remedied”. In India the right to constitutional remedies is one of the main fundamental rights,²²³ which empowers the court on behalf of the citizens “to assign writs in form of habeas corpus, mandamus, prohibition, quo warranto, and certiorari.”

²¹⁸ J A Dada; *op. cit.* P 11; I Sagay; Newbreed Magazine of August 13, 1989 at P 8; O Oluduro, ‘Judicial Remedies For Violation of Fundamental Rights in Nigeria’ cited in O Okpara; *op. cit.*

²¹⁹ N J Udombana, ‘An African Human Rights Court and An African Union Court: A Needful Duality or Needless Duplication’ 2003, Vol. 28, No 3 Brookly Journal of International Law, 813.

²²⁰ (1983)3 NCLR P 915.

²²¹ United Nations Charter, Art.1.

²²² A Buyse, ‘Lost or Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law’ available at <http://www.zaoerv.de/>

²²³ Obtained from <http://www.iloveindia.com/constitution-of-india/right-to-constitutional-remedies.html>.

The Indian Constitution²²⁴ provides for the right of citizens to fight to protect their fundamental rights if they are breached and goes further to set up a national commission with the purpose of protecting the rights of especially the minorities, castes and members of the lower classes. This Commission according to Rakshi²²⁵ is empowered to look into complaints of minorities and take all relevant steps to safeguard their rights as citizens. For example, the National Commission for women protects women rights in cases such as “dowry, exploitation, prostitution and from being victims of religious disputes and unfair job opportunities.”

This is a wake-up call for the Ministry of Women Affairs, the National Council of Women Societies (NCWS), the various chapters of the Federated Women Lawyers (FIDA) and other Non-Governmental Organizations (NGOs) to harmonize strategies to fight for the proper enforcement of the girl-child rights, ensure that restitutions and a public apology as demanded by the Constitution in cases of illegal detention were rendered for violations of the girl-child rights. All the extra-judicial killings in the Niger Delta which are pointers to the state of insecurity of lives and property in the country throw up a further question of what should be done to victims of such violations. Can the various cases of extra-judicial killings in Nigeria and in the Niger Delta in particular be restituted? This brings to mind the not too distant mob killing of the Aluu four, undergraduates of the University of Port Harcourt in Rivers State accused of stealing, denied fair trial and in the presence of the police and a crowd brutally tortured and killed. The writer wonders if there can be any justice for the dead four students; and what justice or remedial processes by the State (who has the duty to preserve life even where there has been a commission of an offence) to the family will be sufficient and adequate. It is the opinion of the

²²⁴ Art. 32.

²²⁵ N B Rakshi, *op. cit.*

writer that no amount of compensation will be sufficient for the violation of a person's right to life.

Furthermore, writing on compensation for violation of fundamental rights in India, Sircar²²⁶ reviewed the Supreme Court of India's dilemma in *Rahul Sah v State of Bihar*²²⁷ (where some persons who were in the custody of the army died), on whether or not to award compensation to the victims of violation of right to life and personal property guaranteed under Article 2 of the Indian Constitution. The court held the State liable and responsible for the wrongs done by its officers and awarded monetary compensation which did not preclude the "petitioner's right to claim damages for wrongful detention under ordinary law of torts. The court concluded that the persons met "unnatural death while in the army custody;" and in addition to the issuance of the writ of habeas corpus, the Union of India was directed to pay an exemplary cost of one lac rupees each to the wives of those persons." The Supreme Court of India's position in the Rahul's case established the following principles, namely: 1. Monetary compensation for violation of Fundamental Rights is an acknowledged remedy for enforcement and protection of human rights.

2. Such a claim is based on strict liability

3. Such a claim of compensation is distinct from and in addition to remedy in private law for damages in tort.

4. This remedy would be available when it is the only practicable mode of redress available.

²²⁶ V K Sircar, 'Compensation For Violation Of Fundamental Rights: A New Remedy in Public Law Distinct from Relief of Damages in Tort' J.T.R.I Journal 1995.

²²⁷ AIR 1983 SC 1086.

On the appropriateness or otherwise of the remedies available to a litigant whose rights have been violated, it is the opinion of the writer that this would to a large extent depend on the type of right violated and losses incurred. There is actually no remedy that can assuage the violation of a person's right to life when life is snuffed out of a person in circumstances that could have been preventable and the extra judicial killing become inexplicable. The monetary compensation paid to the family of a girl-child whose fundamental right to life is violated cannot start to assuage the pain of loss nor can it restore human life.

From the decision of the Indian Supreme court in the Raul's case, it would appear that the court had acknowledged monetary compensation as the most viable remedy in cases of extra-judicial killing by the military. This kill and pay strategy can never be justifiable in a democratic and civilized world where the sanctity of human life should never be negotiated or trifled with especially by persons who are paid by the State to protect human life. A greater deterrent to Security operatives for such avoidable lapses and recklessness would be a life jail in addition to monetary compensation to the bereaved family by both the State and the officer responsible.

CHAPTER FOUR

CHALLENGES FACING THE APPLICATION OF THE GIRL-CHILD RIGHTS IN THE NIGER DELTA.

There are challenges facing the application of the girl-child rights in the Niger Delta region hence the persistent calls by various groups for measures to ensure that the girl-child's rights are protected and not trifled with by government officials, individuals and even corporate entities. It is true that all over the world there is no country that can boast of complete compliance with international standards and laws concerning the rights of the persons within its locale. However the case of Nigeria in particular attracts closer scrutiny as rights long acknowledged and respected as fundamental and inherent in man elsewhere are still subjects of debate in our legislative houses which recently rejected a bill seeking gender equality and end to violence against women on the spurious reasons coming from media reports that the bill is against our culture as Africans where men are perceived and treated as superior to the women; and also that it would make women uncontrollable and disrespectful to men.

The fact that the girl-child, as a member of the human family, has globally recognized and acknowledged inalienable rights; that these rights have been and are still being violated by different persons, organizations, in different climes and for different reasons is no longer debatable although the nature, extent and frequency of violations differ from country to country. Further, that the girl-child in the Niger Delta region of Nigeria is not a peculiar specie of human beings excluded from the inviolable and inherent human rights; but is rather entitled to the same rights with universal application to all human beings is also true. Furthermore it is trite that

Nigeria as previously established in this work is a signatory to many international and regional instruments, Protocols and Charters recognizing and pledging support for the application and enforcement of human rights which includes the rights of the girl-child in addition to the copious provisions on fundamental human rights in its Constitution.

The question then is, are the human rights of the girl-child as already recognized and provided by our laws really applied in Nigeria and specifically in the Niger Delta? If they are, why are the rights of the girl-child still violated in Nigeria? Who are the major culprits of these violations? What are the major challenges facing the application of the rights of the girl-child in the Niger Delta? The issue of discrimination against the girl-child is live and unresolved in our society. Alabi et al¹ acknowledge that “certain traditional practices, stereotyping, cultural and religious beliefs still put the girl-child at the risk of abuse and neglect.” According to them “the root of all kinds of discriminations and bias against the girl-child lies in the customs, traditions and typical mind-set of the society which considers the girl-child and women as inferior beings.”

4.1 The Niger Delta: Its Peoples and Location.

It has been acknowledged² that although defining the peoples and location of the Niger Delta should not be difficult, political and economic considerations in Nigeria have created some contention as to the actual composition of states and peoples of the region. Geographically however, the Niger Delta is described as the delta of the Niger River at the Gulf of Guinea on the Atlantic Ocean in Nigeria.³ And it extends from “the Benin River in the west to Imo River in the

¹ T Alabi & Ors, ‘The Girl-Child: A Sociological View On The Problems of Girl-child Education in Nigeria’(2014)10, *European Scientific Journal*, 67.

² K S A Ebeku, *Oil and The Niger Delta People in International Law* (Germany: Rudiger Koppe Verlag, 2006) p. 19.

³ C M Hogan, ‘Niger River’ in M McGinley (ed), *Encyclopedia of Earth* (Washington DC: National Council for Science and Environment, 2013) p. 7.

East, to the south of Akassa and the estuary of River Nun.⁴ This definition is supported by the Niger Delta Development Commission Bill⁵ which defines Niger Delta to mean “States covered by the delta formed by the River Niger and its branches as it enters into the Atlantic Ocean presently comprising Akwa Ibom, Bayelsa, Delta and Rivers States.”

Tayo⁶ writes that the Niger Delta is a prominent part of Southern Nigeria made up of 9 States and comprises of wetlands, swamp, mangrove forests and waterways which stretch over 300miles from the Benue River in the west to the Cross River on the east, and is described as the largest delta in Africa. According to Ebeku,⁷ the people of the Niger Delta region “are not homogenous entities although they have common interests and problems.” They are characterized by different languages and dialects although some are mutually intelligible such as the *Ijaw*-speaking peoples mainly found in Rivers, Bayelsa, Delta and Ondo states of Nigeria, the *Igbo*-speaking of Ogba, Ekpeye, Ikwerre, Opobo, Egbema, and Ndoni communities of Rivers State; the Aboh, Ika and Ukwuani communities of Delta State; the Asa people of Abia State and the Ohaji and Oguta communities of Imo State; the Edo and the Yoruba speaking peoples of Edo and Ondo States respectively.

Traditionally, the various ethnic groups of the region are mainly farmers and fishermen⁸ as largely dictated by environmental factors since the region is blessed with many rivers, creeks, streams and is very rich in aquatic life in addition to large forest reserves and arable land for agriculture. The people of the Niger Delta have a rich culture of festivals, masquerades and other forms of dances such as the *fungumini* in Opobo and Bonny areas, *mgbede/egerebite* which is the

⁴ Niger Delta Environmental Survey Report (Vol. 1, 1997) p 4.

⁵ Niger Delta Development Commission Bill 2000, S. 30.

⁶ G Tayo, ‘Women, Environment and Food Production: The Challenge of the Niger Delta’ A Paper presented at the 7th International Conference of Nigerian Sociological Association in Abuja on 14 November, 2007, pp.4-6.

⁷ Ebeku, *op. cit.* p.22.

⁸ H L Bellgam & Ors, ‘Fine and Performing Arts’ in E J Alagoa & A A Derefaka (ed) *The Land and People of Rivers State: Eastern Niger Delta* (Nigeria: Onyoma Research Publications, 2002)p.208.

initiation ceremony into womanhood in Bonny, Opobo and the Kalabari communities, the *karikpo* of Ogoni, the *okorusu* of Ogbaland, the *periangala* of Okirika, the *Ogburukwe* in Ikwerre, *obaseki* dance among the Odual people etc.⁹ The Niger Delta “grew out of the fanning of the River Niger into thousands of square kilometers of swamps, waterways, vast flood plains, mangrove forest areas and fishing villages.”¹⁰

4.2 Application of Child Rights in the Niger Delta

From the research conducted there is no difference either in the methods adopted or agencies of State deployed in the application of the rights of the girl-child in States in Nigeria because these rights have a universal application. This work underscores the fact that no section of the country is excluded directly or by necessary implication from applying the relevant extant laws protecting the rights of the girl-child in the country. To this extent, the Child Rights Act as passed by the National Assembly enjoins the different State Legislative houses to enact same as State laws as such matters fall within the residual list under our 1999 constitution.

However, it is discovered that some States especially in the northern part of the country have still not adopted the Child Rights Act 2003 as State laws which means that the copious provisions of the Act aimed at protecting the welfare, interests and rights of the child are not applied in such States. An explanation¹¹ given over the non application of provisions of the Child Rights Act in some states is that it is incompatible with the tenets of Islamic religion which

⁹ *Op.cit*; pp. 208-210.

¹⁰ C Ile & C Akukwe, ‘Niger Delta Nigeria: Issues, Challenges and Opportunities For Equitable Development’ March 8, 2001 available at <http://www.nigeriaworld.com/feature/article/niger-delta.html> accessed April 3, 2016.

¹¹ A Umar, ‘An X-ray of the Conflicts between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy’ (2012) Vol.3 Human Rights Review; An international Human Rights Journal 70-76, in which examining the provisions of the Child Rights Act 2003, he argues that they were in conflict with Sharia law and so cannot be adopted as law in the northern part of the country. The existing conflicts between the provisions of the Child Rights Act and Islamic law according to him especially regarding child marriages were against the spirit and practice of islam and thus, makes “the realization of the rights of the Nigerian child more difficult.

permits child marriages, that is marriages to a girl-child under 18 years and clearly excluded by the Act.

In the Niger Delta which is the focus of this work, this problem of conflict of the Act with religion does not arise. But how has child rights been applied in the Niger Delta? Before the enactment of the Child Rights Act 2003, several other domestic and international legislations were in place to ensure the protection of the girl-child rights such as the Children and Young Person's Act which protected the Nigerian child especially with regard to juvenile justice.

It appears however that:

There exists no provision of national force that truly protects children against abusive conditions; and that in many States, child protection activities in Nigeria are still the purview of Non-Governmental Organizations. Implementation has been challenging as Nigerian States and Local governments represent a diverse range of ethnic groups and customs.¹²

A clear case to buttress this fact is the recent case of one Ese Rita Oruru, a 13year old girl from Bayelsa State in the Niger Delta who was abducted and taken to Kano State where she was converted to islam and forcefully married by a 25year old man. This case and many others occur despite the provisions of our laws protecting the girl-child from early and forced marriages. Writing on this issue, Ekpu¹³ shows that such violations of the rights of the girl-child to freedom of liberty in Nigeria are neither new nor strange as they have over time been condoned by the society.

¹² Cited from www.law.yale.edu/rcw/rcw/jurisdictions/afw/ and accessed on April 4, 2016.

¹³ R Ekpu, 'Baby Brides' The Guardian; Tuesday March 29, 2016, p.64.

According to him:

The reason this story is sensational is not because it is an unknown phenomenon, it is not because the girl was a student but it is because the girl was a Christian converted to Islam, married off without the parents' consent and put in the family way. Some have described it as modern slavery but this does not mean it is a rare phenomenon.

From the assertion of the above writer, one can deduce that neither the abduction of female children in Nigeria nor the fact that the girl-child is forced into early marriages without her consent but with the consent of parents and guardians are new. These facts speak volumes about the application of child rights in Nigeria generally. In fact, Ekpu confirms that "child marriage has always been present in Nigeria and in the rest of the world." This acknowledgement confirms the constant violation of the girl-child rights to freely choose who and when to marry in the Niger Delta and Nigeria generally.

Child labour and exploitation are still practiced in many parts of the country including the Niger Delta despite the provisions of the Convention on the Rights of the Child which enjoins Member States "to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to the child's health or physical, mental, spiritual, moral or social development."¹⁴ Child labour is "one of the main sources of child exploitation and abuse in the world today."¹⁵ The International Labour Organization (ILO) estimated in 2002 that "about 23 to 25% of children aged 10-14years in Nigeria were working on family farms, in fishing and as cattle herders...they also work in

¹⁴C Joseph-Obi, 'Oil, Gender & Agricultural Child Labour in the Niger Delta Region of Nigeria: Implications for Sustainable Development' African Journals online (AJOL) (2011) Vol.9, No.2 available at www.readperiodicals.com/201112/2522112461.html accessed on April 4, 2016.

¹⁵ M O Edeko, 'Policy and Legislative Responses to Child Labour in Nigeria' (2011), Vol. 1, No1 BIU Law Journal, 253.

domestic service and in public markets and streets as hawkers, vendors, stall minders, beggars...head loaders.”¹⁶

In the Niger Delta and in fact in Nigeria generally the reality of the treatment and application of the girl-child’s right to leisure, right to survival and protection; right to dignity; right to parental care, protection and maintenance is x-rayed by Whyte when she stated that:

The children of the poor hawk and do odd jobs. Some of them who are under-aged are employed as house-helps and they use their wages to help their parents. They hawk under rain and sun during day and night...some parents are so poor ...that their daughters as from 7years are given out to persons who indicate interest in taking them away as house-helps or in marriage to barren and wealthy women and men... ¹⁷

From the work of Whyte in the Niger Delta it is obvious that there are challenges to the application of the girl-child rights in the area as natural parental roles of protection and provision for the children who are the products of their marriages seem somewhat reversed. The children especially the girl-child from a tender age when she should be enjoying parental protection is exposed to the vagaries of life, struggling to contribute meaningfully in the provision for the family’s survival instead of being provided for, and exposed to the dangers of street life which threatens her right to life. A study¹⁸carried out in Bonny, Brass, *Sagbama* and *Yenegoa* all in the Niger Delta also showed that 76% of children aged 6-16years in these areas were not attending school either because of the difficulties of access to schools due to incessant flooding or the involvement of children in fishing...as children work primarily for economic reasons to

¹⁶ ILO, ‘A Future Without Child Labour Report Under The Follow Up’. The ILO Declaration on Fundamental Principles And Rights At Work 1(B) ILO Conference, 95th Session, Geneva, 2002.

¹⁷ A Whyte, *The Abuse of the Nigerian Child* (Nigeria: Evans Brothers (Nigeria Publishers) Limited, 2002) p.113.

¹⁸ UNICEF Study, *Children and Women’s Rights in Nigeria: A Wake Up Call Situation Assessment and Analysis* (ed) UNICEF/Anthony Hodges (Abuja: National Planning Commission and UNICEF Nigeria, 2001) p.35.

supplement low farming income of their parents/ guardians. The child's right to education is clearly not protected by parents and government going by the report of this study. So, the number of children both girls and boys who litter the streets of major cities of the Niger Delta begging alms and scurrying to and fro instead of attending schools speak volumes of the extent that the society; that is, both parents, guardians and government ensure that the girl-child's right to basic education is protected and guaranteed.

A typical example of violation of the rights of the girl-child in the Niger Delta is illustrated in the recent case¹⁹ of one Miss Uzoma Okere and a Navy officer in Lagos. In this case, the Navy Officer, a law enforcement agent recklessly violated the rights of a young lady to human dignity, personal liberty, freedom of movement and freedom from violence for allegedly delaying the convoy of the Rear Admiral on the 5th of November 2008. The complainant was assaulted and in the words of the court:

Miss Okere was brutalized, beaten, pushed, pulled, and dragged on the road and her blouse pulled off her by one of the Navy ratings thereby exposing her nakedness from the waist up, leaving her with only her brazier. This was done to a citizen of this country.

This picture clearly shows the chauvinistic attitude of some men who treat the female gender as sub-humans and refuse to recognize that they are to be treated with dignity and respect. To the credit of the judiciary, the trial judge frowned at this manifest violation of Miss Okere's fundamental right especially by persons and agencies seised with the responsibility to protect the rights of citizens. Justice Opayemi, the trial judge ordered the culprits to pay the victim the sum

¹⁹ Unreported case cited in This Day Newspaper of July 9, 2009, p. 51.

of one hundred million naira as damages in addition to a public apology to be rendered to the lady within one month of judgment.

4.3 The Challenge of the Law in Relation to Application of Girl-child Rights in the Niger Delta

It is trite that the challenge to the application of the rights of the girl-child is not the availability of legal provisions encapsulating these rights in addition to relevant procedures for redress in cases of violations but the challenge of the law is actually in the lack of knowledge of available law by persons whose rights are violated daily and by guardians of such persons where they are not of legal age. How many people in our rural Niger Delta communities who are grappling with basic needs of hunger and shelter realize that some attitudes and traditions are clear infractions of their rights? The knowledge and awareness of existing law by those to whom they apply therefore becomes critical to its effective application because a person can only apply what he is aware of.

Another challenge of the law is in the remoteness of the law especially the Constitution to persons in rural Niger Delta. Many persons especially the illiterate class is oblivious of the existence of any legal document called the Constitution of Nigeria; oblivious of its content which provides for certain rights and even protects same. They are more attuned to the customs which they have known all through their lives in the community; and except for the immediate neighbours they have had trading and other social contacts with, may not even be aware of what is obtainable elsewhere. In such areas redresses for perceived wrongs were immediately taken to the family head or community chief who will of course judge the matter based on the custom and traditions of the people; and at this point it is not the right globally recognized as a human right that will guide the family head's or chief's decision but on what the tradition has established.

The critical question that bogs the mind especially where questions of violations of the rights of the girl-child are concerned is the law that should actually apply to such a person in the circumstance. Is it their tradition or the Constitution? Should the family head faced with such a complaint apply the tradition or direct the complaint to other quarters? Who will enforce the constitutional provisions in the local communities where persons are generally answerable to customary and traditional codes, sanctions and practices in cases of deviant behaviour before recourse to modern law enforcement agencies?

The provisions of our Constitution²⁰ which by the implication of establishing Customary and Sharia Courts of Appeal in each State of the Federation where they are relevant and in the Federal Capital territory (FCT) recognize the place of our customary and sharia laws as regulatory of the behaviour of persons who acknowledge them and to whom they apply. This constitutional recognition sometimes expose citizens to conflicts of traditional law and ‘modern law’, that is our constitution and subsidiary legislation which become somewhat farfetched to persons in the creeks for which the Niger Delta is known. So the application of the girl-child rights faces the challenge of which law is to be applied at a particular time. Is it the customary law or the provisions of the Constitution? This question is germane given the fact that customary law is closest to the people. It is part and parcel of their way of life; is known and recognized as regulatory of their behaviour and not an imposition. The difficulty in practice however arises from the fact that most rural dwellers to which the Constitution grants protection may not be aware of such protection and may lack the means to harness the provisions of the Constitution to attack violations condoned by custom and tradition especially as by its clear provisions the Nigerian Constitution states that:

²⁰ SS. 280-284 & 275-279, Part II, Constitution of Nigeria (as amended) 1999 which for instance provides that “a Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.”

The Constitution is Supreme. And its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria... if any other law is inconsistent with the provisions of this Constitution, This Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.²¹

It is however acknowledged by the writer that sometimes the provisions of the Constitution on the fundamental human rights of the girl-child and avenues for redress in cases of violations may in some instances and in some locale actually appear to be too distant and remote to be very useful. For instance, where the Constitution provides for the right to freedom of expression, movement and freedom from discrimination, many customary laws applicable in the Niger Delta as already highlighted in Chapter two of this work qualify this constitutional right by either proscribing the girl-child's right to speak especially in public gatherings or allowing this right only with the permission of her male relatives. As Nnabue²² laments "there are an array of laws to protect women but in reality the dirty song of exploitation, discrimination and violence continues unabated. Some of the laws are omnipotent on paper but are impotent in practice."

Also, the length of time it takes to report violations due to the difficult Niger Delta terrain is a frustrating challenge to the enforcement of the rights of the girl-child in the Niger Delta. Discriminations against the girl-child would have long been carried out or implemented that reversal may be difficult due to the peculiar location of the Niger Delta which is essentially waterlogged and undeveloped, thereby making reports of violations not worth the effort. Also, persons may be discouraged by the same cultural biases thus making the quest for judicial review and pronouncement of the illegality of such an action a mere waste of time and resources which

²¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), SS (1) (3).

²² U S F Nnabue, 'Education, Women and National Development' in FUWA 2013, *op. cit.*p.24

may not even be available to the girl child or her parents. Establishing evidence of some violations especially those with cultural connotations and identifying particular offenders and violators may become problematic as sentiments such as the need to avoid confrontations and conflicts between families and even within the community because of the connectivity of persons may override one's personal desire for justice; and invariably therefore perpetuating such culturally biased violations.

The application of girl – child rights in the Niger Delta therefore faces the challenge of the law; not so much as to paucity of laws but that of harnessing and harmonizing the different provisions on the same subject matter in the different legislations dealing with the rights of the child. For instance, on the issue of marriageable age, a man in Akwa Ibom State who gives out his 17 year old daughter in marriage would be correct to do so under their State law which defines a child as a person under 16years whilst by the provisions of the Child Rights Act 2003 which defines a child as a person below 18 years, the marriage of a 17 year old girl would be offensive as a child marriage. In Rivers State,²³ the age of customary marriages is put at 18 years in tandem with the provisions of the Child rights Act 2003 and the Convention of the Rights of the Child. The Rivers State Law goes on to say that “a marriage or promise or offer of marriage between or in respect of persons either of whom is under the age of 18 years shall be void...”²⁴ So where a Rivers man of 20 years wants to marry an Akwa Ibom lady of 17years, the problem would be which law that would be applicable as what the law justifies in Akwa Ibom State is declared a nullity in Rivers State.

So the discrepancies as to who a child is and age of lawful marriage in the provisions of the Child Rights Laws of the States that have adopted the provisions of the Child Rights Act

²³ Age of Customary Marriage Law, Cap 5 Vol. 1, Laws of Rivers State of Nigeria 1999.

²⁴ S. 2 *ibid.*

2003 which are clearly inconsistent with the provisions of the Act do not make for uniformity and clarity as to the purpose and effectiveness of such legislation. The definition of who can be called a child under our laws is also not uniform. So who can be described as a girl-child has no objective legal interpretation. It is worrisome that the supreme law of the land has created a lacuna in this area which means that certain persons who may locate themselves within this age bracket and so lay claims to established rights acknowledged as belonging to this group may actually be making false claims.

Whilst the 1999 Constitution does not contain a definition of who a child is, the Labour Act defines the child as “a young person under the age of 12years;” and the Children and Young Person’s Act gives a different definition of a child being a person “under the age of 14years”. By the provisions of the African Charter on the Rights and Welfare of the child; “a child is a human being below 18years and the UN Convention on the rights of the Child defines a child to be a person below 18years except where in the law applicable to the child the age of majority is attained earlier. There is thus no agreement in the different laws dealing with the child and this makes enforcing rights and establishing violations such as early and forced marriages difficult and subjective. There is thus the challenge of harmonizing the different customary laws on the marriageable age of the girl-child²⁵ and the provisions of extant written laws such as the Constitution, the Child Rights Act, the Convention on Child Rights, the African Charter on Rights and Welfare of the child. According to Iguh & Onyeka,²⁶ “the lack of a comprehensive

²⁵ Among the Communities of the Niger Delta, the marriageable age for the girl-child ranges from 15years to 18years depending on the community in question, the rate of development of the girl-child and other social factors like death of parents and general poverty of the family.

²⁶ N A Iguh & O Nosike, ‘An Examination of the Child Rights Protection and Corporal Punishment in Nigeria’ (1999) ACRWC, (Legislative and institutional Framework of Environmental Protection) 13 available at www.ajol.info accessed on Friday April 22, 2016.

definition that is applicable throughout the nation is an all encompassing handicap with regard to the just application of the provisions of the law.”

Another challenge of the law is that under our Constitution, issues bordering on children and by implication dealing with the girl-child, are located in the residuary legislative list making it the preserve of the States. This singular fact is the major factor against the proper application of the Child Rights Act 2003 as States are by law required to adopt and adapt same as State laws for the purpose of enforcement in States. It is trite that “every child has the inherent right to life and States shall ensure to the maximum child survival and development;”²⁷ every child has the right to parental care, protection and maintenance to the extent of the means of the parents or guardians.²⁸ The problem however is with the enforcement of these rights. Who will enforce these rights on behalf of the girl-child where she is unable to do so? Is it the State that has not enacted the relevant laws? For instance, it was only a few months ago, in fact in May 2016 that the Bayelsa State in the Niger Delta enacted the State’s Child Rights Law.

By the provisions of the law, where these rights are denied the girl-child she has a right to enforce same in the Family court provided by the Act and to be established in each State of the Federation²⁹ with jurisdiction clearly stated in S. 151. Sadly to say however, this special court is non-existent in most States of the Federation. Enforcement is thus hampered by the inability or refusal of States to adopt the Child Rights Act as State law; and even States that have adopted the Act, have not been able to establish the family court; and where they have actually designated facilities as family courts, such facilities have not equipped with material and manpower thereby rendering them inoperative and non functional. It is only Lagos State that has established a functional family court to try matters that fall within the stated jurisdictions.

²⁷ African Charter on the Rights & Welfare of the Child 1990, Art. 5.

²⁸ Child Rights Act 2003, S.14(2).

²⁹ See S. 149 *ibid.*

Under the Matrimonial Causes Act³⁰ the child has the right to sue his parents for maintenance; but enforcing same against the same parents and guardians who ordinarily would have taken action on her behalf to enforce the girl-child's rights become difficult.

The challenge of the law becomes evident in some of our domestic laws which provide for the protection of the girl-child rights and at the same time import inherent discriminations against the girl-child. An example of this is the offence of rape under our laws which seek to protect the girl-child from sexual harassment and exploitation by male brute force, but however by the same provisions of our law require corroboration for an offence that is essentially private thereby making establishment of the offence of rape difficult. It also exposes the girl-child to further indignities, making it "a man's trial but a woman's tribulation" and invariably discourages the girl-child victim from reporting incidences of rape for fear of public ridicule and opprobrium.³¹

In addition there is a noticeable gender disparity in punishments prescribed for indecent assault under our laws.³² This obvious imbalance in our laws creates the impression that women are inferior to men, making one to wonder what informed the conclusions reached by the framers of the law. The recognition and establishment of Customary and Sharia Courts and law by the Constitution³³ created the fertile ground for the application of all forms of customary laws which arguably may be in conflict with the enabling statute.

³⁰Matrimonial Causes Act 1970, Cap M 7, Vol. 8, Laws of the Federation of Nigeria, 2004; S.70(1)(2).

³¹ N O Odiaka, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' (2013) Journal of Sustainable Development Law and Policy; Vol. 2, No 1, available at <http://www.ajol.info/index.php/jsdlp/article/view/122608> accessed on April 6 2016.

³² See sections 353 & 360 of the Criminal Code which provide for the offence of unlawful and indecent assault with a lesser punishment of 2years for a man who assaults a female and for 3years when the victim is a man.

³³ See S. 282(1) (2) , 1999 Constitution which provides for "civil proceedings involving questions of customary law as may be prescribed by the House of Assembly of the State..."

4.3.1 Examining Relevant Legislation on Application of Girl-child's Rights

The positions agreed on concerning the protection of the rights of the girl-child in different relevant international legislations have not been enforced by Nigeria as a Member State. For instance, Nigeria has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which in its S.2 requires all signatories to condemn discriminations against women in all forms, and to adopt all appropriate means, policies and strategies to eliminate discriminations against women including the repealing of laws which constitute discriminations. In practice however in Nigeria, we see many discriminatory practices against the girl-child thrive under our local and customary laws.

Wife beating which in actual sense is tantamount to domestic violence is still permissible by law in the northern part of the country as the provision in the Penal code³⁴ which permits this has not been repealed. Early child marriages, female genital mutilations and girl-child disinheritance are still subsisting practices under customary law in the Niger Delta as no Federal law has been specifically enacted to criminalize these acts. In fact a recent bill that was proposed in the Senate on "Gender Parity and Prohibition of Violence against Women" which would have addressed some of these issues was thrown away by the male dominated 8th session of the National Assembly in April 2016.

According to Alemika et al³⁵S. 42 of the Nigerian Constitution is not successfully implemented in Nigeria. It is stated that "despite the laws in practice, the girl-child and in some areas the boy-child; children born out of wedlock, disabled children, children of outcasts, children from the minority and children from other States often experience discriminations." In

³⁴ S55(1d) Penal Code of Northern Nigeria which provides that "an assault by a man on a woman is not an offence if they are married, if native law or custom recognizes such correction as lawful and if there is no grievous hurt.

³⁵ E E Alemika, I Chukwuma & Ors, 'Rights of the Child in Nigeria' cited in The Report on the Implementation of the Convention on the Rights of the Child by Nigeria. A Report for the Committee on the Rights of the Child, 38th Session- Geneva, January 2005.

fact female genital mutilations are still practiced in Nigeria despite the provisions of the law protecting the girl-child from degrading treatment.³⁶ And various reasons ranging from the erroneous belief that such painful processes would reduce the girl-child's sexual desires and ensure chastity; to the acceptance of the practice for communal acceptability and social integration; to the promotion of hygiene and simply because certain religions and culture demanding it have been advanced.

The girl-child has the right not to be held in any form of slavery or servitude, domestic or otherwise. The Universal Declaration of Human Rights 1948 provides that "no one shall be held in slavery and slave trade shall be prohibited in all forms;" and "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."³⁷ The girl-child by the provisions of the various domestic, regional and international instruments and laws has an acknowledged "right to rest and leisure; right to basic education, and right to be protected from neglect or negligent treatment, maltreatment or exploitation..."³⁸ It is however very sad that the exposure of the girl-child to all forms of domestic servitude in the houses of relations and non relations alike where she is exposed to exploitative child labour such as hawking wares for long hours on busy roads dogging vehicles and other road users alike cannot guarantee the girl-child's right to rest and leisure. The girl-child in the Niger Delta, a region known for militancy and agitations for the control and participation in the available oil resources is further exposed on the streets to threats to her right to life and protection from negligence. On the streets she becomes an easy target to sexual molesters of different kinds amidst hunger and cold away from the comfort of her home.

³⁶ See S 34(1) 1999 Constitution which provides that "no person shall be subjected to torture or inhuman or degrading treatment..."

³⁷ UDHR 1948, Art.5 & 6.

³⁸ See variously UDHR 1948 Art. 4; Child Rights Act 2003, S.12; ICCPR 1966, Art. 8; CRC 1990, Art.11.

The law clearly provides that no child below 18 years (which includes the girl-child) shall be employed as a domestic help outside her home or family environment.³⁹ The Act also prohibits buying or hiring of children for the purpose of hawking, begging of alms or prostitution⁴⁰ etc. In fact the Act provides criminal sanctions for various violations of child labour; for example it imposes a fine not exceeding fifty thousand naira or imprisonment for a term of five years or both upon conviction for exploitative child labour.⁴¹ The reality however is that various forms of exploitative child labour exists in the Niger Delta. The girl-child is still actively engaged in domestic service outside her family environment as baby minders, petty trade vendors, cooks and waitresses in various food vendors stall at the expense of her acquiring basic education to develop her full potentials. According to Adeyemi, “child labour and child abuses are still rampant with the presence of street children and children beggars... and the right to education appears to be replaced by exploitative child labour.”⁴²

4.3.2 Domestication of International Instruments

A major challenge to the application of the rights of the girl-child in the Niger Delta is the continued inability or refusal of the nation to domesticate some of the critical international legislations and protocols already ratified to give them the required force of law to ensure better enforcement. A typical example of this situation is the non domestication of the Convention on the Elimination of All Forms of Discriminations against women already ratified by the nation in 1985 and with the optional protocol signed in 1999. This instrument is clearly targeting the protection of the rights of women (the girl-child inclusive) from various forms of abuses and violence. It provides for instance, that “women have equal rights and the same advantages with

³⁹ Child Rights Act 2003; S.28.

⁴⁰ S.29 *ibi.d.*

⁴¹ S. 28 (3) *ibid.*

⁴² A A Adeyemi, ‘Children In Especially Difficult Circumstances in the Context of the United Nations and OAU Charter on the Rights of the Child’ (1997)1 NJPL 16.

men in matters relating to marriage and family relations. They also have the right to marriage and to freely choose their spouse, have equal rights during marriage and when marriage comes to an end. Also they have the right to share the same parental responsibilities as men in matters relating to their children.”⁴³

Despite these provisions, our customs and traditions deny the girl-child her right to inherit property from her parents and even from her late husband. In fact she is treated as a property to be inherited by a relation of her late husband. The provisions of CEDAW which gives the woman equal rights with men in the marriage and even at its dissolution notwithstanding, the reality in most of our communities is that at the dissolution of the marriage, the man remains and retains the matrimonial home while the woman for whatever reason is sent packing either to the parents’ home or elsewhere and may even be sent away without the children except they are still nursing. It appears therefore under our traditions that women do not have much stake in the matrimonial home especially where bride-price was fully paid on her head.

Bride-price which is defined as “any gift or payment in money or natural produce, brass rods, cowries or any property whatsoever to a parent or guardian of a female person on account of marriage...”⁴⁴ is what signifies the validity of customary marriage and without which the biological father may not claim the children of the marriage.⁴⁵ According to Igwe & Akolokwu,⁴⁶ “the custom of bride-price is a patriarchal socio-cultural construction and order which maintains the superiority of the man (husband) over the woman (wife). It negates the principle of equality and equity;” variously enunciated by our Constitution and the provisions of the Convention on the Elimination of all forms of discrimination against women 1979. This inequality in customary

⁴³ Convention on the Elimination of all Discriminations Against Women 1979; S.16.

⁴⁴ Limitation of Dowry Law (Eastern States) 1956; S.3(1)a.

⁴⁵ (1935)12 NLR 4.

⁴⁶ O W Igwe & G O Akolokwu, ‘Patriarchy and Its Violations of Human Rights of Women in Nigeria’ (2015) Vol. 1(1) International Law and Policy Research Journal, 001-008; available online at <http://www.apexjournal.org>

marriage is captured by Omoregbe,⁴⁷ who states that the payment of the bride-price transfers ownership of the children to be born during marital life from the girl's family to the family of the man.

The position of the law on matrimonial matters in addition to some court pronouncements have not helped the position of the girl-child/woman in issues of settlement of property upon divorce. The court's interpretation of S 72 Matrimonial Act 1970 on settlement of property upon divorce as displayed in the case of *Nwanya v Nwanya*⁴⁸ where the court disregarded the woman's non financial contributions of care in the marriage but rather insisted on the woman unlike the male partner presenting concrete evidence of financial contributions to the home before the property could be settled between them appears skewed in favour of the man and do not show evidence of substantial justice to the parties' rights.

For the rights enshrined in CEDAW to have the force of law and be translated from a mere paper treaty to an enforceable law, the Convention has to be domesticated and enacted into law by the National Assembly as required by the Nigerian Constitution.⁴⁹ It simply means that these very laudable provisions on the rights of the girl-child and how to eliminate violence against womanhood in Nigeria is not yet law and so cannot be enforced against anybody. Nigeria till date has not fully complied with the obligations set out in this Convention.

Lamenting on this sorry state of non domestication of this Convention, Edeko & Anor⁵⁰ who described CEDAW "as the central international human rights instrument for the realization

⁴⁷ O O Omoregbe, 'Perspectives on urban and Rural Women in A O Obilade (ed.) *Women in Law* (Lagos: Southern University Law centre and Faculty of Law of University of Lagos 1993) p. 90.

⁴⁸ (1987)NWL (pt. 62) p.697.

⁴⁹ S. 12(1) 1999 Constitution (as amended) which provides that "no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

⁵⁰ M Edeko & S O Idehen, 'Attaining Gender Equality in Nigeria through Constitutional Reform: The Kenya Experience' 2013, *Women Education & National Development in Africa* by Federation of University Women of Africa, 97-109 available at <http://www.biu.edu.ng/publications/> accessed on 02/05/16.

of equality between women and men,” stated further that “the non domestication of the treaty by Nigeria after ratifying same hampers the growth of women;”and continuing Edeko stated that the “slow process of domesticating the CEDAW, and the Protocol to the African Charter on Human and Peoples rights on the rights of women in Africa and other human rights instruments that are gender specific in Nigeria is delaying women’s rightful enjoyment of their human rights”.

4.4 The Challenge of Access to Justice

The Nigerian Constitution clearly proclaims its superiority over any local legislation; the equality of all citizens before the law and the right of any citizen whose rights are violated or threatened to seek remedy and get justice in the courts are also therein established.⁵¹Despite this position which provides the legal right of all persons to the justice of the law however, actual access to justice in cases of violation of rights may be farfetched for some persons. Justice in Nigeria is not automatic but follows a process of investigations by the police and prosecution of cases in court which are very expensive. The high and exorbitant legal fees demanded by defense lawyers, the statutory filing fees to be paid may make justice a mirage for the highly impoverished girl-child of the Niger Delta region. Access to justice also eludes the girl-child/woman who is denied the right to bail an accused person by police practice in Nigeria for the simple reason that she is a female. This position was aptly captured by Falana⁵²who stated that:

by the combined effect of sections 6 and 36 of the Constitution
it can be said without any fear of contradiction, that access to
justice is guaranteed in Nigeria. But I submit that for a person

⁵¹ See generally SS 1(1); 46 (1) 1999 Constitution.

⁵² F Falana, ‘Access To Justice, Bill Of Rights And Independence Of The Judiciary’ in M M Gidado, C U Anyanwu, A O Adekunle (eds) *CONSTITUTIONAL ESSAYS IN HONOUR OF BOLA IGE* (Enugu: Chenglo Limited, 2004)p. 227.

to have a meaningful day in court he/she must have the wherewithal to engage the services of a good lawyer or a team of lawyers. Because majority of Nigerians have been sentenced to wallow in abject poverty in the midst of plenty, the existing legal system has understandingly denied them access to justice.

The challenge of access to justice in the application of the rights of the girl-child in the Niger Delta is real as the road to justice from reporting violations to the police and prosecuting the matter in court can be very expensive and time consuming. Access to justice is impeded for various reasons ranging from inordinate delay in the justice delivery system which make citizens reluctant to even initiate actions for enforcement of their basic rights; to the cost of litigation, illiteracy which greatly impedes access to justice as “it breeds poverty, docility and even forced connivance with agents of oppression and marginalization.”⁵³ Okogbule⁵⁴ agrees that there is a wide gulf between official pronouncements of respect for human rights and their actual implementation.” The reason for this position he argues to be the existence of “a number of substantive and procedural obstacles or impediments that not only inhibit the actual implementation of such measures but preclude the masses in general from having access to justice in Nigeria.” To him, it is only when individuals have access to the courts that they can espouse and seek the protection of their basic rights.

⁵³ T A Aguda, *The Cost of Justice* (Akure, Nigeria: Eresu Hills Publishers, 1986) pp. 31-33.

⁵⁴ N S Okogbule, ‘Access To Justice And Human Rights Protection in Nigeria: Problems And Prospects,’ available at <http://www.scielo.br/scielo.php?pid> accessed 20/04/16.

The importance of access to justice in the application of human rights was underscored by Ake⁵⁵ who stated that:

in Africa if liberal rights are to be meaningful...they must be concrete; concrete in the sense that their practical import is visible and relevant to the conditions of existence of the people to whom they apply, and most importantly concrete in the sense that they can be realized by their beneficiaries.

4.5 Cultural Impediments: The Challenge of Customs and Traditions

It is trite that customs and traditions challenge the application of girl-child rights in the Niger Delta. For instance, where the Constitution provides the right to freedom of speech and expression, most of the customary laws applicable in the Niger Delta region already discussed in Chapter two of this work would insist that the girl-child and women generally should not speak in the gathering of men except with the permission of the men. Where the laws provide for the right to life, most customs would more readily expose the girl-child rather than the cherished and preferred male child to practices which would endanger her life in a bid to maintain what is perceived to be the spiritual stability of the community. As Kolawole puts it, the girl-child's right to life is threatened by traditional beliefs which promote the "physical killing of the girl-child in preference to a boy in most traditional Nigerian communities. Most of the time it is the girl-child who is offered as a sacrifice to the gods when the need arises."⁵⁶

⁵⁵ C Ake, 'The African Context of Human Rights' A Paper presented at the International Conference on Human Rights in the African Context held in Port Harcourt 9-11 June 1987 quoted in T Akinola Aguda, *Human Rights and the Right to Development in Africa* (Lagos : Nigerian Institute of International Affairs. 1989)p 26; J N Aduba, 'Human Rights and Social Justice in Nigeria: Issues, Dilemma and Options' in A U Kalu & Y Osinbajo (eds) *Perspectives on Human Rights* (Nigerian Federal Ministry of justice 1992)pp. 220-231.

⁵⁶ M M Kolawole, *Womenism and African Consciousness*. (Trenton: African World Press, 1998) p.47

So the effective application of the rights of the girl-child enshrined in our Constitution; other domestic and international legislations have and are still greatly hampered and challenged by the insistence of our customs and traditions still very much practiced and respected by persons to whom they apply; although over taken by constitutional provisions especially in the Chapter Four and so should be void to the extent of their inconsistencies.⁵⁷ This situation is made worse by the fact that application of customary laws by the courts in Nigeria to regulate human behavior in society is recognized by the same Constitution.

According to Salaam⁵⁸ “tradition or culture and religion have dictated men and women relationships for centuries and entrenched male domination into the structure of social organization...” Continuing, she stated that “women have been schooled by custom and tradition to ‘accept’ their status in society as “any woman who attempts to break the rule is seen as a non – conformist and treated with scorn even by women.” The customary laws applicable in most parts of the Niger Delta appear to assign subordinate and inferior positions to women in their natural arrangement of roles between males and females in the home front and in the community at large. Oakley⁵⁹ confirming the above position stated that “theory in social sciences has developed without the benefit of women’s voices on their experience,” and men’s roles in most cultures and over different epochs have been highly valued and rewarding than women’s roles.⁶⁰

Child and forced marriages condoned and even promoted by our customs and traditions violate the right of the girl-child and according to Aderinto⁶¹ they create aggressive tendencies in the girl-child towards the husband who in most cases would resort to violence to bring her to

⁵⁷ S. 1 (3) 1999 Constitution (as amended).

⁵⁸ T Salaam, ‘A Brief Analysis on the Situation of Women in Nigeria Today’; Democratic Socialist Movement (DSM) available at <http://www.socialistnigeria.org/women/1-3-03.html> accessed on 24/03/16.

⁵⁹ O Oakley, *The Sociology of Housework* (Bath: The Pitman Press, 1974)p.12

⁶⁰ A Giddens, *Sociology* (6th ed, UK: John Wiley & Son, Inc. 2010) p.16

⁶¹ A A Aderinto, ‘Correlates and Coping Measures of Street Children: A Comparative Study of Street and Non Street Children in South-West Nigeria, Child Abuse and Neglect’ (2000) in T Alabi & Ors, *op. cit.*

submission and may even send her packing even with an early pregnancy where she refuses to accept her fate and submit to the wishes of her parents and the husband. This of course exposes her to a greater risk of health hazards and untimely death from lack of medical attention as such a girl-child wife may also be rejected by the parents who will usually insist on her going back to the husband for fear of being asked to refund the bride-price already paid.

The girl-child's right to education especially formal education is often denied by some customs of Etche, Ogba and Ekpeye peoples which would rather prefer and emphasize informal training to formal schooling for the girl-child because of the general belief that a girl who attains a high level of formal education can no longer make a good wife and mother. As Schmitz-Robinson puts it, many cultures believe that "women who are at the same level of education as men are a disgrace to the community because more often than not they will not get married and if they do it will be to a foreigner."⁶²

It is also argued that the various customary laws applicable in the Niger Delta region which promote polygyny⁶³ violates the rights of the girl-child to safe environment, good health, and reproductive rights as it creates an environment of strife, jealousy and rancor. It undermines women's reproductive autonomy and supports their mental abuse. To Atim, polygyny a by-product of patriarchy "constitutes an infringement of women's right to reproductive health care. The environment in Nigeria has not been sympathetic to the development of women because of the patriarchal nature of the society; and the practice of polygyny is embedded in

⁶² E Schmitz-Robinson, 'The Right to Education and the Girl-Child; Girls' Situations' cited from www.girlsrights.org/girls.php retrieved 20/5/15.

⁶³ A marital practice that allows a man to have more than one wife at a time.

patriarchy.”⁶⁴The “complex socio-economic and cultural environment in Nigeria and the resilience of harmful practices are a great challenge to implementation of laws and policies.”⁶⁵

The girl-child’s right to health and sexuality is violated by the continuous practice of female genital mutilations on the excuse that it is the customarily recognized process of initiating the girl-child to womanhood. Cultural practices which continually challenge the application of the rights of the girl-child are the insistence of men and women, especially the family members of a deceased man that his widow drink washings from the corpse of her husband to establish her innocence or to cross the corpse of the husband called ‘*Ogawe iznu*’ among the Ikwerre people of the Niger Delta for the purpose of exonerating self from culpability; refusing to allow the widow have a bath for a week after the death of the husband and only leading her to the stream for a special midnight bathe supposedly to ward off evil spirits; restriction of the widow’s movement and even outright confinement for at least 6 months to mourn the husband which is not reciprocated where it is the wife that dies; wife inheritance and forced marriages by close relatives at the end of the morning period etcetera.

In fact a number of cultural practices are harmful to the physical integrity of the individual; and especially women and girl children. Some cause excruciating physical pain while others subject them to humiliating and degrading treatment.⁶⁶ Harmful traditional practices emanate from the deeply entrenched discriminatory views and beliefs about the role and position of women in society. The role differentiation and expectations in society relegate women to an inferior position from birth throughout their lives. Harmful traditional and cultural practices

⁶⁴ O Olomola, ‘An Appraisal of Polygyny and Reproductive Rights of Women in Nigeria;’ January 2013, Journal of Law and Conflict Resolution, Vol 5(1) pp. 6-15, available at <https://www.academicjournals.org/JLCR> accessed 21/04/16.

⁶⁵ G Atim, ‘The Rights of The Girl-Child in the Empowerment Question and National Development;’ 2015, Research on Humanities and Social Sciences, Vol 5, No 4, available at www.iiste.org accessed 21/04/16.

⁶⁶ R Hanzi , ‘Sexual Abuse and Exploitation of the Girl-child through Cultural practice in Zimbabwe: A Human Rights perspective; Masters’ Thesis, Unpublished, Pretoria: centre University of Pretoria, 2006.

maintain the subordination of women in society and legitimize and perpetuate gender based violence.⁶⁷ For example, in South Africa, Swaziland and Lesotho there is an emerging belief that sexual intercourse with a young virgin girl can cure HIV and AIDS and this has led to an increase in sexual violence against girls resulting in huge psychological scars on the victims.⁶⁸

Traditional practices such as polygamy, payment of bride price (*lobola*)⁶⁹ and child marriages are all synonymous with gender violence as they reduce women to sub-human assets belonging to men. This cultural demand for the payment of the girl-child before she can be married in the name of bride-price has created room for the violation of the rights of the girl-child as many persons have exploited this customary marriage requirement and are demanding exorbitant sums concomitant to or resembling the outright sale of the girl-child into slavery which may be voluntary or involuntary. This form of trading of the girl-child may be voluntary where the girl to be married colludes with her parents and guardians to demand large sums of money from the suitor. In ogbaland in Rivers State, the girl is allowed by custom to demand money called 'ego-ihl' and 'ego-aznu' from the suitor which signifies acceptance of marriage. High demands by the girl prompted by her parents and relations would amount to the voluntary sale of the girl who from the payment of these sums becomes the property of the man by custom. In other situations where the bride-price collected may not be excessive but symbolic of the union, customary law still sees its acceptance as making a change of ownership of the girl-child who now belongs to a new family and can only act or speak with the permission of her husband.

⁶⁷ A E Iyanuola, 'The Challenge of Culture for the Rights of Women in Africa: A Critical Analysis of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Masters Thesis, Unpublished, Cape Town, University of Cape Town, 2008.

⁶⁸ UNICEF 2003; 'Child Protection: An Analysis and Achievements in 2003'. New York. UNICEF

⁶⁹ Bride price paid by a prospective husband among certain peoples in Southern Africa. It is the custom of the groom's family making payment in cattle or cash to the bride's family before the marriage.

The girl-child's right to a name is violated by the tradition set out by our various customs which demands that the girl-child upon marriage abandons her birth name to adopt the name of her husband's family thereby losing her identity substantially. She becomes identified not in her own right anymore but in relation to her husband. Why can't the girl-child in the Niger Delta decide on the name to answer even after marriage? This violation of her right to a name and self identity is even supported by the provisions of our laws which tie the fortunes of the woman directly to that of the man.⁷⁰ The woman's domicile which is a dependent one on the domicile of the man changes as the man changes his residence even if the woman remains in Nigeria. This is unfair as it makes it difficult for a married woman who wishes to divorce the husband to do so if he intentional avoids the divorce by changing his domicile. The fact that the Matrimonial Causes Act sought to remedy this subsequently in S.7 with a proviso granting the woman right to claim domicile if she had been resident in the area for 3 years before the petition is in the opinion of this researcher considered secondary and only underscores the second fiddle position allotted the girl-child in our society.

Why won't the society respect the girl-child's right to a name whether she is married or not? Why can't the man adopt his wife's name upon marriage in accordance with the biblical injunction that 'for this reason a man will leave his father and mother and cleave to his wife (the bible demands that the leaving should be done by the man and not the woman); or both of them choose a unique name which will make for better marriage as it will be a union of equals and not unequal adults with the woman's identity always at stake especially in the event of a divorce and she is forced to change her name again.

⁷⁰ See S. 2 Matrimonial Causes Act 1970 which declares the woman's domicile in matrimonial matters to be the domicile of her husband.

4.6 The Challenge of the Niger Delta Environment

The Niger Delta environment home to many of the Multinational Oil Companies engaged in oil exploration and exploitation in Nigeria is crisis prone due to the frustrations and agitations of its people in their ceaseless demands for greater stakes in the proceeds, management and control of the oil resources found in their environment. Militancy of youth groups, riots and protests which expose the girl-child to further risks of sexual violations are rife. As Ihayere et al⁷¹ describe the situation and challenges of the Niger Delta environment to the application of the rights of the girl-child:

Rape and prostitution are rampant through- out the Niger Delta as both the restive youths fighting for the control of their resources and soldiers sent to calm “rioting villages use the women in the area as their resting place. At night they invade private homes, terrorizing residents with beatings and raping women and girls. Girls and young women who are looking for economic survival hang around the oil companies and keep themselves at the service of both the national and international oil workers who are believed to be guys in money.

Cataloguing the woes of the people of the Niger Delta due to environmental challenges further, they noted that “every year, the Delta is polluted by 2.3 billion cubic meters of oil. Shell Petroleum Development Corporation (SPDC) reported that 50,200 and 123,777 barrels of oil were spilled in 1998 and 1999 respectively.”⁷² The people in these areas run the risk of not having portable drinking water, no good land to farm, no good air to breathe, no good sea to fish,

⁷¹ C Ihayere et al, ‘The Effect of The Niger Delta Oil Crisis on Womenfolk?; (2014), Journal of African Studies and Development, Vol. 6(1)pp 14 -21, available at <https://www.academicjournals.org/JASD> accessed 21/04/16

⁷² *Ibid* p.18.

no forests to gather firewood because in search of straight lines for easy exploitation trees are cut down and forests destroyed. Majority of the people have no good houses to live in because of flooding and stagnation.⁷³ This of course means that the right of the girl-child to good housing and safe environment is not applied.

Ile & anor agree that the oil spills in the Niger Delta are a challenge to the application of the rights of the girl-child to live in a healthy environment as they “kill plants, defertilize the earth, harm animals, foul farmland and destroy aquatic life.”⁷⁴ It is trite that the negative consequences of oil spills are not peculiar to the girl-child but to all and sundry living in the Niger Delta. But for the girl-child who is majorly engaged in subsistence farming and fishing, especially in the business of crayfish, it destroys her source of economic sustenance, and her right to a healthy environment.

The environment of the Niger Delta bubbling with expatriates and other oil workers exposed the girl-child to sexual risks which she may have been spared amongst her own people. The enticement of oil money lures many girls out of the schools to the various rigs littered in the region. According to Joseph-Obi⁷⁵ the “girl-child in the Niger Delta is vulnerable to assault and rape... which has led to the spread of sexually transmitted diseases like STI and HIV AIDS; teenage pregnancy and clandestine abortion, the problem of *Vesico Vagina Fistula*(VVF), ruptured uterus and even death.” The negative consequences of oil exploration in the Niger Delta on the girl-child were further highlighted by Johnson who stated that “nine out of ten women in

⁷³ E R Akpa, ‘Acidic Precipitation and Infrastructural Deterioration in Oil Producing Communities of Akwa Ibom State: A Case Study of Eket, South Eastern Nigeria’ (2003) 2(1) Glob Journal of Environment & Science, pp. 47-52; E J Okon: ‘Women and the Niger Delta Struggle’ in R Aduche Wokocha, Development Rights Issues in the Niger Delta, Schalesworth Centre for Democracy and Development, pp 63-73.

⁷⁴ C Ile & C Akukwe *op. cit.*

⁷⁵ C Joseph-Obi, ‘Gender, Poverty and Globalization: A Focus on Women in the Niger Delta of Nigeria’ A Paper presented at the 10th Annual All African Conference, 2010 at the University of Texas, Austin, USA.

⁷⁵ *Ibid* p.17.

some areas of the Niger Delta have been violated.”⁷⁶The girl-child in rural Niger Delta is usually engaged in some farming and fishing which has over time been frustrated by the activities of the oil companies through oil spills and which destroy plant and marine life leading to loss of livelihood and makes the lure of easy money through prostitution very attractive.

To Ile & anor⁷⁷ making a case for the provision of a better legal framework for the equitable development of the Niger Delta:

The Niger Delta environment and the living conditions of the oil producing communities is a misery tale of unparalleled proportions. For the inhabitants of the oil producing communities, every day basic activity is a gargantuan struggle. They cannot drink water because of the oil pollution, cannot enjoy gainful employment because their traditional sources of livelihood have been destroyed; cannot hunt because wildlife is gone; cannot send their children to school or enjoy basic healthcare because of abject poverty and cannot enjoy basic transportation, electricity and service...

All these challenges in the Niger Delta environment make the application of the girl-child’s right to a healthy and safe environment difficult and near impossible. According to Dadiowei⁷⁸ there is now a “gender anger to environmental devastation of the Niger Delta” and that the impacts of oil explorations in the Niger Delta include:

⁷⁶ L Johnson, ‘ Niger Delta: Tackling Patriarchy, Poverty and Pollution’ (2012) cited in www.asafeworld.org/global-news/Africa/Nigeria/3002-delta-women.html

⁷⁷ *Op. cit.*

⁷⁸ T E Dadiowei, ‘Niger Delta Fund Initiative- Women, Environmental Impact Assessment (EIA) And Conflict Issues’ in ‘The Niger Delta: A Case Study of Gbaran Oil Field Communities of Bayelsa State’ A Paper presented at the National Workshop on Gender, Politics and Power; Overcoming the Barriers to Emergence of Women Political Leaders. Centre For Social Science Research & Development, CSSR & D, Lagos, July 2003 available at www.earthrights.net/nigeria/news/women.html accessed on 15 April 2016.

Severe or excessive flooding of the forest and farmlands destroying food and forest crops, reduction of arable land due to permanent ponding of the farmlands, reduction in games and wildlife populations in our forests, blockage of easy and fast communication/access routes between neighbouring clans...

The above factors have made application of rights of persons especially to life, good health and the exercise of economic rights difficult which situation is further expounded by Ononge⁷⁹ who argues that:

The traditional division of labour which gives the rural woman primary responsibility for providing and managing natural energy sources required for the sustenance of the family household, environmental pollution places a special extra burden on her. And that pollution increases the hours the woman will devote to fetching clean drinkable water, gathering forest and water products which are crucial for food supplements and firewood for domestic use.

Continuing, the writer stated that “the effect of the environment to the women of the degraded Niger Delta communities include high level of poverty, lack of access to good antenatal care, spread of diseases...teenage mothers with fatherless babies, spread of HIV/Aids...”

As Sagay puts it the girl-child’s right to a clean and safe environment and the right to life are being negated by the destruction of the environment and the forceful alienation of communal lands.”

⁷⁹ O F Ononge, ‘Social Impact of Pollution.’ A Paper presented at the Annual Conference of Association of General and Private Medical Practitioners on March 21, 2002 CASS Newsletter available at <http://www.gasandoil.com/news/africa/dc25fd9a4f26db32cbd840c81556edb> accessed on 7 April 2016.

It is acknowledged:⁸⁰

That the plight of the Niger Delta people is a not a gender issue. Every section of the society is affected by the problems of the region but women bear the brunt of these problems mainly because of the unique positions they occupy in society. In the Niger Delta, women are income earners, they do most of the farm work, process the produce and in some communities; petty trading and some form of fishing are the exclusive preserve of women...women in the Niger Delta are an unrecognized but indispensable group in the society.

4.6.1 The Challenge of Poverty

A major challenge to the proper and effective application of the rights of the girl-child in the Niger Delta is poverty, not just of physical cash or resources which is part of it as it is the ready excuse advanced for all forms depravity, sex trafficking and prostitution; but the poverty of information, ideas, values and self worth. In contrast to the abundant natural resources found in the Niger Delta in form of abundant crude oil and gas deposits, abundant water sources and resources of fish and other organisms, thick rain, mangrove and swamp forests, oil exploitation has devastated the region through gas flares and frequent oil spills. Other natural fallouts of such exploitative processes pollute the sea and land, killing plant life and fish and of course destroying the main occupation of traditional Niger Delta peoples and subsequently ushering in poverty and untold hardship on them in the midst of plenty.

⁸⁰ J Thomas, 'Women and The Challenges of the Niger Delta in Esan and Ukiwo' cited in (ed) *Proceedings of a seminar on the Niger Delta* (Port Harcourt: CASS, 2001) p. 10.

“The traditional means of livelihood of the Niger Delta people have been destroyed and truncated while the area and its people have not been able to enjoy adequate means of livelihood under the present dispensation.”⁸¹

Poverty stares the Niger Delta people in the face amidst oil wealth which according to Okoko,⁸² “are siphoned to develop other areas other than those which produce oil...the communities which produce oil remain in abject penury without basic social infrastructures and without any means of self reproduction or economic empowerment even as a future for their children.” The poverty of the rural Niger Delta is displayed in the still mud, stick and thatch houses that litter most parts of riverine Bayelsa, Delta, Akwa Ibom and Rivers States. It is evident in the polluted rivers, the destroyed flora and fauna making access to clean drinking water necessary for the sustenance of life a mirage in the midst of vast expanses of polluted water. Aghalino and Snaaps⁸³ agree that the Niger Delta region “has suffered monumental neglect and deprivation which has resulted to widespread poverty and economic hardship, lack of basic socio-economic infrastructure, plundered environment and high rate of unemployment.”

This poverty is displayed according to Alabi⁸⁴ in the fact that the majority of child labourers especially domestic/ house helps are girls rather than boys which underscores the society’s perception of the role of the girl-child as being better suited for house-hold chores than the boys. Oyeboode⁸⁵ concludes that oil exploitation in the Niger Delta has not helped the economic rights of its people but has “impacted adversely on the lives of the people. As more oil

⁸¹ D Aiyetan, ‘Oil Has Been a Blessing and a Curse’ in Tell Magazine, February 2008, p.11.

⁸² K A B Okoko, ‘The Politics Of Resource Extraction, Distribution And Sustainable Development’ in M M Gidado, C U Anyanwu, A O Adekunle (eds) *op. cit.* p. 223.

⁸³ ‘Economic Activities of the Niger Delta People of Nigeria: A Historical Comparison and Lessons to Learn,’ 37th Annual Meeting Conference Proceedings, North-East Business Association (NBEA), New Jersey, September 30 to October 2, 2010.

⁸⁴ T Alabi & O S Alabi, ‘Child Labour amongst Urban Poor in Lagos and Abuja (2012) Vol. 2(3) Journal of Peace, Gender and Development, 13.

⁸⁵ A Oyeboode, ‘The Legal Framework of Oil Exploration in Nigeria- A Critique’ in R W Ale & E Akinsola (ed) *Boiling Point* (Lagos: CDHR Publication(2000)p. 13.

is exploited and taken away, more devastation is left behind.” To Sagay,⁸⁶ the lament of the Niger Delta people is that “Oil companies have denied us every living thing. They don’t care or hear our cry; they only throw tear gas on us, beat us and drive us out of our land...”

The loss of farmlands due to the devastating effect of oil exploration is rife and the women who are more into subsistence farming and fishing are worse hit. According to Aboribo⁸⁷ “apart from this loss of farmlands which is the main source of livelihood, oil spillages have led to displacement of settlements as well as extensive deforestation with no adequate replanting practices.” For the girl-child and woman in the Niger Delta, poverty stares them in the face especially with the Oil companies’ refusal sometimes to pay compensation for crops and fishing nets destroyed by oil spills claiming that destruction was an act of sabotage by the villagers.

Lamenting on this issue, Jones opined that this has “led to the glaring manifestation of the rights of the women amidst the outright denial of compensation for taking their source of livelihood and destroying the environment.”⁸⁸ This has the resultant effect of denying the girl-child the right to economic survival, relegating her to the background despite their potentials to contribute immensely to the economic development of the region through food production. Poverty has thus driven the girl-child to prostitution especially with the oil workers and to child labour instead of acquiring basic education. According to Eteng,⁸⁹ “the effect of oil exploration and exploitation in the Niger Delta is the “rising incidence of poverty, lack of access to land by women...agricultural child labour; all these factors have some serious negative impact on children of the Niger Delta region...who are forced to work due to deepening poverty,

⁸⁶ I E Sagay, ‘The Extractive Industry in the Niger Delta and Environment’ being the 4th Annual Lecture of Anpez Centre for Environment & Development delivered on 15th November 2001 at Port Harcourt, Rivers State.

⁸⁷ I Aboribo & Anor, ‘The Conflict of Globalization and the Globalization of Conflict in the Niger Delta of Nigeria;’ A paper presented at the International Conference of Nigerian Sociological Association; Abuja, November 2007, pp.8-9.

⁸⁸ P Jones, ‘Using Women to Get Rid of Poverty’ 2006, p.2 cited in O Olomola, *op. cit.*

⁸⁹ I A Eteng, ‘The Nigerian State, Oil Exploration and Community Interest’; (1998) Human Rights Defender Quarterly Journal, 8.

inadequate policies in the region...” Increased poverty in the Niger Delta is confirmed to have led to an increase in the prostitution of the girl-child.”⁹⁰ To him, “the girl-child and woman of this region are the most vulnerable to the system of exploitation created by oil multinational corporations.” Poverty also forces the girl-child to remain in abusive relationships especially in forced marriages because of poor economic bases and the inability to refund the bride-price paid on them to be free of such abusive marriages. The right of the girl-child as enshrined in the Constitution⁹¹ to be free from every degrading treatment is still violated as female genital mutilations are still carried out in the region.

According to Ikoni & Arinze- Umobi,⁹² “the incidence of poverty is higher among women than men... in particular women face lower incomes’ face major difficulties accessing credit and suffer severe health problems and higher illiteracy...” Poverty is displayed in the limited opportunities open to the people of the Niger Delta in the midst of oil wealth to maximize their potentials. Geo-Jaja⁹³ wonders “why from Opobo Town to Kolo/Opokuma, from Twon Brass to Yenagoa...poverty and educational poverty is rampant, and marginalization is evident in human deprivation, increasing inequalities, voicelessness and lack of access to assets?” He went on to attribute this situation of poverty in the region to what he described as “a neoliberal economic model that is enveloped in the prevailing social and political power structures. The Niger Delta is “the least infrastructure and the poorest region in Nigeria...especially rural poverty continues to be one of the major problems assailing the region with approximately 64%

⁹⁰ C Joseph-Obi, *op. cit.* p.17.

⁹¹ See S. 34(1) 1999 Constitution of the Federal Rep of Nigeria (as amended) that “no person shall be subjected to torture or inhuman or degrading treatment...”

⁹² U D Ikoni & C Arinze Umobi, ‘Legal frameworks for Women Education and Development in Contemporary Nigeria: Challenges and Enhancement Options.’ In FUWA, *op. cit.* p.61.

⁹³ M A Geo-Jaja, Social Exclusion, Poverty and Educational Inequality in the Niger Delta Region of Nigeria: Which Development Framework? In *The Politics of Education Reforms* (eds, J Zajda & Geo-Jaja M A; Springer available at <https://www.books.google.com.ng/books> accessed on Monday, 25, April 2016.

of its entire population and about 85% of the rural population living in poverty”⁹⁴Indicators of poverty in the Niger Delta include “low levels of human and physical assets...low levels of education, health and poor housing and road infrastructure...”⁹⁵

4.6.2 The Challenge of Inadequate Infrastructural provisions

The provision of adequate infrastructural services like good roads, hospitals and schools are major challenges in some parts of the Niger Delta where the terrain makes the construction of roads very difficult in the midst of heavy rainfall. Where good and adequate health facilities are not within the reach of the poor who have to travel long distances by sea to obtain medical help cannot by the wildest imagination be favourable to the application of enshrined human rights. Communities in the Niger Delta region “lack communication and social infrastructure.”⁹⁶Every child by the provisions of the United Nations Convention on the rights of the child has the right to free primary education. Implementation of this right however in the Niger Delta especially in the rural areas where schools are few and far in between has been problematic coupled with the poor road networks and bridges which if provided would link communities and usher in development. Lack of good drinking water as the aquifer is generally polluted has meant great health hazards for the people.

According to Ihayere et al,⁹⁷ the seeming developmental strides in form of canals and roads to service the oil industry results in “great monumental degradation creating stagnant ponds of water killing forests and flooding fields” These form very clear threats to the girl-child’s right to life and a healthy environment. The girl-child’s right of access to health care is not guaranteed in the region, with healthcare facilities skeletal and ill equipped as most families

⁹⁴ *Op.cit p.112*

⁹⁵ UNDP Report 2006, p.36.

⁹⁶ UNDP Report 2006, p.36.

⁹⁷ *Ibid p.17.*

have to choose between the satisfaction of hunger which is a primary need and seeking medical care. This situation is compounded by the poor connectivity of the communities by roads and bridges. According to Ile, the “lack of basic infrastructure in the Niger Delta is one of the most visible sign of neglect as electricity, drinkable water, roads, elementary and secondary schools, health centres and telecommunication systems are not present” in the Niger Delta especially the rural Niger Delta.

4.7 The Challenge of Patriarchy

Issues of violation of the rights of the girl-child in the Niger Delta cannot be separated from the nature and effects of the patriarchal system which characterize the Nigerian society. Patriarchy promotes male dominance and superiority over the female gender. Fisho- Orideji⁹⁸ maintains that “a girl-child is born and socialized into the belief of being inferior or sub-human with attendant marginalization and abuse.” It emphasizes the natural differences in gender, promoting masculinity while downplaying feminine roles as subservient and dependent on the male. And it invariably institutes a culture which accepts such impositions as natural. It is agreed that the “human rights of women are being flagrantly violated on the basis of the patriarchal and sexist historical, cultural, social, economic and political construction...

Also that the patriarchal system in Nigeria constitutes cultural impediments to gender equality as well as to the promotion, protection and enjoyment of fundamental freedom and human rights of the female homo sapiens.”⁹⁹ According to Effah et al ¹⁰⁰“the rights of women and the girl-child which are supposed to be integral, inalienable and indivisible parts of the Universal declaration of Human rights (1948) continues to be violated in very many ways.”

⁹⁸ D Fisho-Orideji, ‘The Child: Developing Potentials of the Girl-Child, a National Challenge; in T Alabi & ors, *op. cit.*

⁹⁹ O W Igwe & G O Akolokwu, *op. cit.*

¹⁰⁰ J Effah, M Dulue & S Onyegbule, *Unequal Rights; Discriminatory Laws and Practices Against Women in Nigeria* (Lagos: Constitutional Rights Project, 1995) p. 10.

Women over time and in different epochs have and continue to endure this climate of repression in what is generally described as a ‘man’s world,’ prompting Salaam¹⁰¹ to declare that “a woman is oppressed as a woman in a patriarchal society... as religion and tradition are instruments of women oppression and support the patriarchal society which sets the parameters for women’s structurally unequal position in families... by condoning gender-differential terms in inheritance rights...”

Patriarchy results in some Nigerian families especially the parents attaching greater importance to the boy child than the girl-child which feeling is carried into the education of the boy-child first and sometimes to the detriment and denial of the girl-child even when she is older. Igube¹⁰² maintains that some patriarchal structures restrict the girl-child. Also “women’s education opportunities help maintain male domination,” while “paid employment has been and remains a key structure in creating disadvantages for women and girl-children in particular. It is trite that many women do not seek employment because of “restricted opportunities open to them because of cultural values that suggest that mothers and wives should stay at home”.¹⁰³ According to Alabi et al,¹⁰⁴ “States’ policies and priorities are systematically biased towards patriarchal interest” which to them may be the domination of women and girls. This domination occurs within the household at the hand of an individual patriarch where the girl-child is taught to believe that decisions on issues were the domain of the male. It is agreed that “the patriarchy syndrome is still a norm since women are still largely excluded from positions of power and decision making.”¹⁰⁵

¹⁰¹ *Op.cit.*

¹⁰² R B Igube, *Women and Gender Studies*; (Abuja: Sir Kuf Ventures Limited, 2010) p.17.

¹⁰³ S Walby, ‘Blaming the Victims’ in Murray C: *The Emerging British under Class* (London, Institute of Economic Affairs 1990) p.14.

¹⁰⁴ *Op. cit.*

¹⁰⁵ U S F Nnabue, *op. cit.*p.24

Patriarchy favours the boy-child against the girl-child because in “patriarchal societies girls are regarded as liabilities”¹⁰⁶ and a loss to the family once they marry and move into their husband’s family while the sons only increase the family’s fortune by marrying and bringing in wives to the family, and in such a patriarchal system, the girl-child wife loses her individuality and becomes dependent on the males in her life.¹⁰⁷ The Convention for the Elimination of Discrimination against Women advocates the prohibition of polygamous marriages as “it contravenes a woman’s right to equality with men.”¹⁰⁸

4.8 The Challenge of Education and Enlightenment

A great challenge to the application of the rights of the girl-child in the Niger Delta is inadequate and insufficient enlightenment and education of all the relevant players that is, the society at large, about the recognized and acknowledged rights of the girl-child.

Challenging are the still prevalent customs and practices that appear to be the norm but which actually work against the exercise of the rights of the girl-child. The lack of information on current decisions of the Nigerian courts establishing and re-enforcing the legal rights of girl-child, appropriate and sufficient government policies to ensure that adequate processes and strategies are available and accessible to the girl-child in cases of violations are also critical.

The challenge of education and enlightenment is so real because many people are ignorant of their rights and possible avenues of seeking redress in cases of violations. It is important that the girl-child knows what the law says about her rights as a human being, and as a girl growing into womanhood before she can take appropriate steps to enforce same or take steps to obtain proper advice. Education needs in the Niger Delta are “extensive and acute. Unfortunately

¹⁰⁶ O Olomola, *op. cit.*

¹⁰⁷ *Ibid.*

¹⁰⁸ See generally S. 16 CEDAW 1979.

however education that will significantly reduce poverty and enhance human development despite the region's entrenched social inequities and skewed course of development has been neglected...¹⁰⁹

The society needs enlightenment to know that it owes the girl-child an obligation to jettison cultural and religious injunctions and practices that violate the girl-child's liberty, freedom of speech and dignity of the human person. And the girl-child needs to be seised of the fact that she has a right and that it is the obligation of the State to protect such a right and punish violators upon a proper legal procedure. The society needs proper enlightenment about the ills of polygyny to ensure that the girl-child is not lured into such relationships. Over time negative ideologies have been inculcated even in the girl-child about her role and status in the family and society. The position of subordination of the women in the Niger Delta is due to deficient socialization, poor education. The "lack of opportunities as well as exclusion from decision making, make them vulnerable to poverty... and apart from this humiliation those often sent to keep peace in the area in the time of conflict treat the women as spoils of war, raping them and looting their property."¹¹⁰

The challenge of education in the region is evident by the establishment of "only 2,169 primary schools and 545 secondary schools covering some 30,000km and for an estimated 12million people- the ratio is about one school per 3,700 people and 14,679 people respectively for primary and secondary schools"¹¹¹ This poor situation makes the girl-child's right a mirage; and this is despite the fact that the girl-child has a right to free basic education.¹¹²

¹⁰⁹ M A Geo-Jaja & G Magnum, 'Structural Adjustment as an Inadvertent Enemy of Human Development in Africa' (2001), 32(1) *Journal of Black Studies* 30-50.

¹¹⁰ A Godfrey, 'Counting Their Losses' *Newswatch Magazine*, Vol.48, No 10 September, p.28.

¹¹¹ NDES Report 2002.

¹¹² See Art. 26, UDHR 1948; Art. 28 & 29 CRC 1990.

4.9 The Challenge of Religion

Most religions of the world generally discriminate against women. They give the womenfolk second place to men, prescribing rules of behavior which invariably ensures that a woman's right to express herself freely, freedom to choose a religion, right to freedom and personal liberty, right to choose who and when to marry, reproductive rights to choose when to have children and how many etc are more theoretical than real. They proscribe behaviours which exhibit the individualism of persons while prescribing attitudes and codes specially and specifically for the womenfolk and not to be endured by the men which would perpetually keep the women down and in the inferior position allotted them by men through religion. Such behaviours concern their dressing, sitting or standing postures, movements, entry into certain places at certain periods especially during their monthly periods etcetera.

The major religions of Christianity and Islam practiced in Nigeria have copious provisions commanding the woman to obey the man, be submissive to the man and even go to the extent of limiting interaction of men and women in religious places by demanding different sitting arrangements. And for members of the Christian faith, religion even out rightly dictates that women should not speak in the church but wait to ask their husbands at home if they had any queries. Salaam¹¹³ agrees with this position and has stated that religion indeed discriminates against women and is “used as an instrument in defence of class society and patriarchy”. For instance, in the northern part of the country, Islam which is the dominant religion is “institutionalized as a culture, that is the way of life of the majority of the people of the region”. Sharia law which is an integral part of muslim worship places a lot restrictions on the rights of women. An example of such biased law against women is the provision under which women

¹¹³ *Op.cit.*

who are alleged to have committed adultery are sentenced to death by stoning while excluding their male counterparts from the same punishment.

Religious teachings which violate the right of the girl-child to be treated equally with the man abound.¹¹⁴ The declaration that the woman shall be ruled by the man after the fall in the Garden of Eden is actually the genesis of the woman's subjection to the man as many people even some women see this as divine directive to be obeyed. The fact that the directive given is usually taken out of context and expounded by the male dominated clergy who start early to inculcate in the woman the virtues of being subservient and dependent on man is glossed over.

Also, the girl-child's right to inheritance was not even recognized from biblical times as expressed in the book of Numbers 36 concerning the daughters of Zelophehad who by Jewish customs were denied an inheritance, even that belonging to their late father who had no male children until they asked and made a demand to the leaders to be allowed to inherit their father's property. The issue here is that whereas the males entered into their inheritance as of right, the daughters had to demand for theirs, make an appeal which was tabled to the Lord and approved upon conditions that they only married within their father's tribe as they would lose their father's inheritance once they married outside his tribe.

Gender discriminations still thrive in our societies as the girl-child faces violence at home and even in public places since culture or religion is used to explain it away or used as an excuse for the violation of the fundamental rights of the Nigerian child to basic education, good nutrition, essential healthcare and all other basic needs as well as protection against abuses, neglect, exploitation and slavery. Early marriages of the girl-child below 14years are still practiced in Nigeria despite the legal stipulation of 18years for marriage of the girl-child by the

¹¹⁴ See Genesis 3: 16 where after the fall of man in the Garden of Eden, God declared to the woman, "that her desires shall be to her husband, and he shall have rule over thee.

Child Rights Act 2003. Different groups in the Niger Delta continue to rely on their specific religious inclinations and customary practices to justify such obvious violations of the girl-child right to basic education, right to choose who and when to marry.¹¹⁵

4.10 The Challenge of Government Policies and Programmes

Government policies and programmes sometimes pose a challenge to the proper application of the rights of the girl-child. According to Atim¹¹⁶, “the existing policy thrust and policy implementation in Nigeria are not favourable to the best interest of the child in the fulfillment of their rights.” There appears to be a severe lack of resources directly allocated to the promotion and protection of children’s rights. The mechanisms for protection and promotion of children’s rights remain “weak, uncoordinated and not in line with Nigeria’s obligations under the Convention on the rights of the child, the African Charter on the Rights and Welfare of the child and the UN Convention on the Elimination of All Forms of Discrimination Against Women.”¹¹⁷

The policies and programmes of the Federal government of Nigeria for the region has actually to a large extent exacerbated the crisis of conflict in the region with the girl-child becoming the target for rape and kidnapping. Over the years the government of Nigeria has adopted a policy of establishing development commissions such as the Niger Delta Development Board (NDDDB) in 1960, Oil Minerals Producing Areas Development Commission (OMPADEC) in 1992, the Petroleum Trust Fund (PTF) in 1995, the Niger Delta Development Commission (NDDC) in 2000, the Ministry of Niger Delta Affairs in 2008, all good policy thrusts although the reality is that these commissions have been bedeviled by corruption and very short-lived

¹¹⁵ An NDHS Survey on the Effect of early marriages in Nigeria stated that 19% of girls sampled, cited marriage as a reason for leaving school quoted in Oxfam: Women and Poverty in Nigeria, p.58 available at <http://www.oxfam.org.uk/what-we-do/resources/downloads/wp-nigeria/up-nigeria-womenpov.pdf>

¹¹⁶ G Atim; *op. cit.*

¹¹⁷ M T Ladan quoted in Amnesty International, Nigeria: The Death Penalty and Women under the Nigerian Penal System; February, 2004, p.13 available at <http://www.web.amnesty.org/library/print/ENGAFR 440012004> accessed on April 5, 2016.

programmes that were far removed from the yearnings of the ordinary people of the area. For instance, The Niger Delta Development Commission (NDDC) which is the government's vehicle for development in the region is riddled with allegations of corruption, making millionaires of a few especially the militant males at the expense of a greater number of women and children of the region, and at the expense of massive and coordinated infrastructural developments in the region. This lopsided prosperity in the hands of the few and for no appreciable talent or skill encourages many social vices like prostitution and gang fights for supremacy and control of the region's commonwealth. The supervisory role of the Ministry of Niger Delta and the National Assembly over the programmes of the Commission to ensure that the region enjoys a healthy and peaceful environment where the girl-child's rights to a safe environment would be guaranteed is yet to yield the desired fruits as different forms of conflicts characterize the region.

According to Ojekarotu,¹¹⁸ the government policy of better policing of oil installations and pipelines by the establishment of the Joint Task Force (JTF) has negative repercussions on the region as this police outfit has violated human rights in Ogoni and Odi areas where they were deployed to quell restiveness. This position was confirmed by Odomene¹¹⁹ who stated that these military expeditions culminated in "sexual violence against women and young girls."

Also, the Federal Government's policy of combined development strategies with operating multinational oil companies in the region through Joint Venture Agreements (JVA) have not yielded sustainable fruits for the development of the region especially in the provisions of social amenities such as schools, roads, hospitals, power and water which are all critical to the

¹¹⁸ V Ajakarotu, *Contending Issues in the Niger Delta Crisis of Nigeria* (ed. Bangkok, Africa: JAPSS Press Inc. 2009)p.35.

¹¹⁹ A Odomene, 'The Nigerian Armed Forces and Sexual Violence in Ogoniland of the Niger Delta Nigeria 1990-1999' (2012) 38(2) *Armed Forces & Society Report* pp. 225-251.

protection of the human rights of the girl-child in this region. In fact, it has been argued ¹²⁰that “programmes are designed and decisions made on the basis of ideologies rather than the identified right of citizens...” and that the government’s policy of non recognition of natural resource rights has led to the mistrust of government programmes in the area and creates a real challenge to sustainable development.

The insensitivity of the government to the environmental hazards flowing from oil exploration which the Federal Government’s refusal to implement the UNEP Report on Ogoniland is a pointer; and government’s use of law as an instrument of expropriation of the resource of the Niger delta are challenges to the application of the girl-child right to life and a healthy environment as this policy of government leaves the indigenous Niger Delta people highly impoverished and “ousted from their legitimate, natural and deep interest in their land. It was the instrument of the Land Use Act 1978 that was used to legitimize the transfer of all minerals, Oil and gas in Nigeria to the Federal Government.”¹²¹

Recognizing and maintaining the rights of the people of the Niger Delta (which includes the girl-child) in the midst of the degradation of the Niger Delta environment becomes a mirage; especially as the Nigerian government does not create room for the direct participation of the indigenous people in the oil exploration which is the main stay of the region but has a policy of dealing directly with operators of the Multinational Oil Corporations on all issues in total exclusion of the host community. This fact according to Ile et al meant that “there is no strategic economic interest to build roads or rail lines, train the local workforce or meaningfully employ

¹²⁰ Geo-Jaja, *op. cit.*

¹²¹ C Ile & C Akukwe, *op. cit.*

the host communities. Developing the Oil producing communities is not a stated objective of the Nigeria's National Petroleum Policy.¹²²

4.11 The Challenge of Policing in the Niger Delta.

The history of policing in the Niger Delta region is replete with allegations of extra judicial killings, bribery and high handedness of police officers in carrying out their constitutional duties which is to protect lives and property of every person living within the region. According to Human Rights Watch, the activities of law enforcement agencies in the protection of oil facilities in the Niger Delta, has occasioned a lot of human rights abuses in the region. The violence unleashed on the people of *Liama* in Bayelsa State by the Nigerian Navy in 2001 & 2002 affect the girl-child's right to life as the navy responded to the seizure of the Shell oil company's boats and employees in the area, "not by arresting those alleged to be responsible, and handing them over to the police for investigation and prosecution but by carrying out a reprisal raid on the abductors' village, razing dozens of homes to the ground and killing two people."¹²³

The Police brutality and abuse was captured in an earlier Report which stated the "compelling realities of the Niger Delta to include community dissatisfaction, weak and unresponsive government, security forces abuses and inter-community violence fuelled by oil companies and government..."¹²⁴ All these pose a great challenge to the application of the rights of the girl-child in the Niger Delta. Most of the physical violations of the girl-child either as a married woman whose husband constantly beats up and even maims is treated casually as husband and wife matter to be settled at home. This posture of the Nigerian police equally dominated by men is seriously discouraging and is working untold hardship on the few females

¹²² *Op.cit.*

¹²³ 'The Niger Delta: No Democratic Dividend,' The Report of Human Rights Watch, Vol. 14, No 7, October, 2002, New York.

¹²⁴ 'The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil producing Communities' (New York, Human Rights Watch, January 1999) p. 3

who summon the courage to report incidents of domestic violence to the police. Where an unmarried female is assaulted by a man and reports same to the police, the first reaction borne out of our traditional way of reasoning is for the girl to be cautioned to respect the man, with sentences like, “you no dey fear man;” “you go fit fight man”; “you want to wound” etcetera thrown at her.

CHAPTER FIVE

PROSPECTS OF LEGAL ENFORCEMENT OF GIRL- CHILD RIGHTS IN THE NIGER DELTA REGION OF NIGERIA.

The processes and strategies deployed by government and organizations to legally administer the content of the Child Rights Act and other international legal instruments; to ensure that we go beyond mere pronouncements to action; the procedures adopted to compel the obedience of all persons especially parents, care-givers, teachers and the public at large to the provisions of relevant laws determine the nation's success in protecting the rights of the girl-child. The legal enforcement of the girl-child rights in the Niger Delta would thus concern the legal instruments such as the police, the courts and government and other agencies created under law to put approved societal rules of behaviour into practice. The struggle and fight for the total emancipation of the girl-child in the Niger Delta from traditionally induced and other violations is a long and continuing one. The agitation for the protection and promotion of the girl-child's human rights is ongoing. The struggle for the girl-child's dignity and self worth, the struggle to be heard as of right and not as an appendage to the man; the struggle to break the chains of inferiority and second class citizenship; to break cultural and societal tyranny and subjugation is still on.

Progress is however made daily with increased advocacy of government and non-governmental agencies; with the many more voices speaking against such practices which appear seemingly normal and natural but are actually violations of the girl-child's human rights; to the increased judicial activism characterized by bold, incisive, courageous and epoch-making pronouncements of the courts with decisions declaring customary practices of decades which are

violative of the girl-child's rights to be repugnant, illegal and to the extent of their inconsistencies with the provisions of the Constitution void. The challenge however is going beyond these pronouncements to evolving legal strategies to carry such pronouncements to effect.

The questions to be answered amidst the cry of regular violations of the rights of the girl-child in the Niger Delta, is whether there is any possibility or likelihood that in this region the constitutional provisions on equality of all persons and calls for gender parity would one day become a reality against the background of the interference of customs and traditions? What is the contribution of the Child Rights Act to the protection of the girl-child's human rights?

The major drawbacks to legal enforcement of girl-child rights in the Niger Delta is the lack of commitment of the government to enforce legal instruments already entered into and to domesticate other relevant instruments; the inability of government to protect citizen's rights through the insistence and sustenance of the application of the rule of law; the societal lethargy to legal options and culture of silence amidst violations; the insufficient legal remedies for human rights violations which discourage agitations etcetera. The way forward is still reliance on appropriate laws and the empowerment of State agencies to insist on the supremacy of the law in all situations of violations.

It is trite that the major contribution of this Child Rights Act is the fact that it consolidates all laws relating to children into a single legislation and has provided legally enforceable rights for the girl-child although there is no clear procedure for enforcement contained therein. It has also increased the girl-child's participation in issues affecting their lives since it is a child specific legislation addressing the peculiar needs of children. As Ajumobi¹

¹ F Ajumobi, 'Ese: The Nigerian Child As An Endangered Being' available at <http://www.vanguardngr.com/2016/03/ese-the-nigeria-child-as-an-endangered-being/> accessed on 20/6/16.

states, the Convention on the Rights of the Child which led to the Child Rights Act 2003 changed the way children are viewed and treated. The Act insists on treating them “as human beings with a distinct set of rights instead of as passive objects of care and charity.” Enforcement of the Child Rights Act even in the States that have enacted it as State laws is slow as school age children still roam the streets of major cities in the Niger Delta. Progress needs to continue to be made however, to sustain the tempo of highlighting incidences of girl-child rights violations, taking proactive and responsive steps to prosecute and bring violators to justice whilst projecting the correct human rights posture of the government to the international community to ensure States’ compliance to agreed protocols and legislations.

The Constitutional insistence on the equality of persons in Nigeria is impeachable and gives strength to the continuous calls for the protection of human rights by different groups, agencies and non-governmental organizations. In fact the world’s recent target of gender equality through the Sustainable Development Goals which has the protection of women from violence as a cardinal goal to be achieved by nations are all pointers to the hope of emancipation of the girl-child/woman from the shackles of cultural and male engineered slavery and dominance.

The prospects of applying the rights of the girl-child in the Niger Delta are bright and achievable especially with the global, regional and domestic fight against poverty and disease; and the awakening of the courts to the need to confront customary biases against the girl-child frontally, the increased consciousness of persons especially women and the girl-child to the long years of unjust and unequal treatments based on cultural considerations, the global awareness and insistence on democratic principles of good governance resulting in development on a sustainable basis. Also poverty in the Niger Delta can be curbed by “participation and

empowerment, building human and productive assets and incorporating the poor into development path”² while education is a ready tool to wipe away years of ignorance and non achievement in the region.

5.1 The Role of the Judiciary in the Enforcement of Girl-Child Rights

The judiciary has a critical role to play in the enforcement of the rights of the girl-child in Nigeria as they are constitutionally seised with the powers to interpret available laws providing and protecting the rights of the Nigerian citizens. They also adjudicate on matters bordering on the infringement of these rights or where there is the likelihood of infringements since the Constitution provides the right of persons who fear such infringements to approach the courts for relief. A discussion on the prospects of enforcement of the rights of the girl-child would naturally consider the role of the judiciary which has been variously described as the hope of the common man.³ There are silver linings in the judicial horizon in this regard in Nigeria with the renewed vigour and courage of our courts in insisting on the non discriminatory provisions of our Constitution against the application of some obnoxious and unjust traditional practices which have no legal backing. In this light, the effort of the Supreme Court of Nigeria in the landmark case of *Onyibor Anekwe & anor v Maria Nweke*⁴ which sought to establish and restate the right of a widow without a male child to inherit from her husband contrary to the obnoxious discriminatory customary practice of Amikwo community in Awka which did not recognize her right of inheritance is commendable.

² M A Geo-Jaja & G Magnum, ‘Structural Adjustment As An Inadvertent Enemy of Human Development in Africa: The Case of Nigeria’ (2001)32(1) Journal of Black Studies, 32.

³ I M Attahir, ‘Judiciary As The Last Hope Of Itself’ available at <http://www.gamji.com/article500/NEWS5474.htm> accessed 23/6/16; M Ediru, ‘Judiciary: Last Hope of Common Man On Earth or Where? Available at <http://thenationonlineng.net/judiciary-last-hope-of-common-man-on-earth-or-where/> accessed 23/6/16.

⁴ [2014]9NWLR, (pt 1412) 393.

Although this case is not domiciled in the Niger Delta region, the discriminatory cultural practice of disinheritance of the widow without a male child find similar expression in some customs of the Niger Delta people investigated in Chapter two of this work; and so it is instructive in highlighting the new posture of the Nigerian courts in the enforcement of the rights of women in Nigeria.

In the instant case the respondent a widow instituted the action in the customary court although the matter was later transferred to the High Court of Anambra State, Awka by a court order. The respondent claimed a declaration of statutory right of occupancy over a piece of land which was the property of her late husband and an order of injunction against the appellants from further trespass on the said property. In establishing her claim in court, the respondent contended that she had the right to her husband's property whether she had a male child or not according to the custom of the Awka people. The appellants however denied the respondents claim and counter claimed that the property in dispute was not partitioned land but remained family property which was inheritable by only first sons in succession. The trial court granting the claim of the respondent dismissed the counterclaim of the appellants whereupon they proceeded on appeal to the Court of Appeal which affirmed the decision of the trial court and dismissed the appeal. The appellants dissatisfied with the decision of the Court of Appeal proceeded to the Supreme Court which toed the line of the lower courts and held that the custom of the Awka people of Anambra State which stated that a married woman who had only daughters and no male child for the husband cannot inherit landed property from the late husband as pleaded by the appellants who relying on the supposed custom disinherited the woman and her children, is barbaric and repugnant to natural justice, equity and good conscience and ought to be abolished.

Judicial activism and courage displayed in this case has indeed set the proper tone for the protection of the human rights of women and the girl-child by insisting on the clear and express words of our Constitution which insists on the equality of all persons despite customary laws to the contrary. From the dicta of the learned justices, the prospects of proper enforcement of the girl-child rights through the judiciary are high. It is a wake-up call to persons whose rights have been and are being infringed to shake off the toga of forced silence and take legal steps to redress violations. The Court per Ogunbiyi J.S.C. stated that:

The custom and practices of Awka people upon which the appellants relied for their counter claim is hereby outrightly condemned in very strong terms. In other words a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home where she had lived all her life with her late husband and children by her late husband's

brothers on the ground that she had no male children is indeed barbaric, worrying and flesh skinning.

Muhammed J.S.C. in a similar vein stated that the practice of such custom:

Is a direct challenge to God the creator who bestows male children only, female children only (as in this matter), or an amalgam of male s and females to whom he likes. He also has the sole power to make one a barren. There is nothing virtually one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and unprogressive. It offends the rule of natural justice, equity and good conscience. That practice must fade out and allow equity, equality, justice and fair play to reign in the society.

To Ngwuta J.S.C the custom which the appellants pleaded is a similar custom in other communities:

Wherein a widow is reduced to a chattel and part of the husband's estate constitutes the height of man's inhumanity to woman, his own mother, the mother of nations, and the hand that rocks the cradle. The respondent is not responsible for having female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world...

And to Muntaka-Coomassie JSC and Ariwoola JSC, “the said custom is away from it, it should be declared void at all time. Same should be condemned by all;”and “such a custom that discriminates against female children is a challenge on God Almighty who is the maker and producer of children...it will therefore be inhuman and injustice to discriminate against a female child on her father’s property or a widow on the ground that she has only female children for her late husband” respectively.

It is however important to appreciate that prior to the decision of the Supreme Court in *Onyibor Anekwe & anor v Maria Nweke* the courts in Nigeria have variously upheld certain customary practices especially treating the woman herself as a property to be inherited by the deceased husband’s male relatives and thus incongruent with the rights of the girl-child and women as enshrined in the Constitution and other legal instruments. For instance, In *Essien v Essien & ors*⁵ the Court of Appeal considered the rights of a woman to the property jointly acquired with her husband. She sought a declaration in the High Court of Cross River State that the 1st respondent could not sell the property without her consent nor could he transfer the property without her consent. The 2nd, 3rd, and 4th respondents were joined in the suit and the 2nd and 3rd respondents in the statement of defence made a counter claim that the assignment of the said property by the 1st respondent to the 2nd respondent was valid in law as the latter was a valid purchaser for value without notice of any encumbrance and also there was an order of mandatory injunction compelling the appellant to surrender possession of the disputed property. While the matter was going on the 1st respondent instituted divorce proceedings against the appellant who cross petitioned asking the court to declare No.12 MCC Road Calabar a joint property of the petitioner and the respondent and that the property should be kept intact to serve the interest of the children of the marriage. She got judgment in the matrimonial suit which she tendered in the

⁵ (2010) ALL FWLR (pt 509) 539.

case concerning the status of the property. The trial court however dismissed the appellant's case in its entirety and upheld the counter-claims of the 2nd & 3rd respondents who had sold property to the 4th respondents. The appellant appealed to the Court of Appeal which dismissing the appeal held that a direct financial contribution to the purchase price of the matrimonial home or to the repayment of the mortgage installments in respect thereof is sacrosanct before joint interest could be inferred, and that in the instant case, the trial court was right not to have inferred joint ownership of the property in issue in favour of the appellant as she failed to explain the quality and quantity of her contribution or give details and particulars of the contribution which would have enabled the court to decide whether or not she owned the property with her husband.

The position of the court in the above case is instructive. It underscores the discrimination against womanhood even by our courts because in *Essien's* case as in *Nwanya's* located outside the Niger Delta area; it is only the woman that was required to give particulars of her contributions to the matrimonial property for her claim to ownership to be recognized by the court unlike the man. This is very discriminatory and not in tandem with our laws.⁶ In fact, the same position was adopted by the Supreme Court in *Onwuchekwa v Onwuchekwa*⁷ which denied a wife her claim of co-ownership of matrimonial property on the grounds that she could not furnish evidence of contribution to the purchase of the property in form of receipts, and in addition, the court reiterated that the wife by custom is owned with her property by her husband as chattel. The decision of the Supreme Court in *Adaku Amadi v Edward Nwosu*⁸ on the demand for proof of joint ownership of property by the woman with due respect is discriminatory where

⁶ See S. 42(1)a & b which provides the right of citizens to freedom from discriminations; S 72(1) Matrimonial Causes Act 1970 which enjoins the courts in the exercise of its power in proceedings with respect to settlement of property in matrimonial matters to adopt schemes the court 'considers just and equitable in the circumstances of the case; S. 16(h) CEDAW 1979 provides that State parties should ensure on the basis of equality of men and women the same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property...

⁷ (1997)10 NWLR, (pt 526)5.

⁸ (1992) 6 SCNJ 59.

Kutigi, JSC(as he then was) in the lead judgment stated that the woman “when she came to testify in court ought to have explained the quality and quantity of contributions which would have enabled the court to decide whether or not she owned the property with PW1 (her husband).

The Nigerian courts are however becoming more proactive in the decisions concerning the rights of women and the girl-child to inherit property despite various contrary positions held by native law and custom. The Supreme Court in *Ukeje v Ukeje*⁹ considered the right of the respondent whose paternity was in issue because she was born out of wedlock to inherit from the late father’s estate. The Respondent as plaintiff before the High Court of Lagos State instituted an action claiming to be a daughter of the deceased Lazarus D. Ukeje, a native of Umuahia in Imo State who died intestate. The plaintiff alleged that her paternity was acknowledged by the deceased in his life time and so she was entitled to his estate. The trial judge found for the respondent where upon the appellant appealed. The Court of Appeal however dismissed the appeal, and the appellant appealed to the Supreme Court which dismissing the appeal held that:

A birth certificate is conclusive proof that a person named therein was born on the date stated and the parents are those spelt out in the document. That the paternity of the respondent as the daughter of the deceased is settled and that the Igbo Native Law and custom which disentitles a female from inheriting in her late father’s estate is void as it conflicts with S.42 (1)(a) and 2 of the 1999 constitution.

The Supreme Court stated further that “no matter the circumstances of the birth of a female child she is entitled to an inheritance from her late father’s estate.”

⁹ (2014)ALL FWLR, (pt 730)1323.

5.2 Legislative Interventions in the Enforcement of Girl-Child Rights

A critical tool in the enforcement of the girl-child rights in the Niger Delta region is the legislative process which can be effectively deployed in enacting appropriate laws to ensure better protection of human rights; or the amendment of existing laws to expunge provisions that are clearly discriminatory of women rights; or even in the necessary domestication of international treaties to make them justiciable in Nigeria and possibly even the expunging of the relevance accorded customary laws in the Constitution. In fact, Ikpeze¹⁰ has called for “radical changes of all customary practices relating to inheritance in Nigeria to ensure equality of all persons.”

The effectiveness of any existing law lies in its applicability, implementation and enforcement mechanisms. As such, adequate measures should be provided to enforce these laws through the appropriate legal and non-legal mechanisms. To ensure the proper enforcement of girl-child rights, there is need for the intervention of the legislative arm of government to make international legal instruments entered into by Nigeria applicable as law through the domestication of same as required by Section 12(1) of the 1999 Constitution. It is a duty placed on our legislators to quickly ensure the ratification and domestication of all international conventions or laws to which Nigeria is a signatory, so as to make them justiciable in the local courts of the land. There can be no talk of enforcement of rights when the instruments providing the rights are not accorded the status of laws in Nigeria but remain as mere directives for action by member States.

The adoption of the Convention on the Rights of the Child by the General Assembly of the United Nations and the African Charter for the Rights of the Child by the African Union is a

¹⁰O V C Ikpeze, *Gender Dynamics of Inheritance Rights in Nigeria: Need for Women Empowerment* (Onitsha: Folmech Printing & Pub. Co. Ltd 2009) p. 162.

welcome development for achieving greater application of the rights of the girl-child in the Niger Delta; and especially more so is Nigeria's effort in domesticating the Convention on the Rights of the Child through the enactment of the Child Rights Act 2003. These laws have provided the guidelines for the protection of the rights of the child such as the right to proper healthcare, basic education, safe environment, family life, security, right to life etc from infancy to adulthood.

According to Onyemachi¹¹ the Convention on the Rights of the Child and the African Charter of Rights and Welfare of the Child increase the prospects of child rights enforcement through:

The provision of good and quality education, sanitation and secured environment, as well as other social needs that provide for the growth, sustainable development, survival and well-being of the child. Moreover, children who have suffered from cultural and social disadvantages, such as gender discrimination, exclusion and deprivation as well as all other exploitative abuses can now challenge their perpetrators through the services of the Legal Aid Council in their respective locality to seek for a redress.

To protect the girl-child's rights to freedom from torture, Nigeria has ratified the Optional Protocol to the Convention against Torture. Nigeria has also established a National Committee on Torture as its own National Preventive Mechanism (NPM) as demanded by the provisions of the Optional Protocol to the Convention against Torture (OPCAT) 2009 to ensure the prevention of torture at the domestic scene. This Committee is charged with the responsibility of receiving and considering complaints on torture, visit places of detention, investigate and examine allegations of torture, prevent torture by reviewing the treatment of persons in detention and also

¹¹ T U Onyemachi, 'Children, Status and The Law' (2010) African Research Review, 4(3a) 381.

develop a national anti-torture policy. Despite this however, there is no clear policy generated nor does the nation have expressed legal provisions criminalizing torture and providing compensation to victims of torture as demanded by the United Nations Convention against Torture which Nigeria had ratified. Although investigations carried out did not disclose particular documented instances of torture of the girl-child in the Niger Delta, there were cases of torture of one Obed and Edet by the police who arrested them on their way to Lagos, paraded them as robbers and sought to obtain confessional statements from them through torture.¹²

The enactment of the National Centre for Women Development Act¹³ has greatly improved the prospects of the application of the rights of the girl-child and women in Nigeria. This Act seeks to establish the National Centre for women development for the general purpose of designing developmental programmes and activities for the advancement of women in Nigeria. This Centre is a body corporate, to be located in the nation's capital and directly under the control and supervision of the presidency. The possible impact of this centre on gender issues is evident from the established functions which state that:

- i. the Centre shall be responsible to stimulate consciousness towards the attainment of higher levels of development for Nigerian women;
- ii. to promote international co-operation in stimulating consciousness towards the attainment of development and activity for women.

To achieve the above objectives, the Centre is expected to promote research into the activities and achievements of women; serve as a data bank on women and development in Nigeria; facilitate the formulation of policies affecting women in areas of education,

¹² I Anaba, 'Confessional Statements obtained By Torture Common in Nigeria' LEDAP Report February 2015 available at <http://www.vanguardngr.com/2015/02/confessional-statements-obtained-torture-common-nigeria-ledap/> accessed 5/7/16.

¹³ Cap N15 Vol. 10, Laws of the Federation of Nigeria (LFN) 2004.

employment, health and finance; provide training in skill development, income generation; provide forum for guidance, counseling and mobilization of women in both the rural and urban centres; and liaise with national, regional and international agencies involved in women development programmes.¹⁴

Other institutions created and charged with protection of child issues in Nigeria include the National Human Rights Commission (NHRC); National Council of Child Rights Advocates of Nigeria (NACCARAN) which is an umbrella NGO involved in child rights advocacy; the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) which is a creation of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003. This agency is the Federal Government of Nigeria's response to addressing the menace of trafficking in persons, the degradation and exploitation of persons mainly women and children in the entire country.

5.3 The Role of International Responses and Agencies in the Enforcement of Girl-Child Rights: Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs)

The target of the Millennium Development Goals Programme of the United Nations which has since ended and given birth to extant Sustainable Development Goals Programme is for nations to develop plans and strategies for sustained development of all persons. It also embraces the creation of opportunities for the maximization of individual and collective potentials to ensure eradication of poverty and to improve the standard of living of all persons. The Millennium Development Goals Programme has 8 clear goals, 18 targets and 48 indicators. The Goals are:

1. To eradicate extreme hunger and poverty;
2. Achieve universal primary education;

¹⁴ National Centre for Women Development Act, Cap N15, Vol. 10, LFN 2004; S. 5(1)(2).

3. Promote gender equality and empower women;
4. Reduce child mortality;
5. Improve maternal health;
6. Combat HIV/AIDS, malaria and other diseases;
7. Ensure environmental sustainability
8. Develop global partnership for development.

These goals which centred on improving the lives of human beings globally are all critical to the protection of the rights of the girl-child in the Niger Delta region. Goal 3 which is especially aimed at achieving gender equality and women's empowerment is directly concerned with ensuring the application of the rights of the girl-child and women in society. This goal is very supportive of the girl-child rights. Its target to achieving this is by encouraging government policies targeted at eliminating gender disparity in primary education by 2015. The Millennium Development Goals (MDGs) were therefore internationally agreed sets of targeted goals for ensuring gender equality and achieving sustainable development.¹⁵ "They represent the first collective and integrated attempt to improve the lives and chances of the world's poor."¹⁶ The Millennium Development Goals targeted to end by 2015 gave place to the United Nations Sustainable Development Goals.

The support and encouragement of the international community through the aegis of the United Nations for democratic governance in nations of the world have to a large extent replaced repressive, unpopular and dictatorial governments which had little or no respect for human rights with more responsive government. Democratic governance in Nigeria enhances and promotes

¹⁵ United Nations Development Programme (UNDP) Reports (2012) available at https://www./UNDP_Ng_inclusiveGrowth_Gender-Briefing-K... accessed 25/3/16.

¹⁶ J Rigg, 'The Millenium Development Goals' in V Desai & R B Potter (ed) *The Companion To Development Studies* (2nd edition, London, United Kingdom, Hodder Education, 2008)p. 36.

human rights as the few women in our various legislative houses continually draw public attention to women issues thereby creating room for direct women participation in decision making. The election of only 20 female members to the 8th National assembly though ridiculously low is also a pointer to the fact that women are rising up to the challenge of insisting on their political rights.

Several international organizations have made responses geared towards ensuring that the girl-child has global attention. For instance, the United Nations International Children's Emergency Fund (UNICEF) founded in 1947 to improve the lives of children all over the world has noted that:

Girls' education is both an intrinsic right and a critical lever to reaching other development objectives; providing girls with education helps break the cycle of poverty as educated women are less likely to marry early and against their will; less likely to die in childbirth, more likely to have healthy babies; and more likely to send their children to school. When all children have access to a quality education rooted in human rights and gender equality it creates a ripple effect of opportunity that influences generations to come.

The UNICEF helps to empower the girl-child by supporting governments in the reduction of gender disparities through the following:

(i) The United Nations Girls Education Initiative (UNGEI) which supports skills-based education and female role models in education; it champions the rights of girls and help countries achieve gender equality in education;

(ii) Various programmes aimed at tackling discriminations, violence and the exclusion of girls from education; and

(iii) By supporting child-friendly schools which promote gender equality.

Writing on sustainable peace and development in the Niger Delta, Ajiye¹⁷ opined that “sustainable peace and development involve the transformation of the social and political environment that is responsible for inequality and endangers historical grievances. The indices to determine achievement of goals in various States were in some instances somewhat displaced by local factors such as improper documentation, data base and corruption thereby creating room for doubt as to whether the goals have actually been achieved or not.

In fact whether or not these goals are achieved or are being achieved is debatable and as Ejemudo¹⁸ stated:

The gap between the millennium development goal of gender equality and its actualization in Nigeria however is the action dilemma by the Nigerian government that is typified by mis-governance, lack of political will, the prevailing patriarchal culture, false public investment and the absence of adequate productive capacity that will create the opportunities for women empowerment and development.

Ejemudo however conceded that “some laudable efforts have been made to put in place the necessary mechanisms required for the elimination of gender discrimination to ensure gender parity and human dignity,” while acknowledging that “gender education has not permeated all

¹⁷ S O A jiye, ‘Insecurity and The Niger Delta Environment, Sustainable Peace and Development: An Overview’ (2015) 5(2) Journal of Environment and Earth Science available at www.iiste.org accessed on 3 April 2016.

¹⁸ K B Ejemudo, ‘Gender Equality and Women Empowerment in Nigeria: The Desirability and Inevitability of a Pragmatic Approach’ (2013)3 (4) Developing Country Studies, 59 available at www.iiste.org. accessed on 8 October 2015.

levels of the populace and the impression that gender issues negatively pose a challenge to accepted norms and values of marriage, family and religion is also rife and evident.”¹⁹

Nigeria as a signatory to the Millennium Development Goals which aimed to significantly reduce poverty, inequality and disease by 2015 has shown its commitment to achieving these goals by emphasizing partnership with arms and levels of government, civil society organizations, women groups, United Nations Agencies. “There exist very many indicators of progress from such partnerships and collaboration on promoting women’s political participation, collective support to the passing of critical laws in States Houses of Assemblies, girls’ education initiatives, advocacy on harmful traditional practices and emerging partnerships to deal with gender and sexual based violence...”²⁰ The world has since 2015 moved away from the Millennium Development Goals to Sustainable Development Goals.

According to Vintagesam,²¹ “the performance appraisal of Nigeria’s thirteenth year journey to achieving the set Millennium Development Goals is mixed. Progress towards five MDGs has been below average but progress has been less satisfactory towards the three other MDGs.” According to the writer, no progress had been made in goal I on poverty reduction as “69% of the populace still live in abject poverty as growth in the economy has not generated adequate employment...” Some progress has been made in achieving universal primary education although Nigeria still records large number of out of school children. For goal 3, gender parity and equality is not achieved in Nigeria although government has made efforts to encourage female economic empowerment; progress is made in reduction of child mortality through improved immunization programmes, but not much progress is made to ensure a safe

¹⁹ Ejemudo; *op. cit.* 61.

²⁰ National Gender Policy; *op. cit.* 8

²¹ Vintagesam, ‘Millennium Development Goals: A Performance Review for Nigeria’; August 26, 2013 available at <http://www.opinionnigeria.com/millennium-development-goals-a> accessed on 5 March 2016.

environment for the Nigerian child with militancy in the Niger Delta blowing up oil pipelines and spilling crude and gas in the environment etc.

The failure of most countries especially the third world countries to achieve the MDGs which were mainly government driven and the need for everyone to participate in ensuring the safety of our planet and engaging in developmental processes that would sustain generations led to the United Nations Sustainable Development Goals. The global goals for sustainable development are 17 items, namely:

Goal 1, No poverty for all; Goal 2, No Hunger; Goal 3, Good Health; Goal 4, Quality Education; Goal 5, Gender Equality; Goal 6, Clean Water and Sanitation; Goal 7, Clean Energy; Goal 8 Good jobs and Economic Security; Goal 9. Innovation and Infrastructure; Goal 10 reduced Inequalities; Goal 11 Sustainable cities and Communities; Goal 12 Responsible Consumption; Goal 13 Protect the Planet; Goal 14, Life below Water; Goal 15, Life on Land; Goal 16, Peace and Justice; Goal 17, Partnership for the goals.

The Sustainable Development Goals programme targets development that meets the need of the present generation without compromising the needs of future generations. The sustenance of the natural resources in a particular environment helps protect the girl-child rights to survival and life. Achieving quality education enhances the girl-child ability to achieve her potentials. In Nigeria, the government's adoption of the 17 Sustainable Development Goals indicate willingness and readiness to enforce the rights of the girl-child as articulated in the UN programme of development. This willingness is further displayed by the appointment of a Senior Special Adviser on the SDGs which is replicated at the State levels to ensure the success of the programme through increased advocacy. It is imperative for government at the Federal and State levels to achieve greater success through the setting up of rehabilitation centres for abused

children, especially the girl –child who in such cases would need immediate medical and psychological help to survive the trauma; and other support systems for children from indigent homes roaming the streets.

5.4 The Role of Civil Society Organizations (CSOs): Non Governmental Agencies (NGOs) in Enforcement of the Rights of the Girl-child

The legal basis for the existence and activities of Civil Society Organizations, (whether Non Governmental organizations (NGOs) or Community Based Organizations (CBOs) in Nigeria is found in the provisions of the Constitution²² which guarantees a citizen’s right to freedom of association so long as the purposes of the association sought to be formed are not illegal. Generally, registration of these organizations may not be compulsory except their activities demand registration or they wish to acquire a legal personality. So these associations whether profit or non-profit making which desire to enjoy the benefits of having a legal personality are by law required to be registered.²³ Civil society organizations which include Non-Governmental Organizations (NGOs) are mainly non-profit making organizations which are formed for charitable purposes and for public interests and so enjoy tax advantages. These civil societies may be in form of Companies limited by guarantee or associations with incorporated trustees registered under Part C of CAMA; and engaged in programmes to alleviate poverty, carry out enlightenment campaigns on national issues, engage in advocacy to inculcate better values and educate people on their rights, on the programmes of government thereby generally ensuring good governance and the entrenching of democratic principles.

²² S. 40 Constitution of the Federal Rep. of Nigeria 1999 (as amended).

²³ See Company and Allied Matters Act (CAMA) Cap C20, Laws of the Federation of Nigeria (LFN) 2004.

Civil Societies are usually formed to provide a platform for organized agitation and pressure on the government to provide reliefs, uphold the rule of law by insisting on the proper application of law, the superiority of the Constitution and generally becoming a voice to the voiceless in society. They pursue on behalf of the society questions of justice, poverty alleviation and discrimination in applying agreed rules of behaviour etcetera. Civil Society organizations help enforce the rights of the girl-child through capacity building programmes by attracting international support for the programmes of non-governmental and Community based organizations at the grassroots. They assist in the protection of human rights by the effective mobilization of persons through improved communication strategies to ensure that obnoxious customs which are contrary to the provisions of the Constitution are jettisoned. These organizations carry out systematic awareness campaign programmes in the print and electronic media and even house to house sensitization of persons and all stakeholders as to their rights, the insistence on the application of the rule of law and to acquaint the public with current issues and practices relevant to the survival of man in society.

The Civil Society organizations champion the cause of enlightenment and education of the girl-child and the society at large to correct the injustice of discriminatory practices against women and the girl-child over the years. They encourage the education of the girl-child against traditional beliefs that the girl-child needs no further improvement outside the abilities to help her be a good mother and wife ensures that the Nigerian girl-child acquires knowledge, competencies and abilities to compete favourably with her peers all over the world. Through the programmes of these organizations, the girl-child acquires knowledge to be economically productive and is also enlightened on key national issues of health, economy, security etcetera to make better and informed decisions about her life. She is better equipped with knowledge to

fight all forms of abuses such as human trafficking, female genital mutilations, harmful widowhood practices etc which may have been previously explained away on cultural and traditional basis as the lot of the female child in life.

The Civil Society Organizations' targets include challenging the status quo of depersonalization of the woman which limits her own self definition to the sexual functions of wife and mother and not as a person in her own right. They are thus engaged in gender sensitization in the country to create a lot of awareness of women and girl-child rights which has actually helped to improve the lot of women. Although progress is slow, many more women are appointed into positions of authority and leadership in various sectors in addition to the creation of a ministry of women affairs dedicated to improving the lot of women and to the complete and total emancipation of the girl-child and women from the shackles of debilitating depersonalization.

According to Dada:²⁴

The role of civil societies and stakeholders in advocating for the rights of women cannot be over-stated. Lawyers should also be encouraged to undertake more pro bono cases to assist women who really need legal representation and advice. This will help to create the enabling environment which includes structures, laws and policies while the stakeholders include, government, women, law enforcement agents, media, courts, religious and traditional rulers, women's rights activists and community advocates. It is advocated that the enforceability and

²⁴ F O Dada, 'The Justiceability and Enforcement of Women's Rights in Nigeria' (2014) 14(5) Global Journal of Human Science: E Economics 23.

justiciability of women's rights in Nigeria must commence with the codification of appropriate laws and instruments followed by the court's insistence on enforcing provisions that are fair and equitable, and not repugnant to justice and good conscience.

Proper education and enlightenment are key to the enforcement of the rights of the girl-child; and the role of non-governmental agencies in this regard cannot be over-emphasized. Non-governmental organizations work actively to promote human rights issues such as freedom of expression, women's rights, proposals for reform of law enforcement agencies and the judiciary. It is trite that laws targeting the protection of girl-child rights must be made enforceable by the judicial system to be meaningful. They should not be mere directions for executive actions which cannot be tested in the court of law. The domestication of the African Charter on Human and Peoples Rights in the form of the African Charter on Human and Peoples Rights (Enforcement and Domestication) Act²⁵ has improved the issue of enforcement of the girl-child rights by making rights hitherto non justiciable under our Constitution as enshrined in Chapter two of the Constitution justiciable under the regional instrument.

Some examples of non-governmental organizations actively engaged in this work of enlightenment of the public include the Civil Liberties Organization (CLO); the WomenAid Collective (WACOL), Prisoners' Rehabilitation and Welfare Action (PRAWA) and Network on Police reforms in Nigeria (NOPRIN), African Women Lawyers Association (AWLA) etcetera.

WACOL, an independent, non governmental, non-profit organization was formed in 1997 with headquarters in Enugu and is committed to helping women and young people in need. It is a gender sensitive organization concerned with gender equality and the protection of human rights for all persons. It is involved in specially:

²⁵ Cap 10, 1990.

Helping women and young persons whose rights are threatened/ or have been denied and who are subjected to physical, mental and/ or sexual abuse. The aim of WACOL is to increase legal protection and fight for better choices for abused women and children, facilitate flow of information and experiences between organizations...that will be used in advocacy for human rights of women and young people.²⁶

WACOL has developed a programme of ending child marriages in Nigeria tagged ‘Girls not Brides’ which involves all sectors and levels in Nigeria adopting a theory of change. This theory of change to end child marriages is in four categories namely:

- i. to empower girls by working directly with them to give them opportunity to build skills and knowledge;
- ii. Supporting young people to be agents of change by mobilizing families and communities against child marriages;
- iii. Providing services;
- iv. Establishing and implementing laws and policies.²⁷

PRAWA²⁸ was established in 1994 with the objective of promoting security, justice and development in Africa. The group engages in training and capacity building, research and advocacy, human rights monitoring, rehabilitation care and support services etcetera. It carried out a research on cases of torture, cruel, inhuman and degrading punishment committed by law enforcement agents in Enugu State in 2011 and made the following findings:

²⁶ WACOL, retrieved from http://wacolnigeria.org/wacol/?page_id=145 accessed on 15 May 2016.

²⁷ WACOL, <http://www.girlsnotbrides.org/members/womens-aid-collective-wacol/> accessed on 20 May 2016.

²⁸ See PRAWA, A Joint Report on ‘Torture and Extrajudicial Killings in Nigeria’ available at www.prawa.org accessed on 17 May 2016.

- i. that victims of torture ranged between the ages of 13 to 54 years with persons within the age range of 26 – 30 years being the most frequent victims of torture in the State.
- ii. methods of torture ranged from prolonged police detention, severe beatings, gunshot wounds, burning with hot objects, squeezing of testicles, inserting objects into the penis, insertion of nails on the feet, electric shocks, suspension on trees, cutting with cutlass etc.
- iii. that the Special Anti Robbery Squad (SARS) have specially designated police officers who torture crime suspects.
- iv. that females were reluctant to reveal their ordeal in police custody as only 1 female out of the 176 victims interviewed was willing to be interviewed.

The Network on Police Reform in Nigeria (NOPRIN) established in 2000 is a combination of about 46 Civil Society organizations aimed at promoting police accountability and respect for human rights; provide opportunity for civil society involvement in police reform, promotion of safety, security and justice in Nigeria. The NOPRIN carries out its mandate through monitoring, field research and investigation, documentation, publication, campaign and advocacy.

The Civil Society Legislative Advocacy Centre (CISLAC) is a non-governmental, non-profit legislative advocacy, lobbying, information sharing and research organization. It encourages human rights protection through the civic education of its tenets of democracy and human rights; bridging the gap between the legislature and the electorate; by engagement of bills before they are passed into law etc. CISLAC was inaugurated in Nigeria in 2006 and works to train and enlighten civil society on its role in policy making, the responsibilities of the legislature to the Nigerian populace, public enlightenment on laws and issues affecting Nigerians. Some of their major issues of focus are on anti-corruption campaigns, human rights (gender equality,

educational equity and improvement, sexuality and reproductive health, children and other vulnerable groups such as beggars, pensioners, refugees and internally displaced persons etc.

This organization focuses on ensuring that citizens are participating in governance at all levels, and that the government is safeguarding the rights and welfare of the people. They also organize several workshops for enlightenment on health and specifically on reproductive health especially on the crises of maternal mortality in Nigeria. It has also through civil society advocacy canvassed for the promulgation of human rights and people oriented legislation while engaging in programmes that strengthen the legal system and guaranteeing a free and independent judiciary and other democratic institutions.

5.5. The Role of Community –Based Organizations (CBOs) in the Enforcement of the Rights of the Girl-Child.

Community based organizations are critical to the protection and promotion of the girl-child rights in the Niger Delta and elsewhere as they are the vehicles of participation of community members in the development process of their various communities. This community participation has been defined by the United Nations as “sharing by people in the benefits of development, active contribution by people to development and involvement of people in decision making at all levels of society.”²⁹

Community-based organizations exist within the communities for the purpose of attaining desired objectives in the interest of the group. CBOs are voluntary and self help efforts of community members to contribute to the development of their communities and it may sometimes involve organizing community members to set developmental goals for the

²⁹ 1978 United Nations Report on the ‘World Social Situation’ cited in V Desai, ‘Community Participation in Development’ in V Desai & R B Potter, *op. cit.* 115.

community with a specific period of time, galvanize men and women to identify community needs, plan and contribute human and material resources towards their achievement.

Desai³⁰ states that the various forms of community participation in development are important:

In the poverty reduction strategies espoused by governments...rights of the people to participate in decision making which directly affects their living conditions; promotion of social development by increasing local self-reliance since people themselves know best what they need, what they want, what is most suitable for their needs...in demonstrating that people can form partnerships with governments, development agencies, private – sector organizations and NGOs to bring about development and poverty reduction.

In strategizing to accomplish set goals, these CBOs may become involved in attracting governmental presence to the community, increasing the peoples' awareness of government programmes and policies and championing the fight to ensure that rights of persons in the community are protected and enforced where necessary. It was actually the failure of government to fulfill its obligations to its citizens especially at the rural level that led to the formation of CBOs to augment government efforts and even initiate projects to improve the lives of their people as well as encourage other organizations and NGOs to fight for the protection of peoples' rights. Okodudu (1998) agrees that it is the failure of government in their traditional role of developing rural communities to enjoy developmental facilities that gave rise to the CBOs as social organizations aimed at mobilizing local resources for the provision of the amenities with the cooperation of other agencies like the non governmental agencies (NGOs).

³⁰ V Desai, 'Community Participation in Development,' in V Desai & R B Potter *ibid* 115.

Community-based organizations are therefore veritable tools and agents of development in fighting the scourge of poverty by ensuring agricultural and rural transformation. These organizations articulate demands of the people; mobilize resources and provide a ready link between the State and communities especially at the rural areas to enhance the sustainable development efforts of government and the strengthening of community institutions. In some communities, the development needed to guarantee the girl-child's rights is championed by Community – Based Organization (CBOs) and Non-Governmental Organizations (NGOs) while in others, community members simply responded to the formation of associations and cooperation in order to attract self-help development projects.

Examples of these Community-based organizations are Age grades, Community Development Unions, the Women groups, the Traditional and kinship institutions, Co-operative Societies etcetera. Some of the objectives of these organizations are to complement development efforts of government in rural communities; organize educational programmes for their members, provide technical and leadership training to members as well as facilitating effective communication and exchange of information among members. They thus act as potential agents of development who partner with the government at the federal, State and local government areas to bring dividends of democracy closer to the people by explaining government principles and programmes; and encouraging the rural population to key into such developmental programmes.

According to Uboh & anor,³¹ “there could be no agricultural and rural transformation if the indigenous potentials represented by the Community Based Organizations are neglected.” Enforcing the girl-child and women's economic rights in the Niger Delta, several community-

³¹ O. Ugbah & E.U. Tibi, 'The Role of Community Based Orgs (Cbos) In Rural and Agricultural Transformation in DeltaState' (2007) 1 (2) African Research Review 178 available at <http://www.ajol.info/index.php/affrev/article/view/41007> accessed on 14 March 2016.

based organizations encourage viable agricultural ventures through credits, information on ready source of farm inputs, seedlings, market strategies and outlets. To Sorkaa and Bur³² “the only viable strategy of agricultural and rural transformation is one that is people oriented, involves the people at all stages of the planning and execution process and is committed to bringing about significant qualitative changes in the lives of all the people. This kind of development should be self-sustaining.” Furthermore, Nwugo³³ opines that:

the achievement of our development plans especially in the rural areas both in quality and quantity can only be fully realized with increased participation of Community Based Organizations (CBOS) in rural and agricultural transformation; and he went further to recommend the establishment of community development liason units in various communities to provide an effective reversible tripartite interaction between government, extension services and Community Based Organization.

The role of different community-based organizations becomes indispensable against the background of the fact that the government on its own cannot successfully carryout all necessary and relevant development programmes. More successes in this regard will be recorded if all stakeholders and especially the community based organizations act as supplements and supporting structures.

³² A P Sorkaa & A Bur, ‘The Role of the Poor in Local Participatory and Informal Structures in Benue State’ A Report submitted for the World Bank Poverty Assessment Qualitative Studies, Washington Dc; 1994 cited in Ugboh & Tibi, *ibid*, 178.

³³ D I Nwugo, ‘Identification and Roles of Opinion Leaders in Integrated Rural Development in Awgu L.G.A.’ in A Ikwuba, Community based Organizations As Alternative Vehicles for Rural Development in Nigeria (2010) 11 (1) NJRS 25.

The role of Community based organizations on the development of communities was also examined by Onyeozu³⁴ who opined that CBOs encouraged the development of the communities through the provision of pipe borne water through the sinking of bore-holes, the support of rural economy through the establishment of community markets and the construction of market stalls; building of town halls and community squares for recreational purposes as well as maintaining the school environmental, setting up scholarships for indigent persons and providing reading and other materials for the schools located in the community. In strategizing to develop the community, the CBOs tackle some economic and social problems of the people to bring about desired change. Some age grades help supply needed labour for farming purposes to sick and impoverished members thereby contributing to the protection of the girl-child's right to life through the provision of sustenance.

The CBOs playing a complementary role to government in protecting the girl-child's right to life, good health and a safe environment has promoted programmes in Rivers State and the Delta State³⁵ to these ends. They have for instance been actively involved in the provision of drinkable water through installation of bore-holes, provision of improved agricultural inputs and provision of social services such as health centres and town halls. In *Aluu*, an *Ikwerre* Community in Rivers State, a Community Based Organization; an association of women called Alice tried to address the problem of adequate maternal and child care by building a structure of five rooms and toilets for midwives and pregnant women to ensure safe delivery in hygienic conditions.³⁶ This action greatly encourages improved health facilities, protects the girl-child and

³⁴ A M Onyeozu; 'Analysis of the Influence of Community Based organizations on Community Development in Rivers State, Nigeria (2010) 2 Academia Arena p.10.

³⁵ See generally A M Onyeozu *ibid*; O Ugboh & E U Tibi *op. cit*.

³⁶ A M Onyeozu, *ibid*.

women's reproductive rights and fundamentally reduces the high mother and child mortality rate in the Community.

According to Ikwuba,³⁷ Community based organizations are tools for transforming the rural communities, and a strategy designed to improve the lives of the rural people. They are engaged in mobilization and utilization of resources for sustainable development. They also carry out humanitarian services to ensure the well-being and development of the community through the supply of drugs and other medical services. They encourage the promotion of the girl-child's economic rights through various youth empowerment and capacity building programmes, skills acquisition, building of markets, granting of credit and loans for commercial and agricultural purposes from locally organized credit schemes, supply of farm inputs and implements etcetera. For instance in Bayelsa in 2006, a CBO called the Kolo Creek Foundation which was formed in the Kolo Creek Government Area mobilized people to carry out some self – help projects such as the building of toilets to improve the sanitary condition of the area, the encouragement of the people's economic activities through the building of a weekly market and by rewiring the electricity project in the area.³⁸

It should however be noted that the efforts of the Community-based Organizations in carrying out programmes which promote the rights of the girl-child in the Niger Delta are purely complementary and not mandatory as they are not government sponsored, nor are they paid for the services or statutorily required to carry out these activities. Though they are required to be registered for the purposes of streamlining their activities and ensuring they act within the law,

³⁷ A Ikwuba, 'Community Based Organizations As Alternative Vehicles for Rural Development Practice in Nigeria' (2010) 11(1) NJRS 2.

³⁸ E Ebeleke, 'The Kolo Creek Foundation' 2007 available at <https://www.pnnatural-Nig.org/kolo/html> accessed May 15, 2016.

their enforcement of the rights of the girl-child as highlighted above are mainly social and not legal.

5.6 Government Policies and the Affirmative Action: National Gender Policy

The Federal Government's concerted effort to ensure gender equality in the country is portrayed through the National Gender Policy³⁹ which is divided into 3 parts. Part 1 deals with the context and rationale on status of gender equality, development implications, problems and challenges of bridging gender inequalities in Nigeria. Furthermore the Policy by its provisions acknowledge the existence of gender inequality in the Nigerian polity and the resultant developmental challenges presented by it especially in working against the girl-child's ability and opportunity to maximize her potentials for development purposes. While Part 2 of the Policy establishes the goals, objectives and priority targets, Part 3 deals with strategies of achieving the policy goals and the institutional framework necessary for the achievement of the stated goals which is to:

Build a just society devoid of discriminations, harness the full potentials of all social groups regardless of sex or circumstance, promote the enjoyment of fundamental human rights and protect the health, social, economic and political well being of all citizens in order to achieve equitable rapid economic growth, evolve an evidence based planning and governance system where human, social, financial and technological resources are efficiently and effectively deployed for sustainable development.

³⁹ The National Coalition on Affirmative Action (NCAA) 'National Gender Policy; Promoting Equal Opportunity' available at http://www.aacoalition.org/national_policy_women.html accessed on 30/6/2016.

The main principles guiding the National Gender Policy (NGP) are ensuring ‘gender mainstreaming’⁴⁰ as an approach to economic reform and national development; promotion and protection of human rights; the recognition of gender issues as central to the achievement of national development. The strategies for achieving the Policy include gender education to promote positive gender culture, the use of legislative processes to ensure gender justice and respect for human rights, promotion of economic reforms and partnership of all sectors to enhance productivity and sustainable development especially to address the needs of women, children and other vulnerable groups. Reducing poverty levels among men and women as a development strategy for the promotion of gender equality is the aim of the Policy which also strives to improve health and living standards of all persons.

It is conceded that the 35% affirmative action for women contained in the National Gender Policy is still not achieved in many spheres of our national life. For instance, it is not achieved in the political arena where fewer women are found in all the elective positions; only 20 women in the National assembly by 2016. In fact, it is stated⁴¹ that Goal 3 of the Millennium Development Goals which is sensitive on equality and empowerment of women is not achieved in Nigeria as only 24 women out of the 360 members of the National Assembly, particularly members of the House of Representatives; and 7 out of the 109 members of the Senate were women in the 7th National assembly. Continuing, the Report⁴² stated that “Nigeria ranks 118th out of 134 countries on the Gender Equality Index (GEI) due to the adolescent girls and women being systematically excluded and disadvantaged.” The exclusion of girls and women alluded to in this report concerns Nigeria as a whole although the story is not different in the Niger Delta

⁴⁰ This means the public policy of assessing the different implications for women and men of any planned policy action including legislation and programmes in all areas and levels of governance.

⁴¹ UN Gender Theme Group, Nigeria, ‘Gender Equality. Briefing Kit’ (2013) Infovision Limited Nigeria.

⁴² *Ibid.*

area where in Rivers State for instance, there is only a female in the 32 member State house of Assembly.

Also the global recognition of the need for women empowerment and gender equality as development strategies to improve standard of living, good governance and ensure that men and women have equal voices in decision making and policy implementation has gone a long way to enforce the rights of the girl-child in Nigeria. The National Gender Policy which has no legal force as it is not an Act of the Legislature but is merely directive and a guide on co-ordinate action adopted by the Federal Ministry of Women Affairs therefore aims “to bring a gender perspective into all planning policy, developing legislation and transformation activities in Nigeria.”⁴³

The 2003 Gender Policy was reviewed in 2007 to produce the National Gender Policy (NGP) of 2007 which provided for “a strategic framework and monitoring measures to enhance rural women’s access to justice, information and equity.” The NGP has made some progress in correcting imbalances in the treatment of women by producing and launching the National Strategic Framework (2008-2012) in 2008; instituting a National Gender Management System in 2008; advocating gender parity in school enrolment. The National Gender Policy Strategic Framework (Implementation Plan) includes Strategic Development Results Framework, Baseline Indicators Framework, Managing for results and Reporting Framework; and finally a Five year Indicative Budget. With the approval of the National Gender Policy by the Federal Executive Council in 2006, the process for the development of a strategic framework for its implementation started in 2007 with the Federal Government “recommitting itself to the implementation of

⁴³ National Gender Policy Strategic Framework (Implementation Plan) Federal republic of Nigeria, 2008-2013 available at http://www.aacoalition.org/national_policy_women.html accessed on 30/6/2016.

national and international conventions and laws in support of gender equality, the empowerment of women and women's human rights.”⁴⁴

The National Gender Policy highlights key areas of focus which have continued to pose major challenges to sustainable development; and they are (i) culture re-orientation and sensitization to change gender perception and stereotypes; (ii) promotion of women's human rights and in particular focusing on sexual and gender based violence (SGBV) and in supporting new legislations and legal rights of women; (iii) promoting the empowerment of women and integrating gender into key sectors of the economy; (iv) women's political participation and engendered governance...⁴⁵ The prospects of applying the girl-child rights in the Niger Delta is enhanced by the inclusion of guiding principles in the NGP such as making gender analysis an integral part of all policy articulation, implementation and evaluation by government and all stakeholders; instituting a gender culture that brings about co-operative interaction of women and men and the recognizing of all persons' human rights; instituting a culture which respects women's and men's capabilities, cultural re-orientation supported by policies and programmes of gender education, sensitization, dialogues etc all targeted at achieving set goals.

The National Gender Policy also puts certain measures in place to support women entrepreneurs in all the parts of the country. The Federal Ministry of Women Affairs acting through the various State Ministries of Women Affairs carried out economic and social empowerment of the Nigerian women through the combination of advocacy and various actions of funding of women's economic schemes and programmes through the micro-credit loan schemes. Typical examples of these were the Women Fund for Economic Empowerment (WOFEE); and the Business and Development Fund for Women (BUDFOW).

⁴⁴ *Op.cit*, p.6.

⁴⁵ *Ibid*, 6.

The WOFEE was started in 2005 and involves an agreement of funding between the Ministry of Women Affairs, the Agricultural Co-operative and Rural Development Bank to create a special funding facility to women co-operative societies at the grassroots to reduce challenges faced by the rural woman to access bank facilities and loans. Despite these efforts however, the major challenge is still the ‘Nigerian’ factor where political players hijack the efforts of government for their cronies and relatives leaving those truly in need of financial aid for business stranded because they do not have direct links with persons in the corridors of power.

The WOFEE has successfully taken off only in 8 out of the 36 states of the Federation; namely in Adamawa, Akwa Ibom, Bauchi, Kano, Kaduna, kwara, Ondo and Plateau States.⁴⁶ It has not made much impact in the Niger Delta area because apart from Akwa ibom and to an extent Ondo States, there is no record of the activities and impact of these programmes on the girl-child and women of the area. The BUDFOW on the other hand is targeted at boosting the financial bases of women entrepreneurs who have the potential to transmit from micro to small, medium and large scale businesses. While WOFEE is targeted at co-operative societies and granting group credit facilities for rural women, BUDFOW targets individual women entrepreneurs. The Ministry of Niger Delta Affairs created a Department of Economic Empowerment which is charged with facilitating the development of micro, small and medium enterprises aimed at improving the standards of living through employment generation, wealth creation and curtailing youth restiveness.

In addition to these federal efforts in enforcing the economic rights of the girl-child some States of the Niger Delta have taken other steps to enforce the rights of the girl-child. For

⁴⁶ Civil Society Legislative Advocacy Centre available at <https://www.naij.com/tag/civil-society> accessed on 23 May 2016.

instance the Rivers State Microfinance Agency (RIMA) established in 2008 is geared towards poverty reduction, entrepreneurship development, employment generation etcetera through the grant of market trader's loan, agricultural loans and financial funds to micro and small entrepreneurs across the State. The Strategic Development Results Framework is focused on establishing an institutional framework for the advancement of the status of women and to achieve gender equality, promotes new attitudes and values through advocacy while strengthening the voice and leadership of women for continuous organizing and ensuring that gender equality issues remain high on the national agenda.

The Federal government must however show serious commitment in the implementation of the principles enshrined in the NGP by providing required resources, supervision and supportive programmes which will actually translate the rhetorics which are essentially theoretical to pragmatic and result oriented ventures. To this end, Ejemudo⁴⁷ regrets that a major challenge to the achieving of gender equality in Nigeria is the lack of political will by the government of the Federation to implement the laudable policies already formulated through the provision of necessary institutional, manpower and infrastructural facilities; the dearth of adequate gender technical expertise.

Government has adopted and implemented other policies such as the National Economic Empowerment and Development Strategy (NEEDS) which was concerned with addressing poverty and achieving sustainable growth against the background of our social, political and cultural problems. The programme also sought to provide for the engendering of all programmes emanating from the NEEDS programmes through the 30% affirmative action. This Policy encouraged women participation in the leadership of organizations which hitherto were the preserves of the men. For instance, this 30% affirmative action was directed to apply in all

⁴⁷ K B Ejemudo; *op. cit.*, 65.

government agencies and apparati leading in 2003 to the Nigerian Labour Congress (NLC) articulation of a gender policy for the union which amended its constitution to provide for a national women's commission whose chairperson shall have the status of the vice-president of the NLC.

To change public perception of the roles of women and increase respect for women and child rights, the NGP partnerships with the Federal Ministry of Education, National Board of Films, National/States Orientation Agencies office of the Special Adviser to the President on MDGs to change the curriculum of schools to integrate changing roles of women and men in society, support the release of locally produced home videos focusing on changing roles of women, gender equality and mass campaigns organized by National Orientation Agency on the empowerment of women.

The NGP also identifies legal and constitutional reforms to be undertaken to promote the principles of non discrimination, protection and promotion of women and child rights. In these areas, the Federal Ministry of Women Affairs is partnering with the Federal Ministry of Justice, National Law Reform Commission, National Judicial Council, the Nigerian Police and National Human Rights Commission to ensure that relevant laws and penal codes are raised to include key principles and provisions of CEDAW & CRA to protect women and children's rights.

5.7 Customary Practices and Enforcement Strategies on the Rights of the Girl-child from other Jurisdictions: Examples of Kenya, Southern Africa Development Community States (SADCS) and India.

Other regions of the world equally face the challenge of violations of the girl-child rights by various customary practices despite modern legal trends to the contrary. Enforcing the rights of

the girl-child in these areas have also become imperative as States in compliance with international agreements strive to ensure the protection of the rights of the girl-child. The prospects for the enforcement of the rights of the girl-child and women in other climes are receiving a great boost with constitutional amendments to expunge discriminatory provisions against girl-child rights; with more women and other non-governmental organizations championing enlightenment campaigns and sponsoring programmes for gender equality and justice.

The Case of Kenya

Various forms of discriminations of the girl-child's rights emanating from customary practices exist among different communities and tribes in Kenya. For instance, among the *Masai* people the girl child is forced to marry early to provide wealth to the natal family. This practice discourages investment of parents into the education and training of the girl-child who according to custom would soon belong to another family who will now enjoy the benefits of her training. They are also subjected to the indignities of female genital mutilations (FGM) and discriminatory inheritance rights.

According to Abel,⁴⁸ the customary law of the *Luo* people permitted restitution in homicide cases where the clan of a murderer was required to "provide a girl to bear progeny to the name of the deceased." This means that this girl-child is against her will "sold" or surrendered to the family of the murder victim for the purpose of procreation as replacement for the dead. Also among the *Gusii*, "girls are required to marry early...no more than 15years of age. Premarital intercourse is also common although once discovered it reduces the bride wealth.

⁴⁸ R L Abel, 'Customary Laws of Wrongs in Kenya. An Essay in Research Method' (1969) Vol 17, The American Journal of Comparative Law, 593 available at http://digitalcommons.law.yale.edu/fss_papers/4013.

According to Abel, a *Gusii* husband after the payment of the bride price has control of the wife and is also by tradition allowed to “shave the hair of their wives and keep the shavings to retain a wife who may want to leave the marriage as the shaving of her hair would publicly brand her a disobedient wife and a suspected adulteress.”⁴⁹ This process of course stigmatizes the girl-child and is a violation of her right to dignity of the human person. The *Nandi* culture on the other hand permitted elderly women who were childless to marry other women to bear children for them in a woman to woman marriage system.⁵⁰ Daughters are generally regarded as non permanent members of their natal family and so are excluded from inheritance of land and property. In fact according to Harrington and Chopra, “daughters have great difficulty accessing land through inheritance since marriage would transfer the lands outside the natal holdings and into their husband’s hands.”⁵¹

The government of Kenya has tried to contain these cultural violations of the rights of the girl-child through legislation and by the ratification of international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, the UN Convention on the Rights of the Child (CRC) in 1990, International Convention on Civil and Political Rights (ICCPR), UN Convention against Torture (CAT), the African Charter on Human and Peoples Rights, the African Union Solemn Declaration on Gender and Equality (2004) etcetera. The Kenyan Constitution⁵² also provides that any treaty or Convention ratified by the government shall form part of the laws of Kenya. The Constitution recognizes customary law but invalidates it to the extent that it conflicts with the provisions of the Constitution.⁵³

⁴⁹ *Ibid*, 608.

⁵⁰ UN Women, ‘Virtual Knowledge To End Violence Against Women and Girls’ available at <http://www.endvawnow.org/en/articles/767-inheritance-laws.html?>

⁵¹ C Harrington and T Chopra, ‘Arguing Traditions: Denying Women Access To Land Rights’ (2010) Justice for the Poor Report- The World Bank

⁵² Art. 2 (6) Constitution of Kenya 2010.

⁵³ Art. 2(4) *ibid*.

On issues bordering on the enforcement of the rights of women and children in Kenya, the old 1969 Kenyan Constitution harbored some discriminatory laws which were not supportive of girl-child rights. For example, the Constitution's guarantee of non-discrimination does not apply with respect to personal laws, in particular in the areas of marriage, divorce, adoption, burial and succession. It also did not provide equal citizenship rights for women and it recognized the application of customary laws in Kenya in cases related to marriage, divorce, death and inheritance issues. In addition, the Matrimonial Property Bill and the Equal Opportunities Bill is proposed to further promote women's rights, eradicate female genital mutilations permitted by customary law while the enactment of the Domestic Violence (Family Protection) Bill has been pending since 2002. Legislative changes with regard to gender issues have been impeded by the fact that there have been a lot of delays in parliament regarding some key gender-related bills which, if passed, would go a long way within cultural contexts in addressing some of the discriminatory issues affecting women with regard to matrimonial issues, property rights and inheritance.

The amendment of the 1969 Constitution gave birth to a new Constitution which attempted to address some of these issues although there is no statutory definition of what would amount to discrimination against women in neither the Kenyan Constitution nor in any other local legislation and a general/working definition of torture is also lacking in all Kenyan Statutes, thereby failing to provide a basis for tackling issues of discrimination in all spheres.⁵⁴

The current Kenyan Constitution 2010 shows a strong commitment to principles of equality and non-discrimination. It specifically provided that every person is equal before the law... equality includes the full and equal enjoyment of all rights and fundamental

⁵⁴ F Restifo 'Violence Against Women and Children in Kenya' A Report by World Organization Against Torture (OMCT) available at <https://www.kenyaplex.com>1112-coalition-on-violence-against-women-kenya-covaw-nairobi.aspx> accessed on 20/05/16.

freedoms...women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres...⁵⁵ It also provides for the “elimination of gender discrimination in law, customs and practices.”⁵⁶It expressly states that land rights under customary law are to be respected and fully compensated, unless they are repugnant to written law. The Constitution made important reforms in the area of citizenship by ending gender discrimination in relation to the right of a woman to pass citizenship to her children or spouse etcetera, and that “parties to a marriage have equal rights at the point of marriage, during the marriage and at the dissolution”⁵⁷.

To tackle violations of the rights of women and children in Kenya, the government created a Ministry of Gender, Children and Social Development as well as a National Commission of Gender Development to implement the National Policy on gender. Gender officers are also appointed in ministries and state corporations. The government has also set out a strategy to increase opportunities for women’s participation in economic, social and political decision making through a specialized programme tagged Vision 2030. The government also established a Women’s Enterprise Fund⁵⁸ to provide women access to financial services; and enacted a Succession Act targeted at countering cultural attitudes promoting discriminations against women and the girl-child. This Act especially provides for the right of females to inherit property that was hitherto inaccessible under customary law.

The government has also made efforts through the legislative process to fight violence against women through the promotion of a Family Protection Bill and a Sexual Offences Act; in

⁵⁵ Art 27 Constitution of Kenya 2010 ;which provides the right to equality and freedom from discrimination under the Bill of Rights.

⁵⁶ Art 60(1) *ibid*.

⁵⁷ Art. 45(3) *ibid*.

⁵⁸ A Andanje, ‘ Efforts to Empower Women, Initiatives to Promote Sustainable Economic Growth Mutually Reinforcing Says Third Committee Speakers’- (A Report on Kenya) 64 General Assembly, Third Committee, 13 October 2009 available at http://www.un.org/press/en/2009/gashc_3950.doc.htm accessed on 19/05/16.

addition to partnering with civil societies and community-based organizations to re-orientate citizens and change attitudes that encourage abuse of girl-child rights as well as correct the inequalities between men and women. Female victims of violence are encouraged by the Ministry to seek legal recourse through a witness protection scheme where protection is provided for witnesses who fear reprisals.

In Kenya some specialized non-governmental organizations promote campaigns to showcase and discourage violence against women and the girl-child. An example of such an organization is the Coalition on Violence against Women - Kenya, COVAW (K), which is a registered, non-partisan and non-profit making national women's human rights non-governmental organization working to promote and advance women's human rights in a society free from all forms of violence against women. COVAW (K) was established in 1995 as a result of a workshop organized by Women in Law and Development in Africa, (WILDAF) which sought to strengthen the networking capacities of women's organizations in Kenya. COVAW (K) as an organized body sought to encourage victims of violence to speak out and report such acts of violations; be committed to breaking the silence concerning violence against women and girls in Kenyan communities, and work towards building capacities of individuals, communities and the entire nation to recognize violence against women as an abuse of human rights and also be encouraged to take appropriate measures to stop it by punishing perpetrators appropriately. Since its inception, COVAW (K) has continued to be instrumental in labeling and treating violence against women as a crime and a human rights violation, whether perpetrated in private or in the public domain. Its overall aim is to reduce the incidence of violence against women and in cases where they occur to improve the management of violence against women.

Another organization in the fight to ensure the protection of the human rights of children is the Children's Legal Action Network (CLAN) which is a registered charitable trust formed in 1998 with the core mandate of providing free legal aid to children who have been abused, those in need of care and protection and those in conflict with the law. CLAN's mission is to advocate for, protect and enhance the rights and welfare of children through the provision of free legal aid and related services by working together with frontline service providers including Government departments, civil society organizations, individuals and children.

An organization formed to ensure the protection of the rights of the child in Kenya is the Kenya Alliance for the Advancement of Children (KAACR) which is a coalition of many child-focused organizations committed to the implementation of the UN Convention on the Rights of the Child. KAACR was established in 1989 with the primary duty of monitoring and evaluating the implementation and non-observance of the principles and provisions of the Convention in Kenya, and since its inception, the organization has been implementing programmes on child rights with a special focus on promoting information exchange and cooperation among organizations working with children and advocating for policy reforms which address the interests and wellbeing of children in Kenya as reflected in the Convention on the Rights of the Child; whilst a Children's Foundation called 'The Cradle' is a non-profit-making and non-governmental organization committed to the protection, promotion and enhancement of the rights of the child through court representation, advocacy and law reform. In 1999, the foundation set up a pilot programme for the first legal aid clinic of its kind for children and has since continued protecting and promoting the rights of the child.

The African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) is an African child-rights organization cutting across many countries in Africa and

currently has chapters in 17 African countries. In Kenya, ANPPCAN is a charitable, non-profit organization registered as a non-governmental organization in 1995. It operates as a national resource centre on child abuse, child neglect and promoter of children's rights. It provides information and technical expertise on child protection and child rights issues; carries out research on emerging children's issues; and when necessary lobbies governments, donors, other NGOs and communities on behalf of children.

The Legal Resources Foundation (LRF) established in 1994 as an autonomous project of the Kenyan Human Rights Commission was in the year 2000 registered as a trust and became an independent legal entity. Since then LRF has developed innovative methods to raise legal and human rights awareness among the young, underprivileged and undereducated classes in Kenya. Its programmes consist of community-based paralegal training, theatre for civic education, legal and human rights education for secondary schools, production of educational radio programmes and publication of materials to be used in its own and similar educational projects.

Childline Kenya is a non-governmental organization registered in 2004 in Kenya to protect and promote a culture of children's and human rights. The organization provides a nationwide 24-hour toll-free helpline for counseling and referral services to those in difficult situations, including children, young persons and their families. And it brings together a variety of organizations that provide services in the areas of health, legal aid, counseling, rescue and emergency response, child welfare, child rights promotion and advocacy. Through the helpline, children can access essential services through an allied referral system, thereby providing a platform for a coordinated response to children's concerns in Kenya.

According to Otedo,⁵⁹ the challenges to application of girl-child rights in Kenya are varied but that the Kenyan government has put the following educational programmes in place to tackle girl-child education namely: (i) Innovative Women Teachers (IWT) programme which is an empowerment programme for women teachers and the girl-child to build capacity of the teachers especially in ICT; (ii) Partners in Learning (PIL); (iii) Innovative Schools; (iv) Innovative Students. To Young,⁶⁰ “the Constitution passed in 2010 provides powerful opportunities for women from minority and indigenous communities to capitalize on the new legal and political framework...” It also goes ahead to provide that all State organs and public officers have the duty to address the needs of vulnerable groups within the society including women, older members of the society etc.

The Case of the Southern African Development Community (SADC) States

The SADC is a regional economic community of 15 member states established in 1992 and is committed to regional integration and poverty eradication within Southern Africa through economic development and by ensuring peace and security in the region. The Community with member states as Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe aim to create common political values, systems and institutions; build social and cultural ties; alleviate poverty; uphold human rights and the rule of

⁵⁹ D A Otedo, ‘Gender and Education: Tackling the Challenges to Child Education in Kenya’ (2009); Education Beyond Borders available at <http://www.educationbeyondborders.org/m/blogpost?id=22137> accessed on 23 April 2016.

⁶⁰ L A Young, ‘Challenges at the Intersection of gender and Ethnic identity in Kenya’ (2012), Minority Rights Group International available at <http://humanrightshouse.org/noop/page.php?p=Articles/5345.html&d=1> accessed on 5 May 2016.

law.⁶¹ These States have similar cultural practices which influence the application of the rights of the girl-child in the region. It has been stated for instance, that:

In South Africa, Swaziland and Lesotho there is an emerging belief that sexual intercourse with a young virgin girl can cure HIV and AIDS and this has led to an increase in sexual violence against girls resulting in huge psychological scars on the victims. Traditional practices such as polygamy, payment of bride price (*lobola*) and child marriages are all synonymous with gender violence as they reduce women to sub-human assets belonging to men. Payment of bride price and child marriages take place in most SADC member states as part of traditional culture ignoring changes in social contexts.⁶²

Some of these cultural practices common to the member States include female genital mutilations of various degrees, child abduction and child marriages, sale of the girl-child through the payment of bride prices and the general disinheritance of the girl-child. Although the female genital mutilations are generally practiced in the SADC States, they are prevalent in Tanzania and Malawi where the ritual is performed on young girls.⁶³ In some of the ethnic groups FGM is compulsory, while in others, women who have not undergone the practice may find it difficult to get husbands. In some regions however mass circumcisions are carried out openly where thousands of girls' genitals are mutilated at the same time. In Malawi, FGM entails cutting off the tips of girls' clitoris by a traditional nurse/counsellor using finger nails and followed by

⁶¹ Retrieved from <http://www.southafrica.info/africa/sadc.html#> on 24 May 2016

⁶² N Wadesango, S Rembe & O Chabaya, 'Violations of Women's Rights by Harmful Traditional Practices;' (2011) 13 (2) *Kamla-Raj, Anthropologists*, 124.

⁶³ K Chinnian-Kester, 'Female Genital Mutilation as a Form of Violence against Women and Girls: An Analysis of the Effectiveness of International Human Rights Law' Unpublished Masters' Thesis, Cape Town: University of Western Cape (2005) p. 46.

inserting an egg or a wooden penis the size of a soft drink bottle in the vagina to widen it to accommodate any size of penis.⁶⁴ This is a clear case of invasion of the girl's privacy and can lead to serious health challenges.

Marriage by abduction is also a common practice found in some of the SADC countries and especially in Zimbabwe and South Africa which violates the rights of the girl child as the girl is carried away by a group of people, one of them being the future husband. She is kept hidden and raped to make her succumb to the marriage after which family members from both sides meet and discuss marriage rites between the abducted girl and the would- be husband. By this method she is effectively forced into marriage without her consent.⁶⁵ A similar practice of wife abduction called '*nwanwinya okwnuri*'⁶⁶ existed among the Ogba people of Rivers State in the Niger Delta although this practice has become obsolete with the influence of Christianity.

Another form of abduction commonly practiced in the region is called the *ukuthwala* custom or bride abduction especially among some rural Xhosa communities in the Transkei in South Africa⁶⁷ and the procedure involves the intending groom, with some of his friends waylaying the intended bride and forcibly taking her to the young man's home to be made his wife by sleeping with her before making a report at the girl's home to inform her family of their daughter's safety with them. They then proceed to indicate the bride-price called *lobolo* usually cattle to be paid on the girl's head and once this is done, the status of the girl is immediately

⁶⁴ Malawian Government 2006. '*National Progress Report on World fit for Children (WFFC)*. Lilongwe: Malawi. Malawi Human Rights Commission 2005. *Research Report on Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi*. Lilongwe: Malawi available on <http://www.thepresidency.gov.za> accessed on May 24, 2016.

⁶⁵ *Ibid.*

⁶⁶ This is where a particular age-group hijacks a maiden and forcefully circumcises her thereby initiating her into womanhood and marriage before word is sent to her people. Another form is where a younger sister who escorts her married sister to her new home is equally forced into marrying another member of the larger family before the parents are informed. In such forced marriages, the abductors will readily pay any fines imposed on them by the girl's parents.

⁶⁷ Z Mfono, 'The custom of bride abduction holds its own against time' (2000) 45 *Agenda Feminist Media*, 76-80.

elevated to that of a young wife. It is the girl-child of between 12 and 15 years that is the target of this form of abduction. This practice has greatly hampered the enforcement of the girl-child rights.

Commenting on the adverse effects of abduction marriages,⁶⁸ Tshabalala-Msimang stated that:

Child marriage is regarded as a form of gender-based violence against girl child. Given this, we need to acknowledge that this practice will ultimately compromise the development of the girl child and can result in early pregnancies, increasing the chances of maternal mortality. Furthermore, the young girl will suffer from social isolation, with little or no education, poor vocational training, responsible for household chores in running families at young age, will increase her vulnerability to domestic violence. This simply then reinforces the gendered nature of poverty.

Child marriages of various forms are recognized in the SADC region and are a violation of human rights whether it happens to a girl or a boy, as it represents one of the most prevalent forms of sexual abuse and exploitation of girls.⁶⁹ According to Wadesango et al,⁷⁰ child marriages are practiced in Zimbabwe. It may take the form of parents luring a male tenant on an estate who is hard working and shows high prospects for doing well financially into marrying their teenage daughters by using her as payment for work done as they would claim lack of capacity to pay for his services or the system adopted in some parts of Tanzania especially among pastoral groups, where parents send girls as young as 9 years old to stay with rich men after they have already

⁶⁸ M Tshabalala-Msimang, 'Girl Child Abductions, Forced and Early Marriages' An Address by Dr Manto Tshabalala-Msimang, Minister in The Presidency during the Lusikisiki Imbizo ;24 March 2009 available on <http://www.thepresidency.gov.za> accessed on 30 July, 2015.

⁶⁹ Malawi Human Rights Commission, *op. cit.*

⁷⁰ N Wadesango et al, *op. cit.*

reached an agreement with the rich man on the amount of money or cattle that would be paid as bride price. In some parts of Zimbabwe, Malawi, Zambia, Lesotho and South Africa the husband is even given a younger sister or niece of his wife to take as a bonus (second) wife; whilst in Malawi and Zimbabwe, infant girls may be married off to pay and settle family debts and as a compensation for pledging.⁷¹

Another identifiable traditional practice which violates the girl-child rights to the dignity of the human person and equality is the virginity testing approved by traditional rulers in most of the SADC States. According to Kaarsholm “virginity testing is another cultural practice which violates the rights of women, especially girls. This practice was common in African societies in the 19th century and is now enjoying contemporary revival and popularity after a long period of dormancy.⁷² Virginity tests according to Chirau were used to bargain for a high bride price by parents.⁷³ . This practice however exposes the girl-child to certain indignities of inspection of her private parts, in addition to possible ridicule and stigmatization in the event that she failed the virginity test. As Le Roux⁷⁴ states:

The female participants’ right to equality is infringed by this practice being predominantly applicable to women only. This unfairly places the responsibility of being sexually active on women... Failing virginity tests leads to stigmatization and mocking by other participants as well as the community. This is undignified as the girls are humiliated in the

⁷¹ I Chinyangara , I Chokuwenga , & ors, ‘Indicators for Children’s Rights, Zimbabwe Country Case Study’ (1996) available at http://www.childwatch.uio.no/cwi/projects/indicators/Zimbabwe/ind_zim_intro.html retrieved on 23 June, 2014).

⁷²P Kaarsholm ‘Moral Panic and Cultural Mobilisation: Responses to Transition, Crime and HIV/AIDS in Kwazulu Natal’ (2005) 45 *Development and Change*, 140- 146.

⁷³ N Chirau, ‘Lobola: Implications of the Practice on the Reproductive Rights of Women in Seven Southern African Countries, Including Zimbabwe Harare’ (2002) WLSA17.

⁷⁴ L Le Roux, *Harmful Traditional Practices, (Male Circumcision and Virginity Testing of Girls) and the Legal Rights of Children*. Unpublished Masters’ Thesis, 2006 Cape Town: University of Western Cape, p. 64.

process. ...The pressure by the community to take part in this ritual also infringes the participant's right to bodily integrity.

This right to bodily integrity⁷⁵ is provided under the South African domestic legislation.

In South Africa however, virginity testing is generally prohibited by law except in certain conditions;⁷⁶ while in Zimbabwe, there is no law that prohibits virginity testing although sexual abuse and exploitation of children is covered under the Criminal Law (Codification) Act 257⁷⁷

The governments of the SADC States have taken legislative and other measures to outlaw traditional and cultural practices which violate the rights of women and the girl-child in the region; although the effectiveness of these measures is still debatable.

In Tanzania, economic empowerment is highlighted as a route to improving women's social status. According to Mariam Mwaffisi,⁷⁸ Tanzania is committed to attaining gender equality and women empowerment; and its achievements in this regard included gender parity in education enrolment and the formation of science camps for the girls. Government has also surpassed the 30% threshold for women in public service and parliament and was now reaching 50%. To curtail violence against women and the girl-child, government established a National Action Plan on the prevention and eradication of violence against women and children through a

⁷⁵ S. 12(2) Chapter Two, Constitution of South Africa 1997 which contains the Bill of Rights provides for the right to bodily and psychological integrity which includes the right to make decisions concerning reproduction, to security in and control over their body; and not to be subjected to medical or scientific experiments without their informed consent.

⁷⁶ S. 12(4) Children's Act of South Africa 2005 which prohibits virginity testing of children under the age of 16, although S.12 (5) allows virginity testing provided the following conditions are met, namely: (a) if the child has given consent to the testing in the prescribed manner;(b) after proper counselling of the child; and (a) in the manner prescribed. Section 12 (6) emphasize that disclosure of the results of virginity testing may not be made known without the consent of the affected child while section 12 (7) outlaws marking of the body of the child who has undergone such testing.

⁷⁷ R Hanzi, '*Sexual Abuse and Exploitation of the Girl Child through Cultural Practices in Zimbabwe: A Human Rights Perspective*' Unpublished Masters' Thesis, 2006; Pretoria: Centre University of Pretoria, p.41

⁷⁸ M Mwaffisi, cited in 'Efforts To empower Women, initiatives To promote Sustainable Economic Growth Mutually Reinforcing'; Third Committee Speakers, 64 General Assembly, Third Committee, 13th October 2009 available at <http://www.un.org/press/en/2009/gashc.3950.doc.htm>

campaign tagged “Say No to Violence against Women in Tanzania. The government has also taken steps to improve the status of women by actively promoting savings and credit societies in both rural and urban areas, introduced a Social Action Fund and a Woman’s Bank to provide women with required training and credit for businesses. The Tanzanian government has also enacted relevant laws to ensure access and ownership of land by women.

Most of the States of the SADC have ratified the CEDAW and the CRC. Article 2 of the CRC has urged states to prohibit gender discrimination and recognize the principle of equality;⁷⁹ and it has also identified and communicated to States areas where reform should be made in civil and penal legislation regarding the minimum age for marriage, arguing that the fact that girls mature earlier than boys do not mean that they should be considered adults before the law prescribed for marriage nor should they be deprived of the protection provided by the CRC. States have been advised to raise the minimum age for a child to be married in accordance with the provisions of the Convention as in most of the countries it is below eighteen years while in two countries, Madagascar and Tanzania, it is below sixteen years. There are however differences in minimum ages of marriage for boys and girls in Madagascar, Malawi, Mozambique, South Africa, Tanzania and Zimbabwe. There are also age differences under the marriage laws and under customary law.⁸⁰

According to Jonas⁸¹ this difference in law exist in Tanzania. According to section 13 of the Law of Marriage Act, the age of marriage is 18 years and above. Girls, however, can be married at the age of 15 with the consent of the father and where there is no father, the mother

⁷⁹ UNICEF; *Child Protection: An Analysis and Achievements in 2003*. (New York. UNICEF 2003)11.

⁸⁰ African Child Policy Forum. *Report on Realising Rights for Children: Harmonisation of Laws on Children Eastern and Southern Africa*. (Addis Ababa:Ethiopia, 2007) p.5.

⁸¹ B Jonas, *Towards Effective Implementation of Children’s Rights in Tanzania: Lessons and Opportunities from Ghana and South Africa*. Unpublished Masters’Thesis, Pretoria: University of Pretoria, South Africa; 2006 p.54

although marriage for girls below fifteen years but not below fourteen years can be permitted by court order. This position to him is discriminatory towards girl-child and is a violation of the rights of the child.⁸² It is apparent from the foregoing therefore that although appropriate laws exist, they are both inconsistent and ineffective or do not sufficiently protect children especially the girl-child from early marriages. In some of the countries in the region, it is the parents and not the child's consent that is required to give validity to the marriage. It is thus clear that children do not receive the required protection of the law because some of their parents still push for early marriages in order to acquire wealth.⁸³ This situation calls for more work by these States in the area of strategizing for the effective enforcement and protection of the rights of women and children in this region.

The Case of India

Historically, India was known for several culturally based violations of women's human rights such as the 'self immolation' of widows after the death of their husbands called the practice of Sati.⁸⁴ Also child marriages were common leading to the enactment of the 1929 Child Marriage Restraint Act prohibiting marriages of minors under 14 years old. Rape and other forms of sexual exploitation and discrimination of tribes based on the caste system were also rife.⁸⁵ The country has been quoted to be home to the largest number of sexually abused children in the world.⁸⁶

⁸² See S. 2 CRC & S.21 ACRWC

⁸³ UNICEF 2003, *op. cit.*

⁸⁴ Human Rights Watch 2014 available at <https://en.m.wikipedia.org/wiki/Humanrightswatch/> accessed on April 7, 2016.

⁸⁵ *Ibid.*

⁸⁶ BBC News, ' Why An MP Wants India to Talk About Child Sex Abuses' cited in <https://en.m.wikipedia.org/wiki/humanrightswatch> accessed on June 1, 2016.

To better protect the human rights of the girl-child and women, the Indian government according to Mahtab⁸⁷ aiming at empowering women politically, educationally, economically and legally established a Ministry of Women and Child Development charged with formulation and administration of the rules, regulations and laws relating to women and child development. The Ministry also implements certain innovative programmes for women and children such as welfare and support services, training for employment and income generation, awareness generation and gender sensitization.⁸⁸The Ministry is also involved in micro credit schemes for economic empowerment, establishing support systems such as hostels for working women and self-help programmes which creates economically sustainable self-help groups.

The Constitution of India provides for fundamental rights which include freedom of speech and religion. According to the Human Rights Watch of 2014, “India took positive steps in strengthening laws protecting women and children and in several important cases, prosecuting State security forces for extrajudicial killings.”⁸⁹ A National Human Rights Commission was also established to handle reports of violations, in addition to enacting the right to information Act 2005 to give the citizens access to information held by public authorities. The universal right to employment is guaranteed by the National Rural Employment Guarantee Act (NREGA) 2005.

In 2012, India introduced the Protection of Children from Sexual Offences Act (POCSO) to deal with cases of child sexual abuse.⁹⁰ According to Herath & anor⁹¹, “India has the highest number of people living in conditions of slavery such as in bonded labour where a person

⁸⁷ S B Mahtab, A Report on India cited in ‘Efforts To empower Women, initiatives To promote Sustainable Economic Growth Mutually Reinforcing’; Third Committee Speakers, 64 General Assembly, Third Committee, 13th October 2009 available at http://www.un.org/press/en/2009/gashc_3950.doc.htm accessed on May 8, 2016.

⁸⁸ Indian Laws Relating To Women & Children. Available at <https://wcd.nic.in/> accessed on June 2, 2016.

⁸⁹ *Op. cit.*

⁹⁰ *Ibid.*

⁹¹ G Herath & K Sharma, *Child labour in South Asia*, (Burlington: Ashgate Publishing Company, 2007) p. 100.

pledges himself or herself against a loan; also such debt bondage of parents can be inherited by the children who will be required to pay off the debt.

The Indian government has enacted several laws pertaining to women and children in India⁹² such as:

- i. The Commission of Sati (Prevention) Act 1987.
- ii. Dowry Prohibition Act 1961.
- iii. Indecent Representation of Women (Prohibition) Act 1986.
- iv. National Commission for Women Act 1990.
- v. Protection of women from Domestic Violence Act 2005.
- vi. Immoral Traffic (Prevention) Act 1956.
- vii Child Labour (Prohibition & Regulation) Act 1986.

⁹² Indian Laws Relating To Women, *op. cit.*

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

Issues concerning the girl-child in society, whether traditional or modern occupy the front burner of discussions across the globe. The attention centered on these human species is to a large extent due to the fact that they are regarded as one of the vulnerable groups who would naturally be exposed to various forms of violations ranging from sexual assault, wife battering and neglect to other forms of discriminatory cultural practices. Discriminations which breed infringements of fundamental human rights are rooted in our various customary practices principally evolved and administered by men in a patriarchal society to display their perceived superior roles.

Nigeria has shown gross inequity in gender issues. Gender discriminations persist in Nigeria despite the presence of both national and international legal instruments to the contrary. The girl-child experiences peculiar discriminatory practices despite constitutional protection and these violations of the girl-child rights are illustrated through the continued practice of female genital mutilations, forced marriages of the physically ill prepared girl-child; culturally sanctioned disinheritance of the girl-child; exploitative child labour; the continued raping and sexual molestation of the girl-child, the poverty of the Niger Delta environment in the midst of oil exploitation which exposes the girl-child to a higher risk of sexual exploitation for survival; etcetera. The patriarchal system which emphasizes descent along father's line has worsened the fate of the girl-child as she plays the second fiddle role to the male child and with an assured traditional role in the kitchen which does not require the expertise garnered from western

education. The commonly used cliché that it is a ‘man’s world’ is brutal to womanhood but alas it is generally true as we see custom and tradition over time shape the thinking of both men and women in society to accept and promote this notion of man’s natural superiority over the woman. This societal approved notion is responsible for the slow pace of dislodgement of practices; cultural and otherwise which are clearly inhibitive of the exercise of the woman’s fundamental rights. Men generally, whether in the judiciary, legislature or the executive arm of government often wonder what the fuss about women rights are about because they have been conditioned by the society through our various customs and traditions to accept their domineering roles over women and many women have even learnt to accept their subordinate positions passively. Many women facing gender inequality in various forms console themselves with the fact that it is a man’s world and so accept all forms of discriminations as part of life; seeing and accepting that they are the weaker sex and so are expecting protection from men who are stronger rather than fighting a clear injustice of the system.

The enforcement of the rights of the girl-child in the Niger Delta faces major challenges. Challenges to the protection of the human rights of the girl-child in the Niger Delta are attributable to the issues of patriarchy in our society, the deep rooted and practiced traditional beliefs and customs, the very poor level of education and enlightenment. In addition to these factors is the presence of some of our laws which are clearly discriminatory against the girl-child and so reflect aspirations in direct variance with the international human rights instruments ratified by Nigeria; and the presence of many customary laws which provide institutional support for practices violative of the rights of the girl-child such as early marriages, female genital mutilations, obnoxious and barbaric widowhood rites and disinheritance of the girl-child which clearly limits her enjoyment of the right of equality enshrined in the Constitution. Domestic

violence is a violation of the rights of the girl-child and is a major cause of death of the girl-child as well as a leading cause for various forms of disability of the girl-child such as blindness, and other physical challenges.

Customary laws which are derivable from our customs and traditions infringe on the fundamental rights of persons in the Niger Delta. It generally influences and continues to interfere with the application and enforcement of girl child rights in the Niger Delta. Discriminations against women are counter-productive to national development. The marginalization of women which is sanctioned by certain unwholesome customs stifle initiative, skill and knowledge. The girl-child is still denied her right to inherit property from the father or husband in accordance with customary practices despite the provision of this right in the Constitution. The position of the Nigerian child is summed up thus: “the Nigerian child has been a captive in his own land for many centuries. His fundamental human rights, his God-given destiny has been under the control of foreigners. His abuse goes beyond hawking and domestic maltreatment... He has been greatly abused by the tradition of the land, the society and foreign influence, including imported religion.”¹

Customary law is saved by the Constitution of Nigeria as an existing law; and this saving to protect and project our identity as a people with a distinct cultural heritage has also created room for the continuous application of practices that do not encourage the maximization of the full potentials of the girl-child. The process of acculturation of the child from the family to the school, his immediate community and the society at large has not helped in the better and proper understanding of gender roles in society; and the treatment of all forms of domestic violence as deviant behaviours that should be punished under our laws and treated as such by law enforcement agencies.

¹ A Whyte, *The Abuse of the Nigerian Child*; (Nigeria: Evans Brothers(Nigeria Publishers)Limited, 2002)1

The girl-child in the Niger Delta has domestically and internationally recognizable human rights which include the right to life; right to dignity of the human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own property, the right to the security of person, right to education, right to a safe environment, right to leisure, right to a family life, right to freedom from torture or to cruel, inhuman or degrading treatment or punishment; right to equality before the law etc.

There are however challenges facing the application of the girl-child rights in the Niger Delta region and they include the challenge of the law as knowledge and awareness of existing relevant laws by those to whom they apply; and their ability to deploy same becomes critical to the law's effective application. An aspect of the challenge of law is in the remoteness of the law especially the Constitution to persons in rural Niger Delta and the lack of enthusiasm of victims of violations to seek judicial assistance to declare such acts illegal; and so present useful precedents for future actions. Such judicial pronouncements would bring the letters of the law to life instead of being mere provisions in our Statute books. Closely aligned to the above is the challenge of illiteracy and poverty as many persons especially the illiterate class is oblivious of the existence of any legal document called the Constitution of Nigeria but are more attuned to the customs and traditions they have known all through their lives in the community.

There is also the challenge of the Niger Delta environment which has worked negatively on the rights of the girl-child especially to a safe in environment. There is no gainsaying that oil exploration and exploitation in the Niger Delta has worked negatively on the rights of the girl-child by exposing the girl-child constantly to a polluted environment which is diametrically

opposed to her rights to a safe and healthy environment in addition to the lure of oil wealth which exposes her to prostitution for survival in a harsh environment. The condition of the girl-child in the Niger Delta environment is aptly summed by Ile and Akukwe who stated that “the Niger Delta environment and living conditions of the oil producing communities is a misery tale of unparelled proportions. For the inhabitants of the oil producing communities, every day basic activity is a gargantum struggle. They cannot drink water because of oil pollution, cannot enjoy gainful employment because their traditional sources of livelihood have been destroyed; cannot hunt because their wildlife is gone; cannot send their children to school or enjoy basic health care because of abject poverty and cannot enjoy basic transportation, electricity and service because of the ‘Nigerian factor’.

The application of the girl-child rights also faces the challenge of the non domestication of relevant international instruments protecting women’s rights like the CEDAW; and the challenge of access to justice especially against the background of culturally induced reluctance of families to expose the girl-child to formal education and its attendant result of poor financial and other achievements; the challenge of religion, customs and traditions which have schooled women into accepting their ‘lot’ of playing second fiddle to the man. These customs challenge the girl-child’s right to life through practices such as forced and early marriages, they challenge her right to freedom of expression when they demand that she cannot speak on issues concerning her in public except with the permission of the men in her life, they challenge her right to human and personal dignity when they forcefully subject her to female genital mutilations and various forms barbaric widowhood practices, they deny her right to a name when she is compelled by societal traditions to change her name to the man’s name upon marriage and so lose the identity she had acquired over a period of time etc. The application of the rights of the girl-child also

faces the challenge of patriarchy which insists on elevating the male child to a superior position over the female; it also faces the challenge of very poor infrastructural provisions; inadequate education and poor enlightenment on available rights.

The prospects of applying the rights of the girl-child in the Niger Delta lie in the society's recognition of the negative role of customary law on the rights of the girl-child; the insistence of national and international bodies on the application of ratified agreements by member states; the global, regional and domestic fight against poverty and disease through the Sustainable Development Goals programme; and the awakening of the courts to be more proactive in confronting customary biases against the girl-child; the increased consciousness of persons especially women and the girl-child to the long years of unjust and unequal treatments based on cultural considerations, their breaking of the culture of silence and passivity to seek help when faced with violations of their human rights; the global awareness and insistence on democratic principles of good governance resulting in development on a sustainable basis.

Education adds value to the lives of people and is actually an antidote to poverty. It makes important contributions to equipping people to be able to function, participate and contribute meaningfully to the development of their communities. As Macleans and Magnum² opined, "quality education and social transformation...are the best responses to problems of dehumanization, poverty and exclusion as well as to the need for sustainable development." Education is thus a critical key to the effective application of the rights of the girl-child in the Niger Delta. The problems of violation of the girl's rights in the Niger Delta is not essentially the non recognition of these rights but majorly of application and enforcement.

² M A Geo-Jaja & G Magnum, 'Structural Adjustment as an Inadvertent Enemy of Human Development in Africa: The Case of Nigeria,' *Journal of Black Studies*, Vol 32(1) pp 30-50.

6.2 RECOMMENDATIONS

We must examine the process of socialization of the child from the home to the school environment and finally in the society to ensure that the child does not start early in life to assume an unfounded superiority over another person based on characteristics such as sex, tribe or colour. The process of acculturation of our people should be re-examined to change the culture of treating the girl-child as a property and an appendage to the male.

Advocacy is required and recommended to change the minds of people about opinions and values long acquired and practiced. Advocacy will change society's discriminatory attitudes towards the girl-child and ensure that her human rights are protected and respected by all. And it is trite that until we change our attitude and see human life whether male or female as equal and universal, child abductions and child marriages which violate the rights of the girl-child will continue to thrive.

To ensure the effective application of the rights of the girl-child in the Niger Delta, this research recommends the following:

6.2.1 Codification of customary laws

To bring a positive change, our customs should be codified and made public so that practices that are inconsistent with the provisions of Constitution will clearly be expunged and declared null and void. Also a Committee should be set up to harmonize the customary laws applicable to the groups in the six geo-political zones to aid the court in making judicial pronouncements on them and to go a step further to ensure that these laws are in tandem with the principles of natural justice. Codification, unification and harmonization of our customary law will produce certainty in formulating, applying and implementing the law. Codification of laws is necessary for a

reliable legal system. It will lead to certainty of the practice of some of our customary laws and curb abuse on the rights of the girl-child.

Going further, the customary law saved in the Constitution as an existing law should be expunged and only specific aspects of identical and relevant customary law saved to reduce conflicts. The blanket recognition given to customary law by the constitution should be removed.

Whilst customs violative of girl-child rights should be expressly expunged, non regulatory aspects of our culture which mark our identity as a people may be retained in the constitution and desired customs regulatory of behavior specifically legislated upon.

6.2.2 Domestication of Relevant International Instruments

It is recommended that Protocols, Charters and Conventions relevant to Women and children such as CEDAW1979 ratified since 1985, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003(known as The Maputo Protocol) ratified in 2004; CAT 1984 ratified in 2001 by Nigeria should be domesticated to make them enforceable in the country. The Nigerian government should also ratify the optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution & pornography which she has signed but not ratified; the Optional protocol to the CRC on the involvement of children in armed conflict based on the provisions of S.12 (1) of the Constitution. In the alternative, it is recommended that the said S.12 (1) Constitution of the Federal Republic of Nigeria 1999 which provides the condition of domestication of treaties entered into by Nigeria as law through an enactment of the National Assembly before such agreements will have a force of law in the country be totally expunged and a new provision which incorporates all ratified international instruments as law in Nigeria included in the Constitution.

Constitutional amendment to provide for the inclusion of all ratified international instruments to be law in Nigeria without the need for further legislative adoption.

6.2.3 Legislative Inputs

The Bill on Violence against women in Nigeria which will effectively criminalize all forms of violence and discrimination against women should be passed into law. Women Property Rights and all other laws discriminating against women in Nigeria should be reviewed. The payment of bride-price for customary marriages which become so exorbitant that it amounts to a sale of the girl and gives the husband the right of “ownership” should be abolished by law.

Budgetary allocations to issues that promote Women and Child rights should be increased thereby bridging gender gaps.

Sections 15(1-5), 16(1-2), 17(1-3), 18(1) (3) of the 1999 Constitution of Nigeria should be amended to be imperative and justiciable. All the rights contained in our Constitution should be made justiciable.

Government should enact a specific Federal law against Female Genital Mutilation (FGM) and set up an agency to carry out a nation-wide campaign on the dangers of FGM. The right to health should be made a fundamental right under our Constitution to make it justiciable.

The National Assembly should amend the Federal Character principle in the Constitution to include the Affirmative Action on Gender equality and parity in government.

A Federal law should be passed to expressly provide for the payment of compensation to all victims of violence and torture; the quantum of compensation payable; and in the case of police torture and violation of human rights, the law should provide for the removal of such identified police violator from the Police Force.

Expunging sections of our law that encourage violence especially S.55 Penal Code which permits husbands to beat their wives.

A Federal Law should be enacted to outlaw child customary marriages like the Zimbabwean government did on the 20th of January 2016. Other customary practices in Nigeria should also be made to fall within the context of the Constitution through the repeal of all customary laws that are repugnant to equity, justice and good conscience.

States in Nigeria must also be encouraged to pass into law provisions of the ratified international instruments advocating the rights of women and the girl-child in Nigeria.

Specific gender based laws should be enacted by the National Assembly to reduce the incidence of discriminations against the girl-child.

A specific law granting citizens the right to choose and retain a name even upon marriage should be enacted by the National Assembly.

The Matrimonial Causes Act 1970 should be amended to include the need for the consent of the girl-child and not just the consent of the parents or guardians for customary marriages as this will help reduce the incidence of forced and early marriages of the girl-child.

6.2.4 Government Policy Changes

Integrating women rights issues and gender education into the junior and secondary schools curriculum to ensure proper socialization. Gender Equality and Parity should form the basis of government policies. There should be gender mainstreaming in all activities of government to ensure substantial development. Gender mainstreaming should be institutionalized to increase the involvement of women in decision making processes and access to the nation's resources

which will help dislodge stereotypes, mindsets, generalizations and deep rooted customs that reinforce discriminations against the girl-child.

Adequate health and housing policies should be put in place by the government to ensure the protection of civil rights; guarantee the right to health by establishing and equipping health centres with trained medical manpower. There should be a clear policy on the provision of housing units for different cadres of persons especially women facing violations and in abusive relationships. Provision of shelters for women facing cultural violations such as female genital mutilations by the government would go a long way to encourage the poor rural woman facing such challenges to have the courage to resist and report such violations without facing further economic and cultural sanctions.

The Women Fund for Economic Empowerment (WOFEE) and the Business Development Fund for Women (BUDFOW) should be re-invigorated, properly financed and deployed to promote women economic rights.

The government of Nigeria at all levels should institute a special programme for building the capacity of the girl-child through special scholarship grants, trainings and skills acquisition centres in each State capital.

6.2.5 Implementation of Laws

Adoption and Implementation of the Child Rights Act 2003 by every State in the Federation. Governments should ensure full compliance with the United Nations Convention on the Rights of the Child and the Child Rights Act 2003 which set marriage age at 18years. Child marriages should be stopped and criminalized.

6.2.6 Advocacy Campaigns and Enlightenment

On the issue of child rights, advocacy campaigns should be deployed and adequate structures put in place by government, civil society organizations, NGOs to improve understanding of the issues contained in the Child Rights Act 2003.

Government at the State levels should develop a system of regular town hall meetings between communities and the government in which some cultural practices which violate the rights of the girl-child would be highlighted and discussed for better appreciation of the inherent ills; and the legal options open to address such situations.

6.2.7 Judicial Reforms

There should be increased judicial activism by our courts. More proactive decisions by the courts which interpret legal rights generously would help the case of the girl-child in the Niger Delta. The issue of locus standi to bring action for violations of girl-child and women rights should be abolished to enable more perpetrators to be apprehended through public interest litigations. In a similar vein, the cost of litigation at the Federal High Court for enforcement of environmental rights should be reduced; the legally required filing fees for such matters should be reduced and unfettered access to justice for wrongs and a legal mechanism for protecting human rights should be created.

All forms of customary induced disinheritance of the girl child should be disallowed and punished by law to act as a deterrent to the continued violation of the rights of the girl-child.

S6 of the Criminal Code which specifically provides that sexual intercourse between a husband and a wife cannot amount to rape unless there is a decree absolute or possibly a decree nisi should be expunged because they encourage marital rape and domestic violence in families.

6.2.8 Establishment of Relevant Agencies

There should be the establishment of direct agencies in every local government area to handle the needs of the rural woman, encourage women to break the culture of silence and report violations of their human rights; co-ordinate and carry out enlightenment programmes to change the mind-set of the people on the place of the girl-child in the family, community and society at large.

The restructuring and strengthening of the National Centre for Women, National Council of Women Societies and the establishment of such centres in the States and Local Government Areas as key institutions for enlightenment on human rights issues, gender equality and empowerment of women in Nigeria. These centres will be charged with the socio-cultural re-orientation of the people.

The establishment of Child Rights Implementation and Monitoring Committee in each State to be replicated in each Local Government Area to ensure better compliance and monitoring of violations.

6.2.9 Provision of Social Amenities

There is need to provide shelters, education and counseling to victims of human rights violations especially women and children. And the government should also establish self sustaining empowerment programmes to help build up the economic capacity of women and the girl-child to reduce poverty.

The government should adopt interventionist programmes based on increased community participation and sustainable development. These programmes should be focused on income generating employment, human development and poverty alleviation.

There should be formation of Community Education Boards or Committees charged with the responsibility of tracking and enrolling children of school age into nearby schools.

Establishment of youth centres in different communities for recreational purposes, for counseling and enlightenment.

Free access to reproductive health services through improved policies should be made available.

6.2.10 Establishment of Trust Funds

States should establish trust funds to be managed by the Ministry of Social Services to support actions for the elimination of violence against women and for the effective implementation of national laws and policies for gender parity.

6.2.11 Police Reforms

Encouraging Police stations by law to have special units dedicated to handling cases of violence against women. There is also the need for the re-orientation of the law enforcement agencies to treat such violations as a crime and not as a 'normal' thing between husbands and their wives.

6.2.12 Legal Aid Scheme

Government should improve and enhance the legal aid scheme to provide better assistance for the indigent to secure the services of lawyers to enforce their legal rights. The Legal Aid Council should be better sponsored by government.

6.2.13 Education/ Enlightenment/Re-orientation

Government should provide free and functional basic education as a social service. Education should be made compulsory for the Nigerian child to guarantee sustainable growth and

development. Civic education especially on rights of citizens should be part of curriculum at the pre and primary levels to build awareness for equal rights of all persons in society.

The Nigerian State should advocate gender equal rights, the freedom of choice and consent in marriage, put in place policies to educate the public and to direct national aspirations towards the eradication of prejudice and the abolition of all.

The Child Rights Act 2003 and the Child Rights Law should be translated into simplified versions for every child to read and the inculcation of these laws into the school curriculum.

There should be collation of recognized and registered traditional rulers who should go through a process of re-orientation on gender issues as part of the registration process. The various States' Council of Traditional rulers should be re-engineered to champion the cause of the proper socialization and acculturation of their people on the need to change their traditional attitude to women and the girl-child.

Polygamy which increases the health issues of women and the girl-child such as the transfer of HIV should be outlawed and the law of bigamy already in our Statute books applied by the courts in relevant cases.

The traditional demand for adoption of a man's name upon marriage by the woman should be jettisoned and the right to choose and retain a name even upon marriage adopted by our laws.

The Nigerian government should live up to its primary responsibility of the security and welfare of its citizens as enshrined in S. 14(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

BIBLIOGRAPHY

BOOKS

- Adepoju, A, (ed.) *Family Population and Development in Africa. Development Studies* (Africa, London: Zed Books Ltd 1997).
- Aguda, T A, *The Cost of Justice* (Akure, Nigeria: Eresu Hills Publishers, 1986).
- Aguda, T A, *Human Rights and the Right to Development in Africa* (Lagos: Nigerian Institute of International Affairs. 1989).
- Ajakarotu, V, (ed) *Contending Issues in the Niger Delta Crisis of Nigeria* (Bangkok, Africa JAPSS Press Inc. 2009).
- Akinrimisi, B, *Women and Right to Inheritance in Nigeria* (Shelter Right Initiative, 2001).
- Ako-Nai, R, *Gender and Power Relations in Nigeria* (Lexington Books, 2012).
- Akolokwu, G O, *Customary law Practices in Nigeria: The Case of the Niger Delta* (Lambert Academic Publishing, 2015).
- Alagoa, E A & Derefaka A A, (ed) *The Land and People of Rivers State: Eastern Niger Delta* (Port Harcourt: Onyoma Research Publications, 2002).
- Alapiki, H, *Politics and Governance in Nigeria* (Amethyst, Port Harcourt, 2004).
- Ale, R W, Akinsola E, (ed) *Boiling Point* (Lagos: CDHR Publication 2000).
- Amadi, G O S, *Police Powers in Nigeria* (Nsukka: Afro-orbis Publishing Co Ltd, 2000).
- Anand, A S; *Justice For Women Concerns and Expressions* (2nd Edition, Delhi: Universal Law Publishing Co. PVT. Ltd, 2003).
- Anyebe, A P, *Customary Law: The war without Arms* (Fourth Dimension Publishing Ltd, 1985).
- Anyogu, F, *Access to Justice in Nigeria: A Gender Perspective* (2nd edition, Enugu Ebenezer Productions Ltd. (2013).
- Anyogu, F & Arinze-Umobi C, (eds.) *Women, Education & National Development in Africa* by Federation of University Women in Africa (Awka: Amaka Dreams Limited, 2013).
- Arinze-Umobi, C, *Domestic Violence Against Women in Nigeria: A Legal Anatomy* (FOLMECH PRINTING & CO. LTD, Onitsha 2008).

- Azinge, E, Awah A, (eds) *Legal Pluralism in Africa: A Compendium of African Customary Laws* (Lagos, Nigerian Institute of Advanced Legal Studies 2012).
- Banda, F, *Women, Law and Human Rights: An African Perspective* (Hart Publishing, Oxford and Portland, 2005).
- Barnett, H, *Source Book on Feminist Jurisprudence* (Cavendish Publishing Ltd, London, 1997).
- Benhardt, R, (ed), *Encyclopedia of International Law, Vol 8* (1985).
- Bruce, R, *Success in Law* (John Murray Publishers Ltd, London 1978).
- Burnell, P, Randall V, *Politics in the Developing World* (Oxford: Oxford University Press Ch 18, 2008).
- Chambers, *Chambers English Dictionary* (13th edition, UK: TSP 2014).
- Chukwuodozie, C M, *Introduction to Human Rights and Social Justice* (Enugu: Ochumba Printing and Publishing Company, 1999).
- Claude, R P, *Human Rights in World community, Issues and Actions* (edited by, Pennsylvania Press, 1989).
- Cotter, A M; *Gender Justice An International Comparative Analysis of Equality in Employment Gender Justice* (England: Ashgate Publishing Limited, 2004).
- Desai, V, Potter R B *The Companion to Development Studies* (2nd edition, London UK: Hodder Education, 2008).
- Donnelly, J, *Universal Human Rights in Theory and Practice* (New York: Cornell Press, 2003).
- Ducker, M. (ed.) *Philosophy and Politics, Discourse on Values, Politics and Powers in Africa* (Lagos: Malthouse Press 2006).
- Ebeku, KSA *Oil and The Niger Delta People in International Law* (Germany: Rudiger Koppe Verlag, 2006).
- Effah, J, Dulue, M, Onyegbule, S, *Unequal Rights; Discriminatory Laws and Practices Against Women in Nigeria* (Lagos: Constitutional Rights Project, 1995).
- Elias, T O, *The Nature of African Customary Law* (Manchester: Manchester University Press 1956).
- Eze, O C, *Human Rights in Africa, Some Selected Problems* (Nigeria: Nigerian Institute of International Affairs in co-operation with Macmillan Publishers Ltd 1984).

- Ezeilo, J N, *Human Rights Documents relevant to Women and Children's Rights in Nigeria* (Nigeria: WomenAid Collective, (WACOL), 2008)
- Fiberesima, A, *Customary Land Holding at Okirika* (Newspaper Communication Nigeria 1999).
- Fiberesima, J A, *Indigenous Land tenure of Rivers People* (Port Harcourt: Newsfair Communications Ltd, 1999).
- Freeman, M, Veerman P, *The Ideologies of Children's Rights* (eds: Martinu Nijhoff Publishers, 1992).
- Garner, B A, *Black's Law Dictionary* (7th edition, St Paul, Minn, West Group, 1999).
- Ghandi, S, *Blackstone's International Human Rights Documents* (8th edition, Oxford University Press, 2012).
- Gidado, M M, Anyanwu C U, Adekunle A O, (eds) *CONSTITUTIONAL ESSAYS IN HONOUR OF BOLA IGE* (Enugu: Chenglo Limited, 2004).
- Giddens, A, *Sociology* (6th ed, UK: John Wiley & Son, Inc. 2010).
- Gnanadason, A, Kanyoro M, & Mcspadden L A, *Women, Violence and Non- Violent Change* (L.A: www Publications, 2005).
- Goodhart, M, *Human Rights: Politics and Practice* (ed. Oxford, Oxford University Press Ch 1, 2009).
- Grinke, S M, *Letter on Equality of Sexes and the Condition of Women* (Isaac Knapp, Boston, reprinted by Source Book Press, New York 1838).
- Herath, G, Sharma K, *Child labour in South Asia* (Burlington: Ashgate Publishing Company, 2007).
- Hobbes, T, *Leviathan* (ed. C B Macpherson, Penguin Books, 1968).
- Hogan, C M, 'Niger River' in M McGinley (ed), *Encyclopedia of Earth* (Washington DC: National Council for Science and Environment, 2013) 7-32.
- Ifemeje, S C, *Contemporary Issues in Nigerian Family Law* (Nolix Educational Publications (Nig), Enugu, 2008).
- Ige T, Lewis O, *Human Rights Made Easy* (3rd edition, Legal Research and Resource Development Centre, Lagos, 1999).
- Igube, R B, *Women and Gender Studies*; (Abuja: Sir Kuf Ventures Limited, 2010).

- Igwe, O W, *Preliminary Studies in Human Rights Law* (Lagos: Rings and Favolit Ltd, 2002).
- Ikpeze, V C O, *Gender Dynamics of Inheritance Rights in Nigeria. Need for Women Empowerment*, (FOLMECHN Printing & PUB.CO.LTD, 2009)
- Iowa, I A, Okagbo, *The Rights of the Child in Nigeria* (eds. Nigerian Institute of Advanced Legal Studies, 1996).
- Iruonagbe, C; *Land Ownership Patterns and the Economic Life of Women: A Study of Ozalla Community, Edo State, Nigeria* (Germany: VDM Verlag 2009).
- Iwe, N S, *The History and Contents of Human Rights* (New York: African ed. Peter Lang, 1994).
- Kolawole, M M, *Womenism and African Consciousnes*. (Trenton: African World Press, 1998).
- Kalu, A U, Osinbajo Y, (eds) *Perspectives on Human Rights* (Nigerian Federal Ministry of Justice 1992).
- Madu, A C, *Women Empowerment. Its Relation To National Development and Human Rights*, (Snaap Press Ltd, 2010).
- Mackinnon, C A; *Feminism Unmodified Discourses on Life and Law* (Cambridge M.A Harvard University Press, 1987).
- Madu, A C, *Women Empowerment. It's Relation to National Development and Human Rights* (Snaap Press Ltd, 2010).
- Malemi, E, *Constitutional Law in Nigeria* (Princeton Publications, 2010).
- McGinley, M (ed), *Encyclopedia of Earth* (Washington DC: National Council for Science and Environment, 2013).
- Mullally, S, *Gender, Culture and Human Rights: Reclaiming Universalism* (Oxford and Portland, Oregon Hartland Publishers, 2006).
- Murray, C: *The Emerging British Under-Class*; (London, Institute of Economic Affair; 1990).
- Ndubuisi, F N, Nathaniel O C, *Issues in Jurisprudence and Principles of Human Rights*: (Lagos: Dmodus Publishers, 2002).
- Nelch , C, *Human Rights and Development in Africa* (1984) p. 60
- Ngwakwe , E C, *African Customary Law: Jurisprudence, Themes and Principles* (Ebonyi State, Nigeria: Ave Maria Academic Publishers, 2013).
- Njoku, J, *The World of Africa*; (London: Scarecrows Press, Inc. 1980).

- Nnamani, O O, *Human Rights Law and Practice in Nigeria, An Introduction:* (Enugu: CIDJAP Press, 1999).
- Nwankwo, O, *Child Marriages as Child Abuse* (Enugu: Civil Resource Development and Documentation Centre, Nigeria 2001).
- Nwogugu, E I, *Family Law in Nigeria* (Ibadan: HEBN Publishers Plc. 2001).
- Oakley, O, *The Sociology of Housework* (Bath: The Pitman Press, 1974).
- Obi, S N C; *Modern Family Law in Southern Nigeria* (London: Butterworths, 1966).
- Obilade, A, (ed.) *Women in Law* (Lagos: Southern University law Centre and Faculty of Law, 1993).
- O'Bryne, D, *Human Rights: An Introduction* (Harlow, Pearson Education, 2003).
- Ogbu, O N, *Human Rights Law and Practice in Nigeria, An Introduction* (Cidjap Press Enugu, 1999).
- Ogugua- Ikpeze, V C, *Gender Dynamics of Inheritance Rights in Nigeria. Need for Women Empowerment,* (FOLMECHN Printing & PUB.CO.LTD, 2009).
- Okanny, M C, *The Role of Customary Courts in Nigeria* (Enugu: Fourth Dimension Publishing, 1984).
- Okeke, P, *Reconfiguring Traditions: Women's Rights and Social Status in Contemporary Nigeria* (Nigeria: Africa Today, 2000).
- Okpara, O, *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Limited, 2005).
- Oliyide, O, *Rights;* (Throne of Grace Publishers Ltd, Lagos, Nigeria 2006).
- Olomajobi, Y, *Human Rights on Gender, Sex and the Law in Nigeria* (Princeton Publishing Company, 2013).
- Omeregbe, J, *An Introduction to Philosophical Jurisprudence* (Lagos: Joja Educational Research and Publishers Limited, 1997).
- Omoruyi, O; *Democratization in Africa- Nigeria Perspectives,* (Vol. 2, Benin City, Centre for Democratic Studies, 1994).
- Opuogulaya, E D W; *The Cultural Heritage of the Wakirike* (Port Harcourt: Press Printers Ltd, 1975).

Ouguergouz, F, *The African Charter on Human and Peoples' Rights* (Leiden, Brill Publishers; 2003).

Peters, J, Wolper A, *Women's Rights, Human Rights* (eds Routledge, London 1995).

Plessis, M; *The International Criminal Court and Its Work in Africa*: (Institute for Strategic Studies (ISS) Publication, 2008).

Rao, M, *Law Relating to Women and Children*: (Third Edition, Eastern Book Company, Lucknow, 2012).

Rist, R M, *Stoic Philosophy* (Cambridge: Cambridge University Press, 1977).

Robinson, M, Davidson G, *Chambers 21st Century Dictionary* (edited, Chambers, 2007).

Sakande, J, *Miscellany at Law and Gender Relations* (Lagos: M.J Professions Publishers Ltd. 1999).

Sanni, A, *Introduction to Nigerian Legal Method* (ed) 252

The New International Webster's Comprehensive Dictionary of the English Language; Encyclopedic Edition (USA: Typhoon International 2004).

Umerah, B C, *Medical Practice and the Law in Nigeria*(ed) (Longman Nigeria Ltd, 1989).

Umuozurike, U O, *The African Charter on Human and Peoples' Rights* (Martinus Nijhoff Publishers, 1997).

Veerman P, *The Rights of the Child and the Changing Image of Childhood* (Martinus Nyhoff. Publishers, 1992).

Welchman, L, (ed) *Women's Rights and Islamic Family Law- Perspectives on Reform* (London: Zed Books Ltd, 1988).

Whyte, A, *The Abuse of the Nigerian Child*; (Nigeria: Evans Brothers (Nigeria Publishers) Limited, 2002).

JOURNAL ARTICLES

Abegunde, B, 'Gender Inequality: The Society and the Law' (2003)7 (2) *Journal of International and Comparative Law*, 49-60.

Abdulraheem, N M et al, 'Domestic Violence against Women in Nigeria: A Scourge Devoid of Solution?' (2014)17(2) *The Nigerian Law Journal*, 78-104.

- Abdulraheem, N M, 'Rights of Women in Pre & Post- Colonial Era in Nigeria: Challenges for Today' (2010)(3)2 *Journal of Public law; Department of Public Law, Kogi State University, Anyigba (Nigeria)* 83-93.
- Abdulraheem , N M, 'Women's Marital Rights, Perspective from Nigeria Legal System' (2012) Vol. 3, *Journal of Law and Conflict Resolution*, 31-44.
- Adar, K, 'The Wilsonian Conception of Democracy and Human Rights: A Retrospective and Prospective' (1998) 2(2) *African Studies Quarterly*, 33-44.
- Adetola, A, Coster, A S, Gbolagun A O, 'Child Farm Labour in Rural Households of Southwest Nigeria' (2013) *Global Journal of Human Social Science*, 100-122.
- Adeyemi, A, 'Enforcement Mechanism for the Protection of Women and Children Rights' (2003)1 *Rivers State University Journal of Public Law (UJPL)* 1-12.
- Adeyemi,A A, 'Children In especially Difficult Circumstances in the Context of the United Nations and OAU Charter on the Rights of the Child (1997)1 *NJPL* 8-27.
- Akinbuwa, A A, 'The Concept of Women's Rights in Nigeria' (2009)15(2) *East African Journal of Peace & Human Rights*, 465-475.
- Akpa, E R, 'Acidic Precipitation and Infrastructural Deterioration in Oil Producing Communities of Akwa Ibom State: A Case Study of Eket, South Eastern Nigeria' (2003) 2(1) *Glob Journal of Environment & Science*, 47-52.
- Alabi, T, et al, 'The Girl-Child: A Sociological View on the Problems of Girl-child Education in Nigeria' (2014)10(2) *European Scientific Journal*, 45-81.
- Alabi T, Alabi, O S, 'Child Labour amongst Urban Poor in Lagos and Abuja (2012) 2(3) *Journal of Peace, Gender and Development*, 13-31.
- Bennet, T, 'The Equality Clause and Customary Law' (1994)10 *South African Journal on Human Rights* 97-132.
- Chanock, M, 'Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform,' (1989) 3 *International Journal of Law and Family* 72-111.
- Dada, J A, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal'; (2013) 10 *Journal of Law, Policy and Globalization* 1-30.
- Dada, F O, 'The Justiceability and Enforcement of Women's Rights in Nigeria' (2014) 14(5) *Global Journal of Human Science: E Economics* 18- 43.

- De Silva-de-Alwis R, 'Child Marriage and the Law'(2008) *Legislative Reformative Paper Series-Division of Policy and Planning, January* (2008) 1-27.
- Edeko, M O, 'Policy and Legislative Responses to Child Labour in Nigeria' (2011)1(1) *BIU Law Journal*, 200-253.
- Emejuru, C, T, & Amadi F, C, 'The Best Interest Principles and Educational Rights of a Child: A Sleeker in Human Rights" (2014)6(1) *Port Harcourt Law Journal*, 8-16.
- Eteng, I A, 'The Nigerian State, Oil Exploration and Community Interest' (1998) *Human Rights Defender Quarterly Journal* 5-25.
- Falk R, 'Affirming Universal Human Rights'; (2003) 3 *Human Rights & Human Welfare Centre on Rights Development* 77-82.
- Gbadebo , J O 'Are we married into poverty? Denied women land ownership in Nigeria' (2014) 4(3) *International Research Journal of Agricultural Science and Soil science* ,51-56.
- Geo-Jaja, M A & Magnum G, 'Structural Adjustment as an Inadvertent Enemy of Human Development in Africa: The Case of Nigeria,' (2001) Vol. 32(1) *Journal of Black Studies*, 30-50.
- Glendon, M, 'The Forgotten Crucible: The Latin American Influence on The Universal Human Rights Idea' (2003)16 *Harvard Human Rights Journal*, 27-39.
- Igwe, O W, 'Cultural Impediments to the Realization of Women's Human Rights in Igboland, Nigeria' (2014) 4(4) *Journal of Private and Property Law*, 160-172.
- Ikwuba, A, 'Commuinty Based Organizations As Alternative Vehicles for Rural Development Practice in Nigeria' (2010) 11(1) *NJRS* 2.
- Izzi, M O, 'The Plight of the Girl-Child under Esan Customary Law' (2000)3 *Journal of Commercial, Private and Property Law*, 88-96.
- Izzi, M O, 'Political Development of Women in Nigeria: The Human Rights Perspective' (2013) 4 *Rivers State University Journal of Public Law*, 127-139.
- Izzi, M O, 'Domestic Violence and the Human Rights Challenge in Nigeria' (2012)3 *Rivers State University Journal of Public Law, R/S UJPL*, 211-225.
- Mfono, Z, 'The Custom of bride abduction holds its own against time' (2000) 45 *Agenda Feminist Media*, 76-80.

- Modupe A N & Salman R K, The Economic Rights of Women under Islamic Law: The Obstacles and Challenges in Contemporary Nigeria (2012)3 *Human Rights Review- An International Human Rights Journal*, 107-131.
- Naldi, G J, 'Reparations in Practice of the African Commission on Human and Peoples' Rights' (2001)14 *Leiden Journal of International Law*, 682- 693.
- Ndulo, M, 'African Customary Law, Customs and Women's Rights' (2011) 18(1) *Indiana Journal of Global Legal Studies*, 88-89.
- Nnadi, I, 'Early Marriage: A Gender-Based Violence and a Violation of Women Rights in Nigeria' (2014)7(3) *Journal of Politics and Law*, 22.
- Nwugo, D I, 'Identification and Roles of Opinion Leaders in Integrated Rural Development in Awgu L.G.A.' in A Ikwuba, Community based Organizations As Alternative Vehicles for Rural Development in Nigeria (2010) 11 (1) *NJRS* 25.
- Odinkalu, C A, 'Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa' (2003) 47, *J of Afr.L.* 1-37.
- Odomene, A, 'The Nigerian Armed Forces and Sexual Violence in Ogoniland of the Niger Delta Nigeria 1990-1999;' 2012; *Armed Forces & Society Report* 38(2) pp. 225-251.
- Okogbule, N S & Okobule B, 'Culture and Gender-based violence in Africa: A Human rights Contextual Perspective' (2012)7(1) *The Journal of Jurisprudence and Contemporary Issues*, 214-215.
- Okon, E J, 'Women and The Niger Delta Struggle' in R Aduche Wokocha; *Development Rights Issues in the Niger Delta, Schalesworth Centre for Democracy and Development*, 63-73.
- Olaosebikan E B, 'The Plight of the Nigerian Widow under Customary Law System' (1998)1 *Journal of Commercial, Private and Property Law*, 12- 26.
- Olomola O, 'An Appraisal of Polygyny and Reproductive Rights of Women in Nigeria' (2013) 5(1) *Journal of Law and Conflict Resolution* 6-15.
- Onyemachi, T U, 'Children, Status and the Law' (2010)4(3a) *African Research Review*,301-401.
- Oyelade, S O, Odunsi B, 'Right to Sexual and Reproductive Health in Indigenous Africa: Nigeria in Focus' (2012) Vol. 3 *Rivers State University Journal of Public Law*, 185-210.
- Rengger, N, 'The World Turned Upside Down? Human Rights and International Relations after 25years' (2011)87(5) *International Affairs*, 1159- 1178.

- Rifkin, J, 'Towards a Theory of Law and Patriarchy' (1980) 3 *Harvard Women's Law Journal*, 67-92.
- Simon, E D, 'The Niger Delta Region and the Woman's Predicament: A study of Kaine Agary's Yellow-Yellow' in *African Research Review: (2010) 4(3b) An International Multi-Disciplinary Journal, Ethiopia* 155-166.
- Sircar, V K; Compensation for Violation Of Fundamental Rights: A New Remedy in Public Law Distinct from Relief of Damages in Tort (1995) *J.T.R.I Journal*.92-127.
- Tharoor, S, 'Are Human Rights Universal?'(1999/2000) XVI, NO 4 *World Policy Journals*. 27-41.
- Udombana, N J, 'An African Human Rights Court and An African Union Court: A Needful Duality or Needless Duplication' (2003)28 (3) *Brooklyn Journal of International Law*, 813-820.
- Ukhun, C E, Inegbedion N A, 'Cultural Authoritarianism, Women and Human Rights Issues among the Esan people of Nigeria (2005) 5 *African Human Rights Law Journal* 13 -26.
- Umar, A, 'An X-ray of the Conflicts between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy' (2012) 3 *Human Rights Review; An international Human Rights Journal*, 76-97.
- Wokocha, R A, 'Juriprudential Pitfalls in the Quest for Gender Equality' (2003) 2 *Port Harcourt Law Journal*, 123.
- Wambua L M; 'Gender Issues Affecting the Girl-Child in Kenya' (February 2013)3(2) *International Journal of Humanities and Social Science*) 12.
- Zegveld, L, 'Remedies for Victims of Violation s of International Law (2003)85(851) *Journal of International Law* 321-527.

INTERNET SOURCES

Abah B, in B Ezeamalu; 'Nigeria's Child Rights Act, Non- Functional'; Premium Times, Friday February 19, 2016 available at www.premiumtimes.com/news/161510-nigeria-child-rights-act-functional-activists-say.html accessed 10/5/16.

Abel R L 'Customary Laws of Wrongs in Kenya. An Essay in Research Method' (1969) Vol 17, The American Journal of Comparative Law, 593 available at http://digitalcommons.law.yale.edu/fss_papers/4013

Ajiye S O, 'Insecurity and The Niger Delta Environment, Sustainable Peace and Development : An Overview' (2015) 5(2) Journal of Environment and Earth Science available at www.iiste.org accessed on 3 April 2016.

Ajumobi F; 'Ese : The Nigerian Child As An Endangered Being' available at <http://www.vanguardngr.com/2016/03/ese-the-nigeria-child-as-an-endangered-being/> accessed on 20/6/16.

Andanje A, ' Efforts to Empower Women, Initiatives to Promote Sustainable Economic Growth Mutually Reinforcing Says Third Committee Speakers'- (A Report on Kenya) 64 General Assembly, Third Committee, 13 October 2009 available at <http://www.un.org/press/en/2009/gashc3950.doc.htm> accessed on 19/05/16.

Attahir I M, 'Judiciary As The Last Hope Of Itself' available at <http://www.gamji.com/article500/NEWS5474.htm> accessed 23/6/16

Atim G, 'The Rights of The Girl-Child in the Empowerment Question and National Development,' 2015, Research on Humanities and Social Sciences, Vol 5, No 4, available at www.iiste.org accessed 21/04/16

1994 Annual Report (CHDR) on Human Rights Situation in Nigeria available at <http://www.hrw.org/world-report/2015/country-chapters/nigeria> accessed on 15/1/2016

2008 Country Report on Human Rights Practices, United States Department of State Bureau of Democracy, Human Rights and Labour 2009-02-05 available at <http://www.state.gov/g/dri/ris/hrrpt/2008/af/119018.htm>.accessed on 14/9/2015.

BBC News, ' Why An MP Wants India to Talk About Child Sex Abuses' cited in <https://en.m.wikipedia.org/wiki/humanrightswatch> accessed on June 1, 2016.

Buyse A, "Lost or Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law" available at <http://www.zaoerv.de/> Obtained from <http://www.iloveindia.com/constitution-of-india/right-to-constitutional-remedies.html>

Chinyangara I , Chokuwenga I, & ors, 'Indicators for Children's Rights, Zimbabwe Country Case Study' (1996) available at

http://www.childwatch.uio.no/cwi/projects/indicators/Zimbabwe/ind_zim_intro.html retrieved on 23 June, 2014).

Civil Society Legislative Advocacy Centre available at <https://www.naij.com/tag/civil-society> accessed on 23 May 2016.

Discussions on Customary Law; and especially on Crime and Society in Nigeria available at <http://www-rohan.sdsu>. accessed on the 28th of May 2014.

Ebeleke E, ‘The Kolo Creek Foundation’ 2007 available at <https://www.prnatural-nig.org/kolo/html>. accessed May 15, 2016.

Edeko M, Idehen S O, ‘Attaining Gender Equality In Nigeria Through Constitutional Reform: The Kenya Experience’ 2013, *Women Education & National Development in Africa* by Federation of University Women of Africa, 97-109 available at <http://www.biu.edu.ng/publications/> accessed on 02/05/16.

Ediru M, ‘Judiciary: Last Hope of Common Man On Earth or Where? Available at <http://thenationonlineng.net/judiciary-last-hope-of-common-man-on-earth-or-where/> accessed 23/6/16.

Ejemudo K B, ‘Gender Equality and Women Empowerment in Nigeria: The Desirability and Inevitability of a Pragmatic Approach’ (2013)3 (4) *Developing Country Studies*, 59 available at www.iiste.org. accessed on 8 October 2015

Geo-Jaja M A, *Social Exclusion, Poverty and Educational Inequality in the Niger Delta Region of Nigeria: Which Development Framework?* In *The Politics of Education Reforms* (eds, J Zajda & Geo-Jaja M A; Springer available at <https://www.books.google.com.ng/books> accessed on Monday, 25, April 2016.

Gender and Power Relations in Nigeria available at <https://en.m.wikipedia.org...> accessed on 13/12/2015

Haar R N; “Overview: Rights of the Girl Child” available at <http://ip> accessed on August 5, 2015. digital.usembassy.gov/st/English/publication/2012/02/201 assessed 10 Sep 2012.

Howard, R, ‘Human Rights and Personal Law: Women in Sub-Saharan Africa’ (1982) Vol. 12(1/2)A *Journal of Opinion Cambridge University Press*, 45-52 available at <http://www.jstor.org/stable/1166538>.

Human Rights Watch 2014 available at <https://en.m.wikipedia.org/wiki/Humanrightswatch/> accessed on April 7, 2016.

Iguh N A, Nosike O, ‘An Examination of the Child Rights Protection and Corporal Punishment in Nigeria’ 1999 ACRWC, (Legislative and institutional Framework of Environmental Protection) 13 available at www.ajol.info accessed on Friday April 22, 2016.

Igwe O W, Akolokwu G O, 'Patriarchy and Its Violations of Human Rights of Women in Nigeria' (2015), International Law and Policy Research Journal, Vol 1(1) available online at <http://www.apexjournal.org>

Ihayere C, et al, 'The Effect of The Niger Delta Oil Crisis on Womenfolk'; (2014), Journal of African Studies and Development, Vol 6(1)pp 14 -21, available at <https://www.academicjournals.org/JASD> accessed 21/04/16

Ile C, Akukwe C, 'Niger Delta Nigeria: Issues, Challenges and Opportunities For Equitable Development' March 8, 2001 available at <http://www.nigeriaworld.com/feature/article/niger-delta.html> accessed April 3, 2016

Johnson L, ' Niger Delta: Tackling Patriarchy, Poverty and Pollution' (2012) cited in www.asafeworldforwomen.org/global-news/Africa/Nigeria/3002-delta-women.html

Joseph-Obi C, ' Oil, Gender & Agricultural Child Labour in the Niger Delta region of Nigeria: Implications for Sustainable Development' African Journals online (AJOL) (2011) Vol.9, No.2 available at www.readperiodicals.com/201112/2522112461.html accessed on April 4, 2016.

Ladan M T, 'Amnesty International, Nigeria: The Death Penalty and Women under the Nigerian Penal System' February, 2004, p.13 available at <http://www.web.amnesty.org/library/print/ENGAFR 440012004> accessed on April 5, 2016.

Lower M; 'Can and Should Human Rights be Universal?' available at www.e-ir.info, (Dec 1, 2013) accessed 4/10/15.

Malawi Human Rights Commission 2005. *Research Report on Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi*. Lilongwe:Malawi available on <http://www.thepresidency.gov.za> accessed on May 24, 2016

Mahtab S B, A Report on India cited in 'Efforts To empower Women, initiatives To promote Sustainable Economic Growth Mutually Reinforcing'; Third Committee Speakers, 64 General Assembly, Third Committee, 13th October 2009 available at <http://www.un.org/press/en/2009/gashc 3950.doc.htm> accessed on May 8, 2016.

Indian Laws Relating To Women & Children. Available at <https://wcd.nic.in/> accessed on June 2, 2016.

Mausi S; Human Rights Watch: <https://www.hrw.org/africa/nigeria> accessed on 12/2/2016

Mwaffisi M, 'Efforts To empower Women, initiatives To promote Sustainable Economic Growth Mutually Reinforcing'; Third Committee Speakers, 64 General Assembly, Third Committee, 13th October 2009 available at <http://www.un.org/press/en/2009/gashc 3950.doc.htm>
National Gender Policy Strategic Framework (Implementation Plan) Federal republic of Nigeria, 2008-2013 available at http://www.aacoalition.org/national_policy_women.html accessed on 30/6/2016.

Nigeria 2013 Findings on the Worst Forms of Child Labour available at [https://en.m wikipedia...](https://en.m.wikipedia...) accessed on 15/3/2016

Odiaka N O, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' 2013 Journal of Sustainable Development Law and Policy; Vol 2, No 1, available at <http://www.ajol.info/index.php/jsdlp/article/view/122608> accessed on April 6 2016.

Ogbaji U, UNCEDAW AND WOMEN SOCIO-POLITICAL RIGHTS IN NIGERIA; THE SOUTH – SOUTH EXPERIENCE(1999-2010) available at <http://www.Slideshare.net/udojoel/uncedaw> accessed on the 26th of May 2014

Okeke P; 'Reconfiguring Tradition: Women's Rights and Social Status in Contemporary Nigeria;' Africa Today, 2000 available at <https://en.m.wikipedia.org/wiki/Human-rights-in-Nigeria>, accessed on 7/8/2015

Okogbule N S, 'Access To Justice And Human Rights Protection in Nigeria: Problems And Prospects,' available at <http://www.scielo.br/scielo.php?pid> accessed 20/04/16.

Olomola O, 'An Appraisal of Polygyny and Reproductive Rights of Women in Nigeria'; January 2013, Journal of Law and Conflict Resolution, Vol 5(1) pp. 6-15, available at <https://www.academicjournals.org/JLCR> accessed 21/04/16.

Ononge O F, 'Social Impact of Pollution.' A Paper presented at the Annual Conference of Association of General and Private Medical Practitioners on March 21, 2002 CASS Newsletter available at <http://www.gasandoil.com/news/africa/dc25fd9a4f26db32cbd840c81556edb> accessed on 7 April 2016.

Onyenweaku O; 'The Child Rights Act 2003: The Rights, The Benefits' available at <http://dailyindependentnig.com/2013/10/the-child-rights-act,2003> accessed on 21/7/15

Otedo D A, 'Gender and Education: Tackling the Challenges to Child Education in Kenya' (2009)Education Beyond Borders available at <http://www.educationbeyondborders.org/m/blogpost?id=22137> accessed on 23April 2016.

PRAWA, A Joint Report on 'Torture and Extrajudicial Killings in Nigeria.' Available at www.prawa.org accessed on 17 May 2016.

Rakshi N B; "Right to Constitutional Remedy. Significance of Article 32"; Economic and Political Weekly, Vol 34, No 34/35, Aug 21-Sep 3 1999 available at <http://www.jstor.org/stable/4408327> accessed 10/2/2016.

Restifo F 'Violence Against Women and Children in Kenya;' A Report by World Organization Against Torture (OMCT) available at <https://www.kenyaplex.com>1112-coalition-on-violence-against-women-kenya-covaw-nairobi.aspx> accessed on 20/05/16.

Salaam T, 'A Brief Analysis on the Situation of Women in Nigeria Today'; Democratic Socialist Movement (DSM) available at <http://www.socialistnigeria.org/women/1-3-03.html> accessed on 24/03/16.

Schmitz-Robinson E, 'The Right to Education and the Girl-Child; Girls' Situations' cited from www.girlsrights.org/girls.php retrieved 20/5/15

Tshabalala-Msimang M, 2007.'Girl Child Abductions, Forced and Early Marriages' An Address by Dr MantoTshabalala-Msimang, Minister in The Presidency during the Lusikisiki Imbizo ;24 March 2009 available on <http://www.thepresidency.gov.za> accessed on 30 July, 2015.

The Lawyers Chronicle; *The Rights of Women in Nigeria*; <http://the-lawyerschronicle.com/the-rights-of-women-in-Nigeria>.

The National Coalition on Affirmative Action (NCAA), 'National Gender Policy; Promoting Equal Opportunity' available at http://www.aacoalition.org/national_policy_women.html accessed on 30/6/2016.

"The Rights of the Girl-Child" in <http://www.slideshare.net/ajsjabm> 2012-13/the -girl-child rights

Ugboh O, Tibi E U , 'The Role of Community Based Orgs (Cbos) In Rural and Agricultural Transformation in DeltaState' (2007) 1 (2) African Research Review 178 available at <http://www.ajol.info/index.php/affrev/article/view/41007> accessed on 14 March 2016.

UNCHS, "Law relating to inheritance in marriage in Nigeria"-<http://www.facebook.com/The-reading-nation> accessed on 11/6/2015.
<http://www.un.org/womenwatch/daw/csw/shalev.htm> accessed 16/01/16.

United For Human Rights available at www.humanrights.com/what-are-human-rights.html accessed 13/02/15.

UN Women, 'Virtual Knowledge To End Violence Against Women and Girls' available at <http://www.endvawnow.org/en/articles/767-inheritance-laws.html?>

United Nations Development Programme (UNDP)Reports (2012) available at https://www./UNDP_Ng_inclusiveGrowth_Gender-Briefing-K.../ accessed 25/3/16.

Uweru B C, 'The Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism' p290 www.ajol.info/index.php/afrrrev/article/viewFile/41055/8479> accessed 15th April 2014

Vintagesam, 'Millennium Development Goals: A Performance Review for Nigeria'; August 26, 2013 available at <http://www.opinionnigeria.com/millennium-development-goals-a> accessed on 5 March 2016.

WACOL, <http://www.girlsnotbrides.org/members/womens-aid-collective-wacol/> accessed on 20 May 2016.

WACOL, retrieved from http://wacolnigeria.org/wacol/?page_id=145 accessed on 15 May 2016.

Wadesango N, Rembe S, Chabaya O, 'Violations of Women's Rights by Harmful Traditional Practices;' (2011) 13 (2) *Kamla-Raj, Anthropologists*, 124.

Waltz S; 'The Universality of Human Rights;' Vol 6, Issue 3, *Journal of International Institute*, 1999 available at <http://hdl.handle.net/2027/spo4750978.0006.302>. accessed 24/07/15.

World Health Organization Report (2007) culled from <http://www.yesican.org/definitions/WHO.html> 12/12/15.

Young L A, 'Challenges at the Intersection of gender and Ethnic identity in Kenya'(2012), *Minority Rights Group International* available at <http://humanrightshouse.org/noop/page.php?p=Articles/5345.html&d=1> accessed on 5 May 2016.